

**MINIMUM STANDARDS  
FOR  
FAMILY DAY CARE HOMES  
FAMILY NIGHTTIME HOMES  
AND  
GROUP DAY CARE HOMES  
GROUP NIGHTTIME HOMES  
REGULATIONS AND PROCEDURES**

*Prescribed by*

**STATE OF ALABAMA  
DEPARTMENT OF HUMAN RESOURCES**

Reprinted January 2006

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**STATE OF ALABAMA  
DEPARTMENT OF HUMAN RESOURCES**

**1974**

**Revised 1978**

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**Revised 1988**

**Revised and Combined 2001**

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**Revised 2005**

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**GROUP DAY CARE HOMES  
GROUP NIGHTTIME HOMES**

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# **I. Legal Authority**

The legal authority for regulation of child care is based on:

Child Care Act of 1971-Title 38, Chapter 7, Code of Alabama 1975, 38-7-1 et.seq. (Acts 1971, 3rd Ex. Sess. No. 174, p. 4423, sections 1 - 18.) (See Appendix M, page 89 for details.)

Title 41, Chapter 22, Section 19, 41-22-19, see also 41-22-1 et. seq (See Appendix M, page 107 for details.)

Title 26, Chapter 14, 26-14-1 et.seq. (See Appendix M, page 101 for details.)

Administrative Code, Section 660-5-27

Hearings and Appeals (See Section K, page 58 for details.)

**NOTE: Excerpts of the above-referenced laws are printed in this document as a resource. These laws are not a part of the regulations promulgated by the Department of Human Resources.**

## II. Regulations

These regulations prescribe minimum standards for family day care homes. Additional regulations for family nighttime homes, group day care homes and group nighttime homes are prescribed in sections G., H., and I.

For purposes of these regulations, a license is required for persons:

- Providing care for one or more children who are not related to the provider;
- With or without compensation;
- Away from the child's home;
- For more than four (4) hours in a 24 hour period.

### A. Definitions

*In the context of these regulations, the following definitions apply.*

1. **ADULT.** Any person 19 years of age or older.
2. **ASSISTANT CAREGIVER.** A person providing care and guidance of the children in a group day care/nighttime home, under the supervision of the licensee.
3. **CAREGIVER.** A person providing care and guidance of the children in the home.
4. **CHARACTER AND SUITABILITY.** The person maintains business/professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and concern for the well-being of others to the extent that the person is considered suitable to be entrusted with the care, guidance, and protection of children.
5. **CHILD.** Any person under 19 years of age.
6. **CHILD ABUSE AND NEGLECT.** According to the Code of Alabama 1975, Section 26-14-1, abuse is defined as harm or threatened harm to a child's health or welfare. Harm or threatened harm to a child's health or welfare can occur through nonaccidental physical or mental injury, sexual abuse or attempted sexual abuse or sexual exploitation or attempted sexual exploitation. "Sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in any sexually explicit conduct or any simulation of the conduct for the purpose of

producing any visual depiction of the conduct; or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children as those acts are defined by Alabama law. "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child for commercial purposes. Neglect is defined as negligent treatment or maltreatment of a child, including the failure to provide adequate food, medical treatment, supervision, clothing or shelter.

7. **COMMISSIONER.** The Commissioner of the State Department of Human Resources.
8. **DAY CARE HOME.** A child care facility which is a family home and which receives not more than 6 children for care during the day.
9. **DEPARTMENT.** The State or County Department of Human Resources.
10. **DEPARTMENT'S REPRESENTATIVE.** An employee or designee of the State or County Department of Human Resources, acting as the authorized agent of the Commissioner in carrying out the responsibilities and duties specified in Code of Alabama 1975.
11. **FACILITY FOR CHILD CARE OR CHILD CARE FACILITY.** A facility established by any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody, in any facility as defined in this chapter, established and maintained for the care of the children.
12. **FAMILY HOME.** A family home is the dwelling in which the applicant/licensee resides. (Residence is determined by address, mortgage payment or rent, voting district, property taxes, etc.)
13. **GROUP DAY CARE HOME.** A child care facility which is a family home and which receives at least seven but no more than twelve children for care during part of the day where there are at least two adults present and supervising the activities.
14. **LAWFUL SCHOOL AGE.** For purposes of these regulations, this term includes children who are five (5) years of age on or before September 1, (or the date on which school begins in the enrolling district pursuant to Code of Alabama 1975, § 16-28-4) of a given year. This definition corresponds with the minimum age at which a child is entitled to admission to public school kindergarten.

15. **LICENSEE.** Any person, group of persons, or corporation, to whom the license or permit is issued.
16. **NIGHT CARE FACILITY.** A child-care facility which is a center or a family home receiving a child or children for care after 7:00 p.m. A "night care facility" is further defined as follows:
  - a. **NIGHTTIME HOME.** A family home which receives no more than six children for care after 7 p.m.
  - b. **GROUP NIGHTTIME HOME.** A child care facility which is a family home which receives at least seven but no more than twelve children for nighttime care, where there are at least two adults present and supervising the activities.
17. **PARENT(S)/GUARDIAN(S).** The parent(s), legal guardian(s), or legal custodian of the child.
18. **RELATED.** Any of the following relationships by blood, marriage, or adoption: parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, half brother, half sister, uncle or aunt, and their spouses.
19. **SUBSTITUTE.** A person, at least 19 years of age, who meets the qualifications and is on call if the licensee must be away from the home.
20. **SUPERVISION.** Responsibility for each child and accountability for his/her care by giving direct and full attention to the children at all times.

## **B. Licensing Procedures**

### **1. Application for a License**

- a. Day care or nighttime care shall not be provided or advertised prior to issuance of a license or a six-month permit.
- b. Any person, group of persons, or corporation may obtain an application for a license to operate a child care facility by contacting the Department of Human Resources. (See Code of Alabama 1975, § 38-7-4 in Appendix M, page 93.)
- c. An application for a license to operate a child care home shall be made on the required form and shall include all requested information. (See Appendix A, page 65, for required form.)
- d. Applications for a license shall not be transferred from one person to another or from one location to another.

### **2. Prohibited Advertisement**

- a. No person, unless licensed or holding a six-month permit, may cause to be published any advertisement which solicits a child or children for care. To solicit a child or children for care means, among other similar actions or terms, to invite, appeal, plead, lure, beg, request, offer, suggest, promote, or implore. Both free and paid advertisement is prohibited.
- b. Prohibited advertisement includes, but is not limited to, printed and published material; descriptive literature and aids; speeches, talks, and presentations; flyers; booklets and pamphlets; signs and posters; illustrations and depictions; newspaper, radio, television, magazine, Internet, and/or other media advertising; letters and direct mail advertising; and any materials used by agents. Prohibited advertisement also includes printed and illustrated material or descriptions on cups, mugs, pens, pencils, or other objects.
- c. The following activity does not constitute prohibited advertisement:
  - (1) Advertisement using a name and address seeking employment applications for staff positions; provided that a license application has been filed with the Department and the advertisement includes the clearly visible phrase, "license application pending."
  - (2) "Under Construction," "Renovation," or "Remodeling" signs (with or without name and address) on the premises; provided that a license application has been filed with the Department and the sign includes the clearly visible phrase, "license application pending."

- (3) A market survey to determine the need for child care in a locality. Using the name and address of the business or individual is permitted so long as it does not solicit a child or children for care or promote the business.

### **3. Examination and Investigation of the Application**

- a. After receipt of the completed application, an inspection of the home and grounds and an investigation of the applicant and the household members will be made by a Department representative.
- b. The inspection and investigation will be based on minimum standards and regulations as prescribed and published by the Department.
- c. When minimum standards have been met, a license will be issued.

### **4. Denial of an Application**

If the application is denied, the Department will notify the applicant in writing, indicating the reason(s) for the Department's decision.

### **5. Withdrawal of an Application**

The applicant may withdraw the application either verbally or in writing, at any time during the licensing process.

### **6. Six-Month Permit**

- a. The Department may, at its discretion, issue one six-month permit to allow reasonable time for the applicant to become eligible for a full license. A new application is not required at the expiration of the six-month permit. The initial application remains pending during the six-month permit period. A two year license may be issued when the home meets minimum standards.
- b. The Department's decision to issue a six-month permit may be made after the applicant has met all Minimum Standards **except for providing one-half of the required equipment for each age group for which the home is licensed/permitted.** (See Section L, page 60, for equipment list.)
- c. The application shall be denied and the home shall close if Minimum Standards have not been met at the expiration of the six-month permit.

### **7. Provisions of a License/Permit**

- a. A license issued by the Department is valid for two years unless revoked or suspended by the Department or voluntarily surrendered by the licensee.
- b. A six-month permit issued by the Department is valid for six months unless revoked or suspended by the Department or voluntarily surrendered by the licensee.
- c. The number of children in the home or in the care of the licensee, including children on the premises or on field trips, at any given time, shall not exceed the number specified on the license/permit. Children shall be counted as follows:
  - (1) Children younger than lawful school age (see definition, Section A, 14., page 7), who live in the home shall be counted when they are in the home or on the premises. *(Effective July 8, 2005)* EXCEPTION: For homes licensed before the effective date of these regulations, for five (5) years after the effective date of these regulations (*January 22, 2001*), one (1) child younger than lawful school age who lives in the home shall not be counted.
  - (2) Children of lawful school age and older, who live in the home, shall not be counted.
  - (3) Children younger than twelve (12) years of age, who are visiting in the home during the hours of child care, who are not accompanied and supervised by an adult, whether related to the licensee or not, shall be counted when they are in the home or on the premises.
- d. The age range of the children received for care shall conform to the specifications on the license/permit.
- e. No home shall be licensed for more than three (3) children younger than twelve (12) months of age. *(Effective July 8, 2005)* Exceptions may be granted by the Department to allow for multiple-birth sibling groups (such as triplets) to be received for care.
- f. The Department and its authorized representatives shall have the right to inspect:
  - (1) any child care facility seeking a license;
  - (2) any child care facility seeking a renewal of a license;
  - (3) any child care facility which is operating under a license or a six-month permit.

Such inspection shall be made at any reasonable time, **without prior notice**, and may include the **entire** home and grounds. Prelicensing visits/inspections may be made by appointment.
- g. The Department shall have the right to immediately suspend, limit, or restrict the license/permit of a child care home when conditions hazardous to the health and safety of the children exist, including but not limited to:
  - (1) The right to restrict, limit, or suspend specific activities provided by the child care home, such as but not limited to: away-from-the-home activities; transportation of the children; swimming.
  - (2) The right to restrict or limit the use of specific areas of the home, such as but not limited to: outdoor play areas; bathrooms; rooms used by the children.

- (3) The right to reduce the number of children specified on the license/permit due to restricted use of required space or bathroom facilities or lack of qualified caregivers.
- h. The current license/permit shall be posted in a place in the home easily viewed by the parent(s)/guardian(s).
- i. The license/permit shall not be transferred to another person or to another location and is **void** if the licensee moves to another dwelling.
- j. Violators of provisions or standards prescribed by the Department shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$1000 or be imprisoned in the county jail not longer than one year, or both. (Code of Alabama 1975, § 38-7-16 (7), see page 99.)

## **8. Renewal of a License**

- a. An application for renewal of a license shall be submitted to the Department at least thirty (30) calendar days prior to the expiration of the current license. The application for renewal shall be made on the Department's required form(s). (See Appendix A, page 65, for a copy of required form.) It is the sole responsibility of the licensee to obtain the required form(s) and submit the form(s) to the Department on time.
- b. The home's license continues in effect until a decision is made by the Department on the application for renewal, provided that:
  - (1) the application for renewal is received by the Department at least thirty (30) calendar days prior to expiration of the license;
  - (2) the application is complete and accurate. (See Code of Alabama 1975, 41-22-19, Appendix M, page 107.)
- c. If the application for renewal is not received on time (not received at least thirty (30) calendar days prior to expiration of the license) or if the application is not complete and accurate, the license will expire on the expiration date shown on the license. If the licensee continues to operate after the expiration date, the licensee will be reported to the District Attorney and the Attorney General for operating an unlicensed child care facility.
- d. If, upon inspection, minimum standards are not being met, corrective or adverse action shall be taken. (See Section J., page 54, for additional information.)

## **9. Department Visits and Consultation**

- a. Visits to the home are made by representatives of the Department to determine if minimum standards are being met, to investigate complaints and to provide consultation.
- b. Visits made for the purpose of determining if minimum standards are being met or to investigate a complaint shall be made without prior notice. Prelicensing visits may be made by appointment.
- c. The licensee shall be informed of complaints of alleged licensing violations made to the Department against the licensee.
- d. The licensee shall not be informed of the identity of the complainant by the Department.

## **C. The Home**

### **1. Location**

- a. Each home licensed after the effective date of these regulations shall be the primary residence of the applicant/licensee. (Primary residence is determined by address, mortgage payment/rent, voting district, property taxes, etc.)
- b. Child care shall be provided within the family home, not in a separate building.
- c. If rental property is used, a written statement from the owner of the property granting permission for the applicant to operate a child care home, shall be obtained by the applicant and submitted to the Department at the time of initial application.
- d. At the time of initial application, a written statement of compliance with applicable zoning requirements shall be obtained and submitted to the Department. If no zoning laws or ordinances are applicable, the applicant shall submit a written statement verifying he/she has checked with the local governing authority and there are no applicable zoning laws or ordinances.
- e. At the time of initial application, a written inspection report, with no violations cited, shall be obtained from the fire department with jurisdiction or from the state fire marshal, and submitted to the Department. The home shall comply with the fire code, building and safety codes adopted by the State Fire Marshal's Office.
- f. A written inspection report from the health department may be requested at the discretion of the Department at any time.
- g. Subsequent fire and health department inspection reports, after the initial inspection, may be requested by the Department and copies shall be submitted to the Department by the licensee.
- h. Homes licensed prior to the effective date of these regulations shall submit written statements and inspection reports listed in c., d., e., and g., above, at the time of the home's next license renewal.

### **2. Indoor area**

The home and grounds shall be maintained in a clean and safe condition.

- a. Injury prevention
  - (1) The home shall be free from apparent hazardous conditions.
  - (2) The home shall have electricity, water, gas (if used for cooking/heating), and a waste disposal system (city sewage or septic tank).

- (3) The licensee shall have a working telephone in the home.
- (4) All poisons, cleaning supplies, flammable and other dangerous substances shall be kept under lock and key or combination lock when not in use.
- (5) Animals in the home
  - (a) Animals or breeds of animals that have shown aggressive behavior, shall not be kept in the home or on the grounds.
  - (b) Animals that are not aggressive but could pose a threat to the health and safety of the children shall be kept in an area away from the children.
  - (c) Animals shall not be allowed in areas of food storage, food preparation or food service during the hours of child care.
  - (d) A current certificate of rabies vaccination shall be on file in the home for any animal required by law to be vaccinated.
- (6) If fans are used for ventilation, blades within reach of children shall be enclosed for safety.
- (7) All exposed electrical outlets shall have protective covers. The covers shall be large enough to prevent being swallowed.
- (8) During hours of operation, all guns/firearms shall be unloaded and stored under lock and key or combination lock. Ammunition shall be stored separately from guns/firearms, under lock and key or combination lock.
- (9) All stairs used by the children shall have handrails within child's reach.
- (10) Smoking is prohibited during the hours of child care.
- (11) All medication shall be kept under lock and key or combination lock.
- (12) Clear glass doors, such as patio and storm doors, shall be plainly marked at child level, to prevent accidental impact.
- (13) Tools and machinery shall be kept in an area where the children cannot get to them.
- (14) Hot tubs shall be securely covered or drained during the hours of child care.
- (15) In the event of power failure or other emergency situations, the licensee shall have a flashlight in working condition, in a convenient location.
- (16) Consumption of alcohol is prohibited during hours of child care.
- (17) Non-prescription narcotic or illegal substances are prohibited in the home or on the grounds.

b. Cleanliness and health

- (1) The bathroom shall be clean.
- (2) Foot stools with non-skid legs shall be available for handwashing and toileting.
- (3) If potty chairs are used, they shall be promptly emptied into the toilet and washed and disinfected after each use.
- (4) The diapering area shall be a washable surface and shall be cleaned and disinfected after each use.
- (5) Sufficient clean, dry diapers and clothing shall be provided for each infant/toddler.
- (6) Wet or soiled diapers and other clothing shall be changed promptly.

- (7) Disposable diapers shall be placed in a covered, plastic-lined trash container inaccessible to children.
- (8) Reusable (cloth) diapers shall be rinsed in the toilet, placed in a plastic bag, and stored out of reach of children.
- (9) The licensee and each caregiver shall wash his/her hands with soap and warm running water after diapering **each child**, after assisting with toileting, and after contact with bodily fluids, **even if gloves are used**. Individual disposable paper towels shall be used for hand drying.
- (10) The licensee and each caregiver shall use single-use disposable gloves for diapering. Clean gloves shall be used for diapering **each child**. Used gloves shall be disposed of in a covered, plastic-lined container, inaccessible to children, and shall be disposed of daily.
- (11) Each child's hands shall be washed after diapering and toileting.
- (12) No child shall be left unattended while being diapered.
- (13) The diapering area shall be separate from areas used for serving, preparing, or storing food.
- (14) The home shall be maintained so as to prevent and eliminate rodent and insect infestation.
- (15) Garbage and trash shall be removed at intervals so as not to create a nuisance or a menace to health. Garbage shall be stored in fly-proof and watertight containers with tight fitting covers.
- (16) Bedding, toys, utensils, toilets, and sinks used by a sick child or household member shall be cleaned and disinfected before being used by another person.
- (17) All windows and doors used for ventilation shall be screened.

c. Space

- (1) There shall be at least thirty-two (32) square feet of usable indoor floor space for each child the home is licensed or permitted to serve. For homes licensed before the effective date of these regulations, the capacity of the home for licensing purposes shall be determined by the Department at the time of the home's next license renewal.
- (2) All rooms used for the care of children shall be well-lighted, adequately ventilated, and comfortably cooled or heated as appropriate to the season.
- (3) The home shall have space for providing privacy to a child as needed, and to members of the licensee's household, whether for resting, studying, or other purposes.
- (4) Space shall be available for the temporary care and isolation of a sick child or members of the licensee's household.
- (5) The home shall have clean and appropriate facilities for the protection, storage, preparation, and serving of food.
- (6) Space shall be provided for storage of each child's personal belongings, such as, but not limited to boxes, plastic bins, milk crates, etc.

**d. Equipment and furnishings**

- (1) The licensee shall provide a crib, playpen, bed, or cot for each child who requires rest or sleep during the hours while in care.
  - (a) No child shall sleep with an adult.
  - (b) Each child younger than twelve (12) months of age shall sleep alone in a crib or play pen. If cribs are used, cribs manufactured with slats no more than  $2\frac{3}{8}$  inches apart shall be provided. A waterproof mattress which fits snugly against all sides of the crib shall be provided. Mattresses shall be in good condition, with no tears or exposed foam rubber or other stuffing.
  - (c) In accordance with recommendations from the American Academy of Pediatrics, unless the infant has a note from a physician specifying otherwise, each infant shall be placed in a supine (on his/her back) position for sleeping to lower the risks of Sudden Infant Death Syndrome (SIDS).
  - (d) In accordance with recommendations from the American Academy of Pediatrics, when an infant can easily turn over from the supine (back) to the prone (front) position, he/she shall be put down to sleep on his/her back, but allowed to adopt whatever position he/she prefers for sleep
  - (e) In accordance with recommendations from the American Academy of Pediatrics, each infant (younger than twelve (12) months) shall be placed in a prone (front) position part of the time he/she is awake and observed. "Tummy time" helps muscle development and reduces the tendency of back positioning to flatten the back of the infant's head.
  - (f) In accordance with recommendations from the American Academy of Pediatrics, unless a physician specifies the need for a positioning device that restricts movement within the child's bed, such devices shall not be used.
  - (g) In accordance with recommendations from the American Academy of Pediatrics, soft materials are prohibited in the infant's sleeping environment.
    - ((1)) Soft materials or objects, such as pillows, quilts, comforters, or sheepskins, shall not be placed under a sleeping infant.
    - ((2)) Soft objects, such as pillows, quilts, comforters, bumper pads, sheepskins, stuffed toys, and other gas-trapping objects shall be kept out of the infant's sleeping environment.
  - (h) No infant shall be put to sleep on a sofa, soft mattress, or other soft surface.
  - (i) Each child between 12 and 18 months of age shall sleep alone in a crib or play pen or on a low cot.
  - (j) Two children older than 18 months of age, of the same sex, may share a double or larger size bed, or may sleep alone on a cot or bed.
  - (k) The beds, cots, cribs or play pens shall be clean and sanitary and free of hazards. They shall be maintained in good condition.

- (l) Bedding shall be adequate and appropriate to the season. Sheets and covers shall be laundered weekly or more often when soiled. Clean sheets shall be provided for use by each child. Clean covers shall be provided for use by each child older than twelve (12) months of age.
- (m) Beds, when not in use by household members, may be used for children in care provided that they are completely covered with clean linens before being used by the children.
- (n) Waterbeds shall **not** be used by a child at any time.
- (o) Upper or top bunk beds shall **not** be used by a child at any time.
- (p) No child shall sleep or nap on the floor.
- (2) The licensee shall provide a variety of toys, games, and other play equipment appropriate to the ages of children specified on the license/permit and to the interests of the children. The licensee shall provide at least two (2) items from each category for each age group for which the home is licensed or permitted, as listed in Section L., page 60, the Equipment List. For homes licensed before the effective date of these regulations, required equipment shall be provided by August 31, 2003. *(Effective June 10, 2003)*
- (3) Video tapes shall be viewed by the licensee for appropriateness before being shown to children. Video tapes and reading materials with sexually explicit, frightening or violent content shall be kept in an area inaccessible to children.
- (4) First aid supplies shall be available for the treatment of minor cuts and abrasions and other minor injuries. Such supplies shall be stored out of the reach of children.

### 3. Outdoor Area

***NOTE: The Department of Human Resources does not inspect activities away from the home, including swimming and wading activities. The licensee shall assume full authority and responsibility for away from the home activities.***

***If the licensee provides activities away from the home, a written statement, signed by each child's parent(s)/guardian(s), shall be on file in the home prior to the child's participation in such activities. The statement shall indicate that the parent(s)/guardian(s) has/have been informed the Department of Human Resources does not inspect activities provided away from the home and that the licensee assumes full responsibility for such activities.***

The home and grounds shall be maintained in a clean and safe condition.

- a. Outdoor play area
  - (1) Children shall be supervised at all times.
  - (2) The outdoor play area shall be free from apparent hazardous conditions.
  - (3) There shall be at least one outdoor play area of at least 300 square feet on the grounds. The outdoor play area shall be enclosed by a fence or wall at least four (4) feet in height, free from sharp, protruding edges, except where

prohibited by federal regulations. Written documentation shall be submitted to the Department. **Homes licensed before the effective date of these regulations, without a four (4) foot fence or wall, shall install a fence or wall at least four (4) feet in height by August 31, 2003, except as stated above.** (Effective June 10, 2003)

- (4) The licensee shall provide at least two (2) different items of active/outside play equipment listed in Section L., page 60, Equipment List, for each age group specified on the license/permit. For homes licensed before the effective date of these regulations, required equipment shall be provided by August 31, 2003. (Effective June 10, 2003)
- (5) Outdoor play equipment, which is not designed to be portable, shall be securely anchored so that it cannot be tipped over by an adult.
- (6) Concrete or asphalt shall not be used under outdoor play equipment, except wheel toys.
- (7) The outdoor play area shall be free of any stacked wood, construction materials, lumber, or firewood.
- (8) Stairs or steps used by the children shall have handrails within child's reach.

b. Injury prevention

- (1) The home and grounds shall be free from apparent hazards including, but not limited to:
  - abandoned automobiles;
  - unused household appliances;
  - uncovered wells and cisterns;
  - stacked lumber with exposed nails;
  - and explosives.
- (2) Tools and machinery shall be inaccessible to the children in care.
- (3) All poisons shall be kept in a locked area (lock and key or combination lock).
- (4) Animals or breeds of animals that have shown aggressive behavior shall not be kept in the home or on the grounds.
- (5) Animals that are not aggressive but could pose a threat to the health and safety of the children shall be kept in an area away from the children.
- (6) A current certificate of rabies vaccination shall be on file in the home for any animal required by law to be vaccinated.
- (7) Water hazards on the grounds or adjacent to the grounds shall be inaccessible to the children.

c. Swimming and wading

***NOTE: The Department of Human Resources does not inspect activities away from the home, including swimming and wading activities. The licensee shall assume full authority and responsibility for away from the home activities.***

***If the licensee provides activities away from the home, a written statement, signed by each child's parent(s)/guardian(s), shall be on file in the home prior to the child's participation in such activities. The statement shall indicate that the***

***parent(s)/guardian(s) has/have been informed the Department of Human Resources does not inspect activities provided away from the home and that the licensee assumes full responsibility for such activities.***

- (1) When a swimming pool (above ground or in-ground), two (2) feet or more in depth is accessible to the area used for child care, the pool shall be enclosed by a fence or a solid wall which has no doors, windows, or other openings. The sides of an above ground pool shall not be considered a fence or wall. The fence or wall shall be at least four (4) feet in height, with a locking gate. The gate and all areas of access shall remain locked at all times the pool is not in use.
  - (a) If children are allowed in the pool area, additional supervision shall be required. The adult to child ratio shall be:
    - (i) one adult caregiver for each child younger than 2½ years;
    - (ii) one adult caregiver for every three (3) children 2½ years up to 6 years of age;
    - (iii) one adult caregiver to every five (5) children 6 years of age and older.
  - (b) A person with a current American Red Cross Lifeguard Training Certificate shall be in the pool area at all times when the pool is in use. A copy of the current American Red Cross Lifeguard Training Certificate shall be on file in the home.
  - (c) The pool shall be maintained in a clean and safe condition.
- (2) When a wading structure less than two (2) feet in depth is available to the children, there shall be continuous supervision by an adult caregiver. The wading pool shall be filled with clean water prior to each day's usage. The wading pool shall be emptied when not in use.
- (3) The licensee shall be present during any swimming/wading activities.
- (4) Written permission for participation in swimming/wading activities from each child's parent(s)/guardian(s) shall be on file in the home if swimming/wading is provided.

#### **4. Transportation**

***NOTE: The Department of Human Resources does not inspect activities away from the home. The licensee shall assume full authority and responsibility for away from the home activities.***

***If the licensee provides activities away from the home, a written statement, signed by each child's parent(s)/guardian(s), shall be on file in the home prior to the child's participation in such activities. The statement shall indicate that the parent(s)/guardian(s) has/have been informed the Department of Human Resources does not inspect activities provided away from the home and that the licensee assumes full responsibility for such activities.***

- a. The licensee shall be responsible for children whom they transport during the hours of care.
- b. When the licensee provides transportation to and from the home or another designated location, the licensee shall be responsible for picking the child up at the designated location and delivering the child to the care of the designated person.
- c. A transportation checklist shall be used any time children are transported, walking or by vehicle, to account for each child at every location. (See Appendix L, page 86, for required form.)
- d. The licensee shall not transport any child in a vehicle without the written consent of the child's parent(s)/guardian(s).
- e. No child shall be left in a vehicle without adult supervision.
- f. The driver of the vehicle shall have a valid driver's license.
- g. Doors of the vehicle shall be locked at all times when the vehicle is moving.
- h. All passengers and the driver shall be secured in a seat belt or a child passenger restraint system:
  - (1) Each child from birth until his/her fourth birthday shall be secured in a child passenger restraint system (commonly known as a car seat), as prescribed by law, which is installed and used according to the manufacturer's instructions and is maintained in good condition.
  - (2) Each child four years of age and older shall be secured in an *individual* seat belt, as prescribed by law, which is properly anchored to the vehicle.
  - (3) In all vehicles, front seat passengers and each child younger than four (4) years of age shall be secured in a seat belt or child passenger restraint system (commonly known as a car seat) as required. Seat belt or child passenger restraint system requirements for children four (4) and older do not apply to trucks and buses with a tonnage rating of one ton or more. Written documentation of vehicle tonnage rating from the vehicle's manufacturer or authorized dealer, tag receipt or metal plate on the vehicle or from some other official source, shall be submitted to the Department for vehicles with a tonnage rating of one ton or more to be exempt from seat belt or child passenger restraint system requirements.
- i. Children shall not be transported in the front seat of any vehicle with a passenger side air bag.

## 5. Emergency procedures

- a. The licensee shall maintain a list of names and telephone numbers, posted by the telephone for emergency situations. The list shall include the name and telephone number of each child's parent(s)/guardian(s), each child's responsible relative, each child's doctor, law enforcement, fire department, hospital, poison control, Department of Human Resources, caregivers, and substitutes.
- b. A plan for the evacuation and care of the children in case of fire, tornado, serious accident or injury, or power failure shall be established and posted in a conspicuous place in the home. The licensee shall inform substitutes and all caregiver(s) of his/her duties and responsibilities in case of emergency. A written statement, signed by each substitute and caregiver, verifying that he/she has been informed of emergency procedures shall be on file in the home.
- c. The licensee and each caregiver shall have current Infant-Child Cardiopulmonary Resuscitation Certificate (CPR) from the American Red Cross, the American Heart Association or the National Safety Council and a current First Aid Certificate. Copies of the certificates shall be on file in the home.

## **D. Licensee and Members of the Household**

### **1. Health**

The health of the applicant/licensee and of the members of the household shall not be detrimental to the physical and mental well-being of the children in care.

- a. Initially, the applicant/licensee shall provide a medical report, on the required form, (see Appendix C, page 72, for required form) from a licensed practicing medical doctor, physician's assistant (as defined in Section 34-4-290 (4), Code of Alabama 1975), or a certified nurse practitioner. The initial report shall be dated within six (6) months prior to the date of the initial application and shall document the date (shall also be within six (6) months) and result of a tuberculin skin test or chest x-ray. The medical report shall attest to the physical ability of the applicant/licensee to care for children and the person's freedom from infectious or contagious diseases. The statement shall be signed by a licensed practicing medical doctor, a physician's assistant, or a certified nurse practitioner and shall be on file with the Department. A copy of the medical statement shall be kept on file by the applicant/licensee.
- b. At least every two (2) years after the date of the initial medical report the licensee shall obtain a report (see Appendix C, page 72, for required form) from a licensed practicing medical doctor, physician's assistant, or certified nurse practitioner, which attests to the licensee's freedom from infectious or contagious diseases and to his/her physical ability to care for children. The report shall be submitted to the Department. A copy shall be kept on file in the home.
- c. A medical report (see Appendix C, page 72, for required form) from a licensed practicing medical doctor, physician's assistant, or certified nurse practitioner, dated within six (6) months prior to the date of the initial application, shall be submitted initially for each household member. The medical report shall document the date (shall also be within six (6) months) and result of a tuberculin skin test or chest x-ray. At least every four (4) years after the date of the initial medical report, each member of the household shall submit another medical report, signed by a licensed practicing medical doctor, physician's assistant, or certified nurse practitioner. Each report shall indicate the person's physical condition and freedom from infectious or contagious diseases.
- d. In addition to the medical report, for each child from two (2) months to five (5) years of age, living in the home, a valid State of Alabama Certificate of Immunization (ADPH-F-IMM-50), a valid Alabama Certificate of Medical Exemption (ADPH-F-IMM-50), or a valid Alabama Certificate of Religious Exemption (ADPH-F-IMM-52) shall be submitted to the Department. A copy shall be kept on file in the home.
- e. A medical report (see Appendix C, page 72, for required form) from a licensed practicing medical doctor, or physician's assistant, or certified nurse practitioner,

shall be submitted initially (dated within six (6) months prior to the date of the initial application) and at least every two (2) years after the date of the initial report, on all substitutes, caregivers, and household domestic workers who have contact with the children in care or with food served to the children in care. The medical report shall document the date (shall also be within six (6) months) and result of a tuberculin skin test or chest x-ray. Each report shall indicate the person's physical condition and freedom from infectious or contagious diseases.

- f. An additional medical or psychological evaluation or a drug screening may be required at the discretion of the Department's representative, based on information that raises reasonable suspicion. A release to allow the department representative to confer directly with the doctor or professional performing the evaluation shall be provided by the applicant/licensee upon request. "Reasonable suspicion" is defined as follows: Belief based upon evidence of past or present behavior that reasonable grounds exist to review the employee, staff, or licensee, including board members, suitability and fitness to provide care for children. (*Effective June 10, 2003*)
- g. A licensee/caregiver who shows indications of a physical, emotional, or mental condition which could be detrimental to the children in care or which would prevent satisfactory performance of duties shall not continue giving care to the children until a written statement from the examining medical doctor, indicating that the licensee/caregiver is able to care for the children, is submitted to the Department. In such situations, the substitute may care for the children until the condition is cleared.

## **2. Character and Suitability**

- a. Applicants/licensees (see definition, Section A., 15., page 9), household members, caregivers (see definition, Section A., 3, page 7), substitutes, domestic workers, volunteers, or other persons who have contact with the children in care or unsupervised access to the children in care shall be of good moral character. Information regarding the character and suitability of applicants for a license and all adult household members shall be reviewed by the Department at the time of the initial application for a license. Subsequent character and suitability reviews shall be conducted at the discretion of the Department. Evidence that an applicant/licensee, household member, caregiver, substitute, domestic worker, volunteer, or other person who has contact with the children or unsupervised access to the children, is of unsuitable character may be the basis for the denial of an initial application, denial of an application for renewal of a license, suspension of a license/permit, or revocation of a license or six-month permit.
- b. The applicant/licensee shall conduct a character and suitability review, as set forth below, of substitutes, caregivers, domestic workers, volunteers, and other persons have contact with the children or unsupervised access to the children.

- c. **Factors to be considered in determining character and suitability shall include but need not be limited to:**
- (1) References.
    - (a) At the time of initial application, each applicant for a license and each adult household member shall provide the Department with the names, addresses, and telephone numbers of at least three persons who are unrelated to the applicant or household member by blood, marriage, or adoption. These persons shall be contacted by the Department to determine the applicant/household member's character, community reputation, work history, and suitability to care for children or to have contact with children. The Department may, at its discretion, contact additional sources who can attest to the applicant/household member's character and suitability to care for children or to have contact with children.
    - (b) The applicant/licensee shall obtain at least three written references for each current and prospective caregiver, substitute, domestic worker, volunteer, or other person who has contact with the children or unsupervised access to the children. References shall attest to the person's character, community reputation, work history, suitability to care for children or to have contact with the children. Reference contacts shall not be related to the person by blood, marriage, or adoption. Written references shall be kept on file in the home. (See Appendix E, page 77, for required reference form.)
  - (2) Clearance of State Central Registry on Child Abuse/Neglect
    - (a) At the time of initial application, a completed REQUEST FOR CLEARANCE OF STATE CENTRAL REGISTRY ON CHILD ABUSE/NEGLECT (DHR-DFC-1598) shall be submitted by the applicant and each adult household member. Results shall be kept in the Department's files.
    - (b) The applicant shall obtain a completed REQUEST FOR CLEARANCE OF STATE CENTRAL REGISTRY ON CHILD ABUSE/NEGLECT (DHR-DFC-1598) for each caregiver, substitute, volunteer, domestic worker, and any other person who has contact with the children or unsupervised access to the children. Completed forms shall be submitted to the Department.
    - (c) A subsequent REQUEST FOR CLEARANCE OF STATE CENTRAL REGISTRY ON CHILD ABUSE/NEGLECT (DHR-DFC-1598) may be requested by the Department at any time.
  - (3) Criminal History Background Information Checks
    - (a) In accordance with Alabama law, (Act 2000-775, Code of Alabama 1975, § 38-13-1 through 12, effective November 1, 2000, see Appendix M, page **Error! Bookmark not defined.**, for a copy of the law), the criminal history of each applicant for a license, each licensee, each adult household member, substitute, caregiver, volunteer, and domestic worker, as well as any other person who has

contact with the children or unsupervised access to the children shall be reviewed.

- (b) At the time of initial application, an applicant for a license and each adult household member shall submit, to the Alabama Bureau of Investigation, Department of Public Safety, a request for a criminal history background information check accompanied by the following:
- ((1)) **MANDATORY CRIMINAL HISTORY CHECK NOTICE:** (See Appendix B., page 71, for copy of form.) Alabama law requires that a criminal history background information check be conducted on all persons who hold a license or work in a Department of Human Resources licensed child care or adult care facility, a foster or adoptive home approved by the Department of Human Resources, or a licensed child placing agency, including all officers and agents of the entity. You are required to provide full, complete, and accurate information on your criminal conviction history upon application for a license or employment (whether paid or unpaid, including volunteers). This information shall be used to determine your suitability to provide care to children, the elderly, or disabled individuals. Unless a criminal history background information check report and suitability determination have previously been obtained, you must complete a written request and consent for a criminal history background information check with fingerprints at the time of application for employment. Refusal to complete these documents or providing false information shall result in refusal of employment, approval, or licensure. The term conviction includes a determination of guilt by a trial, by a plea of guilty, or a plea of nolo contendere. You are required to notify your employer, licensing agency, or entity where you are performing volunteer work of any criminal conviction occurring subsequent to the date of completion of this notice. Any individual determined to have submitted false information shall be referred to the district attorney or law enforcement for investigation and possible prosecution. An individual who intentionally falsifies or provides any misleading information on the statement is guilty of a Class A misdemeanor, punishable by a fine of not more than two thousand dollars (\$2,000) and imprisonment for not more than one year. Convictions for any crimes listed in Section (4), shall make an individual unsuitable for licensure, employment, or volunteer work.

- ((2)) Convictions for any crimes listed in Section D., 2., c., (4), shall make an individual unsuitable for licensure, employment or volunteer work.
  - ((3)) The Mandatory Criminal History Check Notice shall include the following criminal history statement:
    - (i) Have you ever had a suitability determination made by the Department of Human Resources in connection with a previous criminal history information background check? Yes (\_\_\_) No (\_\_\_).
    - (ii) Have you ever been convicted of a crime? Yes (\_\_\_) No (\_\_\_). If yes, state the date, crime, location, punishment imposed, and whether the victim was a child or an elderly or disabled individual.
  - ((4)) A signed statement, which includes the mandatory statement above, indicating whether he or she has ever been convicted of a crime, and if so, fully disclosing all convictions. The mandatory statement shall be submitted to the Department of Human Resources Criminal History Checks Unit. A copy shall be kept on file in the home
  - ((5)) Two complete sets of fingerprints, properly executed by a law enforcement agency or an individual properly trained in fingerprinting techniques.
  - ((6)) Written consent from the applicant and each adult household member for the release of the criminal history background information to the Department of Human Resources. A copy shall be submitted to the Department of Human Resources Criminal History Checks Unit. A copy shall kept on file in the home
  - ((7)) The required fee.
  - ((8)) Identification verification of name, date of birth, race, sex, and Social Security number in the form of a photo identification from any governmental agency, such as a driver's license, non-driver's identification, or program participation card. A copy of the identification verification shall be kept on file in the home.
- (c) Each adult household member, substitute, caregiver, and domestic worker, volunteer, and any other person who has contact with the children or unsupervised access to the children, at the time of initial employment, moving into a licensed home, or performing volunteer services, shall submit, to the Alabama Bureau of Investigation Department of Public Safety, a request for a criminal history background information check accompanied by the following:
- ((1)) Prior to or on the first day of employment or moving into the home, a statement shall be signed, which includes the mandatory statement above, indicating whether he or she has ever been convicted of a crime, and if so, fully disclosing all

convictions. The mandatory statement shall be submitted to the Department of Human Resources Criminal History Checks Unit. A copy shall be kept on file in the home.

- ((2)) A substitute, caregiver, volunteer, domestic worker and any other person who has contact with the children or unsupervised access to the children, who fails or refuses to sign the required Mandatory Criminal History Check Notice and complete the questions shall not be employed, or allowed to perform volunteer services.
- ((3)) If an adult household member fails or refuses to sign the required Mandatory Criminal History Check Notice and complete the questions, the Department shall revoke or refuse to renew the home's license.
- ((4)) Upon receipt of a signed Mandatory Criminal History Check Notice, revealing no disqualifying convictions, an adult household member, substitute, caregiver, volunteer, domestic worker and any other person who has contact with the children or unsupervised access to the children, may be employed, perform volunteer services or reside in a licensed home provisionally at the discretion of the licensee, pending receipt of a suitability determination from the Department.
- ((5)) Within five business days of moving into the home, being employed, or beginning volunteer service the following shall be submitted to the Alabama Bureau of Investigation, Department of Public Safety:
  - (i) Fingerprints, properly executed by a law enforcement agency or an individual properly trained in fingerprinting techniques.
  - (ii) Written consent from each adult household member, substitute, caregiver, volunteer, domestic worker, or any other person who has contact with the children or unsupervised access to the children, for the release of the criminal history background information to the Department of Human Resources. A copy shall be submitted to the Department of Human Resources Criminal History Checks Unit. A copy shall be kept on file in the home.
  - (iii) The required fee.
  - (iv) Identification verification of name, date of birth, race, sex, and Social Security number in the form of a photo identification from any governmental agency, such as a driver's license, non-driver's identification, or program participation card. A copy of the identification verification shall be kept on file in the home.

- ((6)) Fingerprints may be collected through the use of ink pads and fingerprint cards or through the use of ink-less “live scan” fingerprinting devices to collect and print fingerprints on cards or transmit the fingerprints electronically to the Department of Public Safety. When no copy of the fingerprint card is available because of the electronic transmission of live scan fingerprints, written documentation from the individual or law enforcement agency that the fingerprints have been collected and transmitted shall be maintained on file in the home and sent to the Department’s Criminal History Check Unit.
- ((7)) Fingerprints are not required when a disability prevents an individual from being fingerprinted. Disabilities preventing fingerprinting include the loss of both hands, severe scarring of all fingers, closed paralytic hands, and similar disabilities. In situations involving a covered disability, a completed Criminal History Information Consent and Release form is required. The Department of Public Safety shall conduct a criminal history background information check by name and Social Security number in such cases. Documentation or verification of that the disability prevents fingerprinting shall be obtained from law enforcement or from an individual trained in fingerprinting techniques and shall be submitted to the Department of Public Safety and the Department of Human Resources.
- (d) Criminal history background information checks shall be performed by the Alabama Department of Public Safety. National criminal history background checks shall be requested by the Department of Public Safety from the Federal Bureau of Investigation. Criminal history background reports shall be sent to the Department of Human Resources.
- (e) The Department of Human Resources shall review the report and determine whether the applicant or other person meets the suitability requirement based on the criminal history background report. The Department shall issue a suitability determination and maintain a confidential file on individuals for whom a criminal history background information report or report updates have been received.
- (f) Upon receipt of a determination of unsuitability, the affected individual shall be terminated from employment or volunteer work in the home.
- (g) The Department shall suspend or revoke the license or deny the initial application or the application for renewal if the applicant/licensee, household member or another person in the home receives a determination of unsuitable character.
- (h) The Department shall send a copy of the letter determining suitability status to the individual affected and to the licensee of the home. The

individual has thirty (30) days from the date of notification to request in writing a reversal of the determination of suitability if the disqualifying conviction is not for a sex crime, or a crime against a child, an elderly individual, or an individual with disabilities. The affected individual shall show clear and convincing evidence of successful rehabilitation.

- (i) The Department shall send a copy of the report received from the Department of Public Safety to the affected individual. The affected individual shall have the opportunity to challenge the accuracy of the report.
  - (j) If a suitability determination letter is received by the licensee from the Department's Criminal History Check Unit stating an individual is suitable for employment based on the absence of any disqualifying convictions, the licensee shall make his or her own determination regarding employment or volunteer work. No right to employment is created by the issuance of a letter stating an individual is suitable for employment.
  - (k) Only one criminal history background check shall be required per individual. If the individual certifies on the Mandatory Criminal History Check Notice statement that a criminal history check has been performed by the Department, the Department will issue a determination of suitability based on the criminal history report received. If the previous report cannot be obtained, a new criminal history check shall be required.
  - (l) The licensee shall inform the Department of any criminal convictions and current criminal charges involving the licensee, household members, substitutes, caregivers, domestic workers, and other persons who have contact with the children or unsupervised access to the children, which occur after a license/permit is obtained. Such reports shall be made within 24 hours and followed by a written report within five (5) days. (See Section F., 2., Reports to the Department for details.) This information shall be kept on file by the Department.
- (4) Evidence of Unsuitable Character
- (a) Convictions for any of the following crimes **shall** make an applicant/licensee, household member, caregiver, substitute, domestic worker, volunteer, or any other person unsuitable to hold a license/permit or have contact with the children or unsupervised access to children
    - ((1)) Murder, manslaughter, or criminally negligent homicide.
    - ((2)) A sex crime, including the following:
      - (i) Enticing a child to enter a vehicle, room, house, office, or any other space for immoral purposes, as proscribed by Section 13A-6-69 of the Code of Alabama 1975.

- (ii) Incest, when the offender is an adult and the victim is a minor, as proscribed by Section 13A-13-3 of the Code of Alabama 1975.
  - (iii) Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44 of the Code of Alabama 1975.
  - (iv) Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or Section 13A-12-112 of the Code of Alabama 1975.
  - (v) Rape in the first or second degree, as proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code of Alabama 1975.
  - (vi) Sexual misconduct, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.
  - (vii) Sexual torture, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.
  - (viii) Sexual abuse in the first or second degree, as proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code of Alabama 1975.
  - (ix) Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code of Alabama 1975.
  - (x) Soliciting a child by computer for the purposes of committing a sexual act and transmittal of obscene material to a child by computer as proscribed by Sections 13A-6-110 and 13A-6-111 of the Code of Alabama 1975.
  - (xi) Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197 of the Code of Alabama 1975.
  - (xii) Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs i through xi, inclusive.
  - (xiii) A crime listed in the Community Notification Act, Chapter 20 of Title 15 of the Code of Alabama 1975.
- ((3)) A crime that involves the physical or mental injury or maltreatment of a child, the elderly, or an individual with disabilities.
  - ((4)) A crime committed against a child.
  - ((5)) A crime involving the sale or distribution of a controlled substance.
  - ((6)) Robbery.

- ((7)) A crime listed in the federal Adoption and Safe Families Act as prohibiting a person from being a foster parent or adoptive parent shall be deemed to make the convicted person unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent.
  - ((8)) A violation or attempted violation of an offense committed outside the State of Alabama or under federal law is a sex crime or any other crime listed in this notice if the offense would be a crime listed in this notice in Alabama.
- (b) Reports of adult or child abuse/neglect (with or without criminal convictions), related to crimes listed in ((1)) through ((8)) above, with a final disposition by the hearing officer of indicated (founded or substantiated), or indicated reports of adult or child abuse/neglect in which a hearing was declined, in this or any other state. *(Effective July 8, 2005)*
- (c) Examples of evidence which **may** make an applicant/licensee, household member, caregiver, substitute, domestic worker, volunteer, or any other person, unsuitable to hold a license/permit or have contact with the children or unsupervised access to children, include but are not limited to the following:
  - ((1)) any felony conviction in this or any other state;
  - ((2)) theft and other financial crimes related to business activities
  - ((3)) misdemeanor convictions in this or any other state;
  - ((4)) operating a motor vehicle while under the influence of or while impaired by the use of intoxicating liquor or drugs;
  - ((5)) offenses involving the reckless operation of a motor vehicle at an excessive speed;
  - ((6)) a crime involving the possession of a controlled substance;
  - ((7)) operating a child care facility without a license/permit/exemption;
  - ((8)) refusal to cease operations of an unlicensed child care facility;
  - ((9)) a history of consistent failure to maintain minimum standards while operating a child care facility;
  - ((10)) refusal or failure to cooperate in any Department investigation or inspection;
  - ((11)) making false or misleading statements or reports to the Department;
  - ((12)) past history of the individual regarding his/her truthfulness;
  - ((13)) the individual's ability to care for children;
- (d) Indicated (founded or substantiated) reports of adult or child abuse/neglect (with or without criminal convictions) in this or any other state. *(Effective July 8, 2005)*
- (e) Evidence in item (b) ((1)) through ((13)) and item (d) above, will be evaluated to determine whether or not it constitutes a danger to the children based on the seriousness of the crime, the existence of

extenuating circumstances, the propensity to recommit the crime, and evidence of rehabilitation since the crime was committed.

- (f) An application for a license shall be denied or a license or permit shall be suspended or revoked if the applicant/licensee, a household member, substitute, caregiver, domestic worker, volunteer, or any other person who has contact with the children or unsupervised access to the children, is determined to be of unsuitable character to work with children, to have contact with children or to have unsupervised access to children.

### **3. Qualifications**

- a. After the effective date of these regulations, applicants for an initial license shall have a high school diploma or G. E. D. (general education diploma). Homes licensed before the effective date of these regulations are exempt from this requirement as long as the license remains current.
- b. The licensee shall be at least 19 years of age.
- c. Prior to initial licensing, the applicant/licensee shall submit to the Department a current Infant-Child Cardiopulmonary Resuscitation Certificate (CPR) from the American Red Cross, the American Heart Association or the National Safety Council and a current First Aid Certificate.
- d. The licensee shall submit an updated Infant-Child Cardiopulmonary Resuscitation Certificate (CPR) from the American Red Cross, the American Heart Association or the National Safety Council and an updated First Aid Certificate to the Department when these certificates expire. (*Effective July 8, 2005*)
- e. Prior to initial licensing, the applicant/licensee shall have at least twenty-four (24) clock hours of training in child care and development through participation in workshops, meetings, videotapes, or one to one consultation. Written documentation shall be submitted to the Department. Child care training shall include at least four (4) hours in each of these areas:
  - (1) child development;
  - (2) health, safety and universal precautions;
  - (3) quality child care and licensing;
  - (4) the child care professional and the family;
  - (5) language development;
  - (6) positive discipline and guidance.
- f. Thereafter, the licensee shall have at least twenty (20) clock hours of training related to child care each year. Documentation of training shall be on file in the home. Child care training shall include hours in each of these areas:

- (1) child development;
- (2) health, safety and universal precautions;
- (3) quality child care and licensing;
- (4) the child care professional and the family;
- (5) language development;
- (6) positive discipline and guidance.

#### **4. Financial Resources**

There shall be financial resources available for the satisfactory care of children served in regard to upkeep of the home and the provisions for nutritious meals, adequate and safe recreational equipment, educational materials and required arrangements for comfortable rest or sleep.

#### **5. Substitutes**

The licensee shall have at least one (1) substitute. Another licensed child care provider shall not be a substitute. Substitutes shall care for the children in the licensee's home.

- a. Substitutes shall be at least 19 years of age.
- b. Substitutes designated after the effective date of these regulations shall have a high school diploma or a general education diploma (G. E. D.). Substitutes designated before the effective date of these regulations are exempt from this requirement.
- c. The licensee shall give the Department the name(s), age(s), address(es) and telephone number(s) of the substitute(s).
- d. For each substitute, the following information shall be on file in the home:
  - (1) name;
  - (2) age;
  - (3) address;
  - (4) telephone number;
  - (5) required medical form, including TB test or chest x-ray;
  - (6) reference data;
  - (7) verification of education;
  - (8) documentation of a current Infant-Child Cardiopulmonary Resuscitation Certificate (CPR) from the American Red Cross, the American Heart Association or the National Safety Council and a current First Aid Certificate;
  - (9) character and suitability information (see Section D., 2., page 25);
  - (10) written verification that he/she has been informed of emergency procedures;
  - (11) written verification that he/she has read the Minimum Standards.

**6. No outside work or school**

During the hours of child care, the licensee shall not work outside the home or attend school.

No other activities that take time and attention away from the children shall be performed in the home during the hours of child care. Household duties related to the care of the children shall be performed as necessary.

## **E. Care of the Children**

### **1. Supervision of the Children**

**The children shall be supervised at all times. The licensee shall be responsible for the care and supervision of the children at all times.**

### **2. Infants and children shall be handled gently.**

**The licensee and each caregiver shall support each infant's head while lifting and holding the infant. Rough or harsh handling is prohibited, including but not limited to: shaking; lifting or jerking by one or both arms; pushing; pulling; forcing or restricting movement; lifting or moving by grasping clothing; covering an infant's or child's mouth, face or head, etc. (Effective December 9, 2005)**

### **3. Health**

#### **a. Immunizations**

Each child two (2) months up to five (5) years of age and five (5) year olds who are not enrolled in public or private school kindergarten shall have a valid State of Alabama Certificate of Immunization (ADPH-F-IMM-50) on file in the home on the child's first day of attendance and the Certificate shall be kept current thereafter unless one of the following certificates is on file in the home:

(1) A valid Alabama Certificate of Medical Exemption (ADPH-F-IMM-50).

**OR:**

(2) A valid Alabama Certificate of Religious Exemption (ADPH-F-IMM-52).

#### **b. Observations**

Each child shall be observed for illness and injuries upon his/her arrival at the child care home, and if possible, shall be observed in the presence of his/her parent(s)/guardian(s).

#### **c. Illness or injury**

(1) The licensee shall report promptly to the child's parent(s)/guardian(s):

(a) Any injury suspected illness or other changes observed in the health of their child;

(b) Any exposure to a contagious disease, so that the child may be observed for symptoms of the disease.

(2) No child who is ill shall be admitted to the home. This regulation is not intended to require the exclusion of children in violation of the Americans with Disabilities Act (ADA). The Department of Human Resources is not the enforcement agency for the ADA. Determinations of illness may be based on: the child's inability to participate in the home's activities; the need for additional care that cannot be provided without taking time and attention away from the other children; signs of serious or contagious

disease or condition, such as but not limited to fever, diarrhea, vomiting, unexplained rash, scabies, head lice; a physician's diagnosis requiring that the child be separated from other children.

- (3) Isolation and removal
  - (a) Any child in attendance who becomes ill, has a contagious disease or condition, or suffers an injury that requires professional medical attention shall be separated promptly from the group, but shall have continuous supervision. Toys, bedding, equipment and bathroom facilities used by an ill child or adult shall be cleaned and disinfected prior to use by another person.
  - (b) The ill or injured child's parent(s)/guardian(s) shall be notified immediately and required to come for, or arrange for another designated person to come for the child.
  - (c) If the parent(s)/guardian(s) or person designated by the parent(s)/guardian(s) can not be reached or if the injury or illness is severe, the licensee shall obtain emergency medical treatment.
- (4) Contagious diseases/conditions
  - (a) When a contagious disease/condition (a disease/condition which can be transmitted or spread from person to person) has been introduced into the home, parent(s)/guardian(s) of each exposed child shall be notified.
  - (b) The licensee shall urge parent(s)/guardian(s) to notify the licensee when their child is known to have been exposed to a contagious disease/condition outside the home.

d. Medication/Medical Procedures

- (1) No medication or medical procedures (prescription or over-the-counter) shall be administered without a written, signed, authorization form from the child's parent(s)/guardian(s). **Blanket authorization forms are prohibited.** The authorization form shall include time(s) and date(s) to be administered, dosage, storage instructions, and specific directions for administering the medication/medical procedure, such as give by mouth, apply to skin, inhale, drops in eyes, etc. An authorization form shall be valid for no more than seven (7) days, unless accompanied by a written physician's statement. (See Appendix H, page 82, for required form.)
- (2) Any prescription drug or over-the-counter drug sent to the home shall be in its original container. Prescription drugs shall have a pharmacy label or shall be accompanied by a physician's written instructions. Over-the-counter drugs shall be clearly labeled with the child's name and directions for administering the drug. A measuring device (if the medication requires measuring) shall be provided for each child's medication.
- (3) All medication (children's or household member's) shall be kept under lock and key or combination lock.
- (4) Medicines/drugs shall be returned to the child's parent(s)/guardian(s) or disposed of properly when no longer needed.

- (5) Time and date of all medication dosages or medical procedures administered by the licensee/caregiver shall be documented, in writing, signed by the person administering the medication or medical procedure (initials not acceptable), and kept in the child's file in the home. (See Section F., 3., g., page 48, for children's records requirements.) Copies shall be made available to the child's parent(s)/guardian(s) on request.

#### **4. Care of Infants**

- a. In accordance with recommendations from the American Academy of Pediatrics, unless the infant has a note from a physician specifying otherwise, each infant shall be placed in a supine (on his/her back) position for sleeping to lower the risks of Sudden Infant Death Syndrome (SIDS).
- b. In accordance with recommendations from the American Academy of Pediatrics, when an infant can easily turn over from the supine (back) to the prone (front) position, he/she shall be put down to sleep on his/her back, but allowed to adopt whatever position he/she prefers for sleep.
- c. In accordance with recommendations from the American Academy of Pediatrics, each infant (younger than twelve (12) months) shall be placed in a prone (front) position part of the time he/she is awake and observed. "Tummy time" helps muscle development and reduces the tendency of back positioning to flatten the back of the infant's head.
- d. In accordance with recommendations from the American Academy of Pediatrics, unless a physician specifies the need for a positioning device that restricts movement within the child's bed, such devices shall not be used.
- e. In accordance with recommendations from the American Academy of Pediatrics, soft materials are prohibited in the infant's sleeping environment.
  - (1) Soft materials or objects, such as pillows, quilts, comforters, or sheepskins, shall not be placed under a sleeping infant.
  - (2) Soft objects, such as pillows, quilts, comforters, bumper pads, sheepskins, stuffed toys, and other gas-trapping objects shall be kept out of the infant's sleeping environment.
  - (3) No infant shall be put to sleep on a sofa, soft mattress, or other soft surface.
- f. The diapering area shall be a washable surface and shall be cleaned and disinfected after each use.
- g. Sufficient clean, dry diapers and clothing shall be provided for each infant/toddler.
- h. Wet or soiled diapers and other clothing shall be changed promptly.

- i. Disposable diapers shall be placed in a covered, plastic-lined trash container inaccessible to children.
- j. Reusable (cloth) diapers shall be rinsed in the toilet, placed in a plastic bag, and stored out of reach of children.
- k. The licensee and each caregiver shall wash his/her hands with soap and warm running water after diapering **each** child, after assisting with toileting, and after contact with bodily fluids, **even if gloves are used**. Individual disposable paper towels shall be used for hand drying.
- l. The licensee and each caregiver shall use single-use disposable gloves for diapering. Clean gloves shall be used for diapering **each** child. Used gloves shall be disposed of in a covered, plastic-lined container, inaccessible to children, and shall be disposed of daily.
- m. Each child's hands shall be washed after diapering and toileting.
- n. No child shall be left unattended while being diapered.
- o. The diapering area shall be separate from areas used for serving, preparing, or storing food.
- p. Infants shall be handled gently. The licensee and each caregiver shall support each infant's head while lifting and holding the infant. Rough or harsh handling is prohibited, including but not limited to: shaking; lifting or jerking by one or both arms; pushing; pulling; forcing or restricting movement; lifting or moving by grasping clothing; covering an infant's mouth, face or head, etc. (*Effective December 9, 2005*)

## 5. Child Abuse/Neglect Reporting

- a. The licensee and any other caregivers are required by law, (Code of Alabama 1975, § 26-14-1 through 26-14-13, in Appendix M, page 101) to report known or suspected child abuse or neglect to the County Department of Human Resources or the local chief of police, or county sheriff. The report shall be made immediately by telephone or direct oral communication, followed by a written report, containing all known information.
- b. Any person making a report in good faith is immune from any civil or criminal liability.
- c. The law further provides that all reports to the Department of Human Resources and certain other records of child abuse and neglect are considered confidential under penalty of law.

- d. The licensee, household members, and all caregivers shall cooperate with the Department personnel on any child abuse or neglect investigation, including providing information to workers and allowing access to children and records.

## 6. Meals and Snacks

- a. The licensee shall provide breakfast or a morning snack, a mid-day meal and at least one afternoon snack each day for the children in care. Meal and snack components and serving sizes shall comply with patterns shown in Section M, on page 63. No child shall be deprived of a meal or snack if he/she is in attendance at the time the meal/snack is served.
  - (1) Breakfast, if served, shall include at least the following:
    - (a) fruit or vegetable or full strength juice;
    - (b) bread or bread product;
    - (c) and milk.
  - (2) Snacks shall include at least two of the following four choices:
    - (a) milk or milk products;
    - (b) meat or meat alternate;
    - (c) fruit, vegetable or full strength juice;
    - (d) bread, cereal, crackers or other bread products.
  - (3) Meals shall include at least the following:
    - (a) meat or meat alternate;
    - (b) vegetables/fruits (two vegetables, one vegetable and one fruit, or two fruits);
    - (c) bread or bread product;
    - (d) and milk.
- b. Formula or food for infants and other special diets recommended or prescribed by a physician shall be prepared as directed by the parent(s)/guardian(s). Special foods for any child shall be clearly labeled with the child's name and stored as directed.
- c. Fluid (liquid) milk shall be served. No powdered milk shall be used for drinking.
- d. Small hard candies and nuts shall **not** be served to children younger than four years of age.
- e. Foods with a shape and consistency that may cause choking shall be prepared appropriately for the age and ability of the child. The following foods shall be served **only** under close supervision: peanut butter; popcorn; small pieces of raw vegetables; raisins; seeds; grapes (cut in half); foods with bones, meats (cut in pieces small enough to prevent choking); and hot dogs (cut length-wise, then chopped in small pieces, not cut in circular pieces).

## **7. Food Service**

- a. The licensee, each caregiver, and each child shall wash his/her hands with soap and warm running water before eating, preparing, or serving foods. Individual disposable paper towels shall be provided for drying hands.
- b. Feeding chairs shall be provided for infants. Feeding chairs and tables on which food is served shall be thoroughly cleaned and disinfected prior to and after snacks and meals. Each child's food shall be served from an individual dish.
- c. Each infant and toddler shall be encouraged to experiment with self-feeding with his/her hands or a spoon. Utensils shall be provided for each child who feeds himself/herself. Disposable utensils and cups shall be used only under close supervision.
- d. All formula and food brought from the child's home shall be labeled with the child's name and properly stored. Milk and prepared formula shall be placed immediately in the refrigerator. Previously opened baby food jars shall not be accepted by the licensee. All formula remaining in the bottle after a feeding shall be discarded.
- e. Each infant shall be held when fed from a bottle. Bottles shall not be propped.
- f. The size of servings shall be adequate to meet each child's needs. Minimum servings shall be according to meal and snack patterns in Section M., on page 63.
- g. Food, including dessert or milk, shall not be forced on or withheld from a child.
- h. Each child shall be seated while eating.

## **8. Food protection and preparation**

- a. Food shall be in good condition.
- b. No home-canned foods shall be used.
- c. Food shall be protected from contamination during storage, preparation, and serving.
- d. All food preparation surfaces and utensils shall be thoroughly cleaned before use.
- e. Once food has been served to a child, portions of leftover food shall not be served again.
- f. Tableware, cooking utensils, and all food contact surfaces shall be thoroughly cleaned after each use.

- g. Animals shall not be allowed in food storage, food preparation, or food service areas during hours of child care.
- h. Floors in food preparation and service areas shall be swept or vacuumed daily and mopped as needed to maintain cleanliness.

## **9. Personal Belongings**

- a. The licensee shall require the parent(s)/guardian(s) to provide sufficient clothing for each child to permit a change when necessary.
- b. Sufficient clean, dry diapers and clothing shall be provided for each infant/toddler. Wet or soiled diapers and other clothing shall be changed promptly.
- c. Adequate space shall be available to each child for storing his/her personal belongings.

## **10. Disciplinary Practices**

- a. Discipline shall be appropriate to the age and developmental level of the children.
- b. The following disciplinary practices are prohibited:
  - (1) Corporal or physical punishment is prohibited, including, but not limited to: spanking; shaking; slapping; kicking; pushing; biting; pinching; hitting; thumping; hair pulling; or ear pulling;
  - (2) Verbal abuse is prohibited, including but not limited to: yelling; shouting; name calling; shaming; making derogatory remarks about a child or a child's family; using language that threatens, humiliates, or frightens a child;
  - (3) Discipline associated with food, naps, or bathroom procedures is prohibited, including but not limited to: withholding food as punishment; use of food such as hot sauce, lemon juice, vinegar, etc., or soap, as punishment; punishment for lapses in toilet training; punishment for not sleeping during nap/rest time;
  - (4) Physical restraint as punishment is prohibited;
  - (5) Punishment administered by another child is prohibited.
  - (6) Rough or harsh handling of children, whether associated with discipline or not, is prohibited, including but not limited to: shaking; lifting or jerking by one or both arms; pushing; pulling; forcing or restricting movement; lifting or moving by grasping clothing; covering a child's head, etc.  
*(Effective December 9, 2005)*

## **11. Outdoor Play**

Children shall spend time outdoors each day, when weather permits.

**12. Sign in/Sign out Procedures**

- a. The licensee shall require the parent(s)/guardian(s) or other person designated by the parent(s)/guardian(s) to sign (signature required, initials not acceptable) each child in at each arrival to the home, indicating the time of arrival. (See Appendix J, page 84, for required form.)
- b. The licensee shall require the parent(s)/guardian(s) or other person designated by the parent(s)/guardian(s) to sign (signature required, initials not acceptable) each child out at each departure from the home, indicating the time of departure. (See Appendix J, page 84, for required form.)
- c. If a child walks to the home from school or another designated location, or is transported to/from the home by school bus, the licensee/caregiver shall sign (signature required, initials not acceptable) each child in upon arrival and out upon departure, indicating time of arrival/departure.

**13. Release of the children**

- a. The licensee/caregiver shall not release a child to anyone without written authorization from the child's parent(s)/guardian(s).
- b. Authorized persons who are unfamiliar to the licensee/caregiver shall show photographic identification when picking up a child.

**14. Visits by parent(s)/guardian(s)**

Parent(s)/guardian(s) shall have the right to visit and observe their child in the home at any time during hours of operation. Parent(s)/guardian(s) shall be informed of this right.

## **F. Administration**

### **1. General administrative responsibilities of the applicant/licensee**

- a. The applicant/licensee shall apply for a license to operate a child care home on the required form(s). (See Appendix A, page 65, for a copy of required form(s).) (See also Licensing Procedures, Section B, page 10, for additional information.)
- b. An application for renewal of the license shall be submitted to the Department at least thirty (30) calendar days prior to the expiration of the license on the required form(s). (See Appendix A, Page 65.) It is the sole responsibility of the licensee to obtain the required form(s) and to submit the form(s) to the Department as required.
- c. The applicant/licensee shall read and be familiar with the Minimum Standards and assume final authority and responsibility for meeting and maintaining Minimum Standards.
- d. There shall be financial resources available to provide for the satisfactory care of the children in care in regard to upkeep of the home and the provision of nutritious meals, safe play equipment, and required arrangements for comfortable rest/sleep.
- e. The following documents shall be posted in a place in the home easily seen by parent(s)/guardian(s):
  - (1) the home's current license or permit;
  - (2) the most recent licensing evaluation form;
  - (3) the most recent deficiency report form;
  - (4) public notice form;
  - (5) corrective/adverse action notices.
- f. Any information regarding children and facts learned about children and their relatives shall be kept confidential and shall not be shared except:
  - (1) with the parent(s)/guardian(s) or person(s) authorized by parent(s)/guardian(s) to receive such information, or
  - (2) with the Department. (See Code of Alabama 1975, Section 38-7-13, see page 98.)
- g. The licensee shall provide the parent(s)/guardian(s) and the Department with a written statement of the rules and policies of the home. These rules and policies shall be given to parent(s)/guardian(s) when the child is enrolled and shall include at least the following:
  - (1) A statement of child care services to be provided including days and hours of care and fees;
  - (2) Information about the substitutes and how they will be used;
  - (3) Information about any animals on the premises;

- (4) Information about pools on the premises and if the children will have access to the pool;
  - (5) Parent(s)/guardian(s) shall be informed of their right to visit and observe their child in the home at any time during the hours of care;
  - (6) Statement regarding Minimum Standards requirements for illness and injury; (See Section E., 3., c., page 37, for details.);
  - (7) A daily schedule;
  - (8) Disciplinary practices (See Section E., 9., page 43, for details);
  - (9) An emergency plan for evacuation and care of the children in case of fire, tornado, serious accident or injury, or power failure.
- h. The licensee shall notify parent(s)/guardian(s) and the Department in writing, of any changes in the home's rules and policies.
  - i. The licensee's social security number or tax ID number shall be made available to the parent(s)/guardian(s) on request.

## 2. Reports to the Department

- a. Enrollment reports, indicating the number and ages of children enrolled in the home, shall be submitted to the Department upon written request from the Department
- b. The licensee shall report any known or suspected child abuse or neglect to the County Department of Human Resources, the local chief of police or the county sheriff. (See Section E., 5., page 40, for additional information.)
- c. The following shall be reported verbally *within 24 hours*, and followed by a written report within 5 days:
  - (1) any injury/illness requiring professional medical treatment of any child;
  - (2) any injury/illness requiring emergency medical treatment;
  - (3) any death occurring in the home;
  - (4) changes in caregivers or substitutes (new or additional caregivers or substitutes);
  - (5) any change in the name of the licensee;
  - (6) any change in the name or number of the street address of the licensed home made by a government agency (**Note: any change in location requires a new license**);
  - (7) change in the telephone number of the licensee, caregiver, or substitute;
  - (8) serious accidents or serious illness of the licensee or household members;
  - (9) serious damage to the home or grounds;
  - (10) changes in members of the household (new household members moving into the home, household members moving out of the home, birth of a child);
  - (11) any arrest of the licensee, household members, caregivers, substitutes, domestic workers, volunteers, or any other persons who have contact with the children or unsupervised access to children;

- (12) final disposition of any child abuse/neglect investigation involving the licensee, household members, caregivers, substitutes, domestic workers, volunteers, or any other persons who have contact with the children or unsupervised access to children.
- d. Any physical or structural changes in the home or on the grounds such as but not limited to: remodeling; renovations; or installation of a swimming pool, shall be reported to the Department in advance.
- e. Any change in location (move to another home) shall be reported to the Department in advance. **(Note: A new license must be applied for and obtained before receiving children in the new location.)**

### 3. Records to be kept by the licensee

- a. Copies of initial and updated medical reports for the licensee.
- b. Written verification of education for the applicant/licensee.
- c. Written verification of training for the applicant/licensee, including:
  - (1) written documentation of a current Infant-Child Cardiopulmonary Resuscitation Certificate (CPR) from the American Red Cross, the American Heart Association or the National Safety Council and a current First Aid Certificate;
  - (2) a current American Red Cross Lifeguard training certificate if the home has a pool and the children in care are allowed in the pool area;
  - (3) written verification of training received through workshops, meetings, videotapes, or one to one consultation.
- d. The following information shall be kept in an individual file in the home for each caregiver and each substitute:
  - (1) three (3) references;
  - (2) State Central Registry on Child Abuse/Neglect Clearance Form (DHR-DFC-1598) (See Section D., 2., c., (2) page 26, for details);
  - (3) Criminal history background information, (See Section D. 2., c., (3), page 26 for details) including:
    - (a) A copy of the Mandatory Criminal History Check Notice.
    - (b) A copy of the Criminal History Information Consent and Release Form.
    - (c) A Suitability Determination letter from the Department.
    - (d) Identification verification of name, date of birth, race, sex, and Social Security number in the form of a photo identification from any governmental agency, such as a driver's license, non-driver's identification, or program participation card.
  - (4) medical reports;

- (5) results of tuberculin skin tests or chest x-rays;
- (6) written verification regarding emergency procedures;
- (7) written verification of having read the Minimum Standards;
- (8) written verification of education;
- (9) written verification of training, including:
  - (a) written documentation of a current Infant-Child Cardiopulmonary Resuscitation Certificate (CPR) from the American Red Cross, the American Heart Association or the National Safety Council and a current First Aid Certificate;
  - (b) a current American Red Cross Lifeguard training certificate if the home has a pool and the children in care are allowed in the pool area;
  - (c) written verification of training received through workshops, meetings, videotapes, or one to one consultation (not required for substitutes).
  
- e. Records on caregivers and substitutes shall be kept for at least two (2) years after the caregiver or substitute leaves.
  
- f. A current certificate of rabies vaccination for animals required by law to be vaccinated.
  
- g. Children's records shall be on file in the home on the child's first day of attendance and shall include at least:
  - (1) Child's Pre-Admission Record, on the required form, including: child's name; birthdate; home address; name, address, and telephone number of child's parent(s)/guardian(s); name, address, and telephone number of mother's and father's employer; emergency contact information; name, address, and telephone number of child's doctor; signed authorization for emergency medical treatment; special needs or instructions; list of persons child may be released to; statement that parent(s)/guardian(s) understands that the Department does not inspect activities away from the facility; permission signed by the child's parent(s)/guardian(s) for the child to participate in activities away from the facility, transportation provided by the facility, and swimming/wading provided by the facility; child's first day of attendance; child's withdrawal date. (See Appendix G, page 80, for required form.);
  - (2) written authorization, signed by the parent(s)/guardian(s) to administer medication or medical procedures, if applicable, and written record of medication administration (see Appendix H, page 82, for required form.);
  - (3) immunization certificates. (See Section E., 3., a., page 37, for details.)
  
- h. Children's records shall be kept for at least two (2) years after the child leaves care.
  
- i. Any other information about the children shall be kept in the children's records.

- j. Any information regarding children and facts learned about children and their relatives shall be kept confidential and shall not be shared except;
  - (1) with the parent(s)/guardian(s) or person(s) authorized by parent(s)/guardian(s) to receive such information, or
  - (2) with the Department. (See Code of Alabama 1975, Section 38-7-13, page 98.)
  
- k. Confidentiality
  - (1) Children's records and information about children and their families shall be kept confidential.
  - (2) Confidential information about children and their families shall not be used or disclosed for any purpose not directly related to the well being of the child.
  - (3) Any discussion about children and their families shall be treated as confidential.
  - (4) Confidential information including children's records shall be accessible only to authorized persons.
  - (5) The Department shall have the right to inspect records, including children's records.
  
- l. Transportation checklists (see Appendix L, page 86) and sign in/sign out sheets (see Appendix J, page 84) shall be kept on file in the home for the current year plus two (2) additional years.

## **G. Nighttime Care**

**In addition to the preceding regulations, homes offering nighttime care after 7 p.m., shall meet the following regulations:**

1. The number and age of children in nighttime care shall not exceed the number and age range of children for which the nighttime home is licensed.
2. Bathing
  - (a) If any child in care is bathed, clean water shall be provided for each child. Each child shall be bathed separately. Each child shall be supervised while bathing.
  - (b) An individual bar of soap, an individual towel, and individual washcloth shall be provided for each child who is bathed at the home.
3. In addition to requirements for sleeping (See Indoor Area, Equipment and Furnishings, Section C., 2., d., page 18):
  - (a) Each child younger than eighteen (18) months of age who receives his/her regular night's sleep in a nighttime home, shall sleep alone in a crib.
  - (b) In accordance with recommendations from the American Academy of Pediatrics, unless the infant has a note from a physician specifying otherwise, each infant shall be placed in a supine (on his/her back) position for sleeping to lower the risks of Sudden Infant Death Syndrome (SIDS).
  - (c) Each child who is eighteen (18) months of age or older, who receives his/her regular night's sleep in a nighttime home, shall sleep in a bed.
4. Each child's toilet articles (such as combs, toothbrushes, etc.) shall be labeled with the child's name, kept separate, and kept in sanitary condition.
5. Breakfast shall be served to each child who goes directly to school from nighttime care, unless breakfast is provided by the school or by the parent(s)/guardian(s). (See Section E., 6., a., (1), page 41, for breakfast requirements.)
6. An evening meal shall be served for each child who continuing in attendance from the day time program. (See Section E., 6., a., (3), page 41, for meal requirements.)

## **H. Group Day Care Homes**

**For purposes of these regulations, a license is required for persons:**

- **Providing care for one or more children who are not related to the provider;**
- **With or without compensation;**
- **Away from the child's home;**
- **For more than four (4) hours in a 24 hour period.**

**In addition to the preceding regulations (except for Section G., Nighttime Care), homes offering group day care for at least seven (7) but no more than twelve (12) children, shall meet the following regulations:**

1. A separate license shall be applied for and obtained prior to offering group day care for seven (7) but no more than twelve (12) children.
2. A group day care home shall have at least the following caregivers: the licensee, the assistant caregiver, and at least two (2) substitutes.
3. Whenever seven (7) or more children are present, at least two (2) adult caregivers shall be present and supervising the children. This shall include the licensee and the assistant caregiver. If a substitute is used, either the licensee or the assistant caregiver shall be present and supervising the children.
4. No group day care home shall be licensed for more than six (6) children younger than twelve (12) months of age. There shall be at least one (1) caregiver present and supervising each three (3) children younger than twelve (12) months of age. (*Effective July 8, 2005*)
5. The assistant caregiver hired after the effective date of these regulations shall meet the same educational, medical, age, and character and suitability requirements and qualifications as the licensee with the exception of living in the home.
6. The assistant caregiver hired after the effective date of these regulations shall have at least twelve (12) clock hours of training in child care within the first 30 days of employment. Child care training shall include clock hours in each of these areas:
  - (1) child development;
  - (2) health, safety and universal precautions;
  - (3) quality child care and licensing;
  - (4) the child care professional and the family;
  - (5) language development;
  - (6) positive discipline and guidance.

7. The assistant caregiver shall have at least twelve (12) clock hours of child care training each year thereafter. Child care training shall include clock hours in each of these areas:
  - (1) child development;
  - (2) health, safety and universal precautions;
  - (3) quality child care and licensing;
  - (4) the child care professional and the family;
  - (5) language development;
  - (6) positive discipline and guidance.
8. Required information for the assistant caregiver shall be kept on file in the home. (See Section F., 3., d., page 47, for requirements of caregiver/substitute records.)
9. All caregivers shall read and be familiar with the Minimum Standards and written verification of this shall be on file in the home.
10. An outdoor play area of at least 600 square feet shall be provided on the grounds. The outdoor play area shall be enclosed by a fence or wall at least four (4) feet in height.
11. The licensee shall provide at least four (4) items from each category of play equipment for each age group listed in Section L., Equipment List, page 60, by August 31, 2003. (*Effective June 10, 2003*)

## **I. Group Nighttime Homes**

**In addition to the preceding regulations including Section G., Nighttime Care) homes offering group nighttime care for at least seven (7) but no more than twelve (12) children after 7 p.m., shall meet the following regulations:**

1. Anytime seven (7) or more children are present, at least two (2) adult caregivers shall be present and supervising the children.
2. The number and age of children in nighttime care shall not exceed the number and age range of children for which the nighttime home is licensed.
3. In addition to requirements for sleeping (See Indoor Area, Equipment and Furnishings, Section C, 2, d, page 18):
  - (a) Each child younger than eighteen (18) months of age who receives his/her regular night's sleep in a nighttime home shall sleep alone in a crib.
  - (b) In accordance with recommendations from the American Academy of Pediatrics, unless the infant has a note from a physician specifying otherwise, each infant shall be placed in a supine (on his/her back) position for sleeping to lower the risks of Sudden Infant Death Syndrome (SIDS).
  - (c) Each child who is eighteen (18) months of age or older, who receives his/her regular night's sleep in a nighttime home shall sleep in a bed.

## **J. Corrective and Adverse Actions**

**Corrective or adverse actions may be imposed by the Department when the licensee fails to meet and maintain minimum standards prescribed by the Department. Corrective/adverse actions may include, but need not be limited to: deficiency reports; corrective action plans; probationary status; restrictions or modifications of the provisions of the license/permit, suspension of a license/permit, and revocation of a license/permit.**

*Written notice of the corrective or adverse action shall be posted at each public entrance of the child care home.*

**None of these regulations are to be interpreted to allow a home to operate in violation of the minimum standards or out of compliance with the minimum standards.**

### **1. Deficiency Report**

If an inspection, evaluation, or investigation indicates non-compliance with the minimum standards (deficiency), a deficiency report shall be prepared by the Department. A deficiency report is prepared in conjunction with or subsequent to a visit to the home, or after investigation of a substantiated complaint regarding the home. In any visit to the home in which deficiencies are observed or noted, the licensing representative shall complete a deficiency report, and discuss the deficiencies observed or noted with the licensee or facility representative. A copy of the completed deficiency report shall be provided to the licensee or facility representative. No deficiency report shall be completed in conjunction with a prelicensing visit.

### **2. Corrective Action**

- a. If an inspection, evaluation, or investigation indicates continued or repeated non-compliance with the minimum standards, or if areas of non-compliance indicated previously on a deficiency report are not corrected, a corrective action plan may be developed to allow the licensee to achieve compliance with the minimum standards while continuing to care for children. The corrective action plan shall include: a statement of each deficiency; a description of how the deficiency shall be corrected; the date by which corrections shall be completed; and the signature of the Department's representative and the licensee or facility representative.
- b. During the corrective action period, the licensee shall correct each deficiency (area of noncompliance) and shall report the corrections to the Department. The length of time the corrective action plan remains in effect shall be determined based on the nature of the areas of noncompliance. If the licensee fails or refuses to comply with the minimum standards and the terms of the corrective action plan, the Department may initiate adverse action such as probation or revocation of the license/permit.

- c. Requests for changes to the provisions of the license such as increases in licensed capacity or changes in the ages of the children received for care shall not be granted during the corrective action period.

### **3. Probationary Status**

- a. If an inspection, evaluation, or investigation indicates non-compliance with the minimum standards, or if conditions exist that could pose a hazard to the health and safety of the children in care, a period of probationary status may be instituted to allow the licensee to achieve compliance with the minimum standards while continuing to care for children. At the beginning of the probationary period the licensee shall be provided with: a statement of each deficiency; a description of how the deficiency shall be corrected; the date by which corrections shall be completed; and the signature of the Department's representative and the licensee or facility representative.
- b. During the probationary period, the licensee shall correct each deficiency (area of noncompliance) and shall report the corrections to the Department. The length of the period of probationary status shall be determined based on the nature of the areas of noncompliance. The maximum period shall be six months. At the end of the probationary period, the home's license shall be returned to active status if the home is in compliance with the minimum standards. If the licensee fails or refuses to comply with the minimum standards during the probationary period, the Department may initiate revocation of the license/permit.
- c. Requests for changes to the provisions of the license such as increases in licensed capacity or changes in the ages of the children received for care shall not be granted during the period of probationary status.

### **4. Restriction or Modification of the Provisions of the License/Permit**

- a. The right to restrict, limit, or suspend specific activities provided by the child day/night care home, such as but not limited to: away-from-the-home activities; transportation of the children; swimming.
- b. The right to restrict or limit the use of specific areas of the home, such as but not limited to: outdoor play areas; bathrooms; rooms used by the children.
- c. The right to reduce the licensed capacity of the home or to amend the ages of children to be served, due to restricted use of required space or bathroom facilities or lack of qualified caregivers.

### **5. Revocation of a License**

(See Code of Alabama 1975, Section 38-7-8, Appendix M, page 95.)

The Department may revoke or refuse to renew the license of the child care home or refuse to issue a full license to the holder of a six-month permit should the licensee:

- a. Consistently fail to maintain standards prescribed and published by the Department;
  - b. Violate the provisions of the license issued;
  - c. Furnish or make any misleading or any false statements or reports to the Department;
  - d. Refuse to submit to the Department any reports or refuse to make available to the Department any records required by the Department in making an investigation of the child care facility for licensing purposes; provided, however, that the Department shall not revoke or refuse to renew a license in such case unless it has made written demand on the person, firm or corporation operating the facility requesting such report or reports and such person, firm or corporation fails or refuses to submit such records for a period of ten days.
  - e. Fail or refuse to submit to an investigation by the Department;
  - f. Fail or refuse to admit authorized representatives of the Department at any reasonable time for the purpose of investigation;
  - g. Fail to provide, maintain, equip and keep in safe and sanitary condition the premises established or used for child care as required under standards prescribed by the Department, or as otherwise required by any law, regulation or ordinance applicable to such facility;
  - h. Refuse to display its license or permit;
  - i. Fail to maintain financial resources adequate for the satisfactory care of children served in regard to upkeep of premises and provisions for personal care, medical services, clothing, learning experience and other essentials in the proper care, rearing and training of children;
- or**
- j. Fail to adhere to all terms of the Family/Group Day Care/Nighttime Home Agreement required on the Application for a License.

## **6. Suspension of a License**

In accordance with the Code of Alabama 1975, Sections 38-7-11 (page 97) and 41-22-19(d), (page 107) the Department has the authority to immediately suspend without notice the license/six-month permit if an inspection by the Department of a licensed child care facility discloses any condition, deficiency, dereliction, or abuse, which is, or could be, hazardous to

the health, safety, or physical, moral, or mental well-being of the children in the care of the child care facility being inspected. In this event, the child care facility shall not operate during the pendency of any proceeding for a fair hearing or judicial review, except under court order. The suspension may remain in effect for a period of not longer than 120 days and shall not be renewable. The license shall not be suspended for the same or a substantially similar emergency within one calendar year from its first suspension unless the emergency could not have been reasonably foreseen during the initial 120 day period that such emergency would continue or would likely reoccur during the next nine months. When such summary suspension is ordered, a formal suspension or revocation proceeding shall also be promptly instituted and acted upon.

**7. Penalty for Unlicensed Facilities**

If the Department representative determines, through investigation, that any person, group of persons, or corporation is, or has been, operating a child care facility without a license, approval or six-month permit, the results of the investigation shall be reported to the Attorney General and to the appropriate District Attorney for prosecution. (See Code of Alabama 1975, Section 38-7-10, 38-7-16, and 38-7-17, Appendix M, page 96, 99, and 100.)

**8. Refusal to Permit Inspections**

(Code of Alabama 1975, Section 13A-10-3.)

- a. A person commits the crime of refusing to permit inspection of property that is owned, possessed or otherwise subject to his/her control if a public servant is legally authorized to inspect such property and an attempt is being made to exercise that authority and he/she:
  - (1) refuses to produce the property for a reasonable inspection; or
  - (2) refuses to permit a reasonable inspection.
- b. For the purposes of this section, “legally authorized inspection” includes any lawful search, sampling, testing or other examination of property, in connection with the regulation of the defendant’s business or occupation, that is authorized by law.
- c. Refusing to permit inspection is a Class C misdemeanor (fine of not more than \$500.00 or imprisonment in county jail for not more than three months).

## **K. Hearings and Appeals**

### **1. Pre-revocation Hearings**

- a. If the Department makes the decision to revoke or refuse to renew the license, six-month permit, or approval, a pre-revocation hearing shall be held in order to discuss the intended action and give the licensee/permit holder an opportunity to show why the action should not be taken. Notice of the pre-revocation hearing and notice of action taken by the Department following the pre-revocation hearing shall be sent to the licensee/permit holder by certified mail unless waived. The pre-revocation hearing shall be held in accordance with the Administrative Code, Chapter 660-1-5, a copy of which may be obtained from the Department on request. The pre-revocation hearing does not alter the licensee/permit/approval holder's right to a fair hearing.
- b. If the Department finds that danger to the health, safety or welfare of the children requires emergency suspension of a license, six-month permit, or approval, the licensee/permit/approval holder shall be notified in writing of the reason(s) for the decision. The Department may proceed without hearing or upon any abbreviated hearing it finds practicable to suspend the license, six-month permit, or approval. The suspension shall become effective immediately unless otherwise stated. In this event, the child care facility shall not operate during the pendency of any proceeding for a fair hearing or judicial review, except under court order. The suspension may remain in effect for a period of not longer than 120 days and shall not be renewable. The license/permit/approval shall not be suspended for the same or a substantially similar emergency within one calendar year from its first suspension unless the emergency could not have been reasonably foreseen during the initial 120 day period that such emergency would continue or would likely reoccur during the next nine months. When such summary suspension is ordered, a formal suspension or revocation proceeding shall also be promptly instituted and acted upon.
- c. No pre-denial hearing is required to be held prior to the denial of an initial application for a license.

### **2. Request for a Fair Hearing**

- a. An aggrieved person may request a fair hearing in the following situations:
  - (1) If an application for an initial license is denied;
  - (2) If an application for a renewal of a license is denied;
  - (3) If any application for an initial license or renewal of a license is not acted upon with reasonable promptness, which is defined as sixty (60) days from the date of the receipt by the Department of all information ( including but

not limited to: required forms received; investigations and inspections completed) needed to make a decision to grant or deny the license or permit;  
**or**

- (4) If a license, six-month permit, or approval is revoked.
- b. Notice of the opportunity to request a fair hearing shall be given by certified mail.
- c. When a pre-revocation hearing has been held, a request for a fair hearing shall be filed within fourteen (14) calendar days of the notice of the revocation. Any existing license or six-month permit shall remain in effect during the fourteen (14) day time period allowed for request of a fair hearing. If a fair hearing is requested, the existing license, six-month permit, or approval shall remain in effect until and including thirty (30) days after the final decision on the request for a fair hearing.
- d. If the Department finds that danger to the health, safety or welfare of the children requires emergency suspension of a license or six-month permit, the licensee/permit holder shall be notified in writing of the reasons for the decision. The existing license or six-month permit shall be suspended immediately or on the date specified in the notice of suspension.
- e. In all other situations where a pre-action hearing has not been held, a request for a fair hearing shall be filed within sixty (60) calendar days of the action (or inaction) with which the aggrieved person is dissatisfied.

### **3. Conduct of a Fair Hearing**

- a. When a pre-revocation hearing has been held, the fair hearing will be conducted on the record. No additional evidence or testimony will be admitted unless it can be shown that it is material to the issues of the case and could not have been presented at the prior hearing with reasonable diligence or that the additional evidence was not allowed at the prior hearing due to unlawful procedures.
- b. When a pre-action hearing has not been held, the fair hearing is to be conducted in accordance with the hearing procedures found in the Administrative Code, Chapter 660-1-5, a copy of which may be obtained from the Department on request.

## **L. Equipment List**

The licensee shall provide a variety of toys, games, and other play equipment appropriate to the ages of children specified on the license/permit and to the interests of the children. The licensee shall provide at least two (2) items from each category for each age group for which the home is licensed or permitted. For homes licensed before the effective date of these regulations, required equipment shall be provided by August 31, 2003. (*Effective June 10, 2003*)

### **1. Equipment for Children Up to 2½ Years**

- a. Toys For Active/Outdoor Play
  - Small wheel toys
  - Push and pull toys
  - Boxes of assorted sizes
  - Swings with safety seat, infant swing
  - Sand or digging area, toys for digging, pouring, sifting
  - Large Balls
- b. Quiet toys
  - Simple puzzles
  - Nesting and stacking toys
  - Soft dolls and clothes
  - Cars, trucks, trains
  - Large beads or spools to string
  - Picture books
- c. Art materials
  - Paper
  - Non-toxic crayons
  - Non-toxic water color markers
  - Non-toxic play dough
- d. Crib toys
  - Crib mobiles (for infants younger than 5 months)
  - Washable teething rings
  - Rattle toys
  - Squeeze toys
  - Soft cuddly toys
  - Busy boxes
- e. Make-believe Play
  - Dolls, and clothes and blankets
  - Dress-up clothes
  - Homeliving area-pretend kitchen appliances may be made from boxes
  - Toys, dishes, pans, spoons, plastic containers with lids

Toy telephone  
Puppets

## 2. Equipment for Children 2½ Years up to 6 Years

- a. Toys for Active/Outdoor Play
  - Sand or digging area with items for digging, filling, sifting, and pouring
  - Climbing structure with soft surface underneath
  - Wheel toys
  - Balls
  - Buckets for water play, items for pouring, measuring, floating
- b. Toys for Quiet Play
  - Puzzles
  - Beads or spools and string for stringing
  - Peg boards and pegs
  - Matching games such as lotto, picture dominoes and other simple games
  - Creative construction sets
  - Blocks
  - Small cars, trucks, boats, trains
- c. Make Believe Play
  - Dolls, with clothes, blankets, storage area
  - Doll stroller
  - Doll bed or cradle
  - Dress-up clothes
  - Home living area-kitchen appliances may be purchased or made from cardboard boxes
  - Play dishes, plastic baby bottles, pots and pans, measuring spoons
  - Puppets
  - Sheet or bedspread for making a tent
  - Cardboard boxes in assorted sizes
  - Mirror
  - Toy telephone
- d. Water Play
  - Dish pan
  - Sponges
  - Bubble mixture
  - Strainers
  - Funnels
  - Egg beaters
  - Small boats and other floating toys
- e. Art, Books, Music

Non-toxic art materials - large pencils and crayons, water color markers, paper, chalk, blunt-end scissors, paste, glue, playdough, paints (tempera or water color), long handled brushes, finger paints

A variety of age-appropriate books accessible to the children

A record player or tape player with a variety of age-appropriate music

Rhythm instruments

- f. Nature and Science Materials
  - Collections of rocks, leaves, seeds, etc.
  - Aquarium with fish (must be covered)
  - Magnifying glass
  - Magnets
  - Measuring equipment

### **3. Equipment for Children 6 Years and Older**

- a. Storage
  - Children shall have a separate area for storing their personal items and projects.
- b. Art, Music, Books
  - Non-toxic art materials: a variety of kinds of paper, scissors, glue, crayons, markers, chalk, paints, clay, playdough,
  - Books and magazines appropriate to the ages of the children
  - Record player or tape player and a variety of age-appropriate music and stories
- c. Dramatic Play Props
  - Dress-up clothes
  - Dolls and dolls clothes
  - Costumes and masks
- d. Toys for quiet time
  - Interlocking manipulative play sets
  - Jigsaw puzzles
  - Board games and playing cards
- e. Equipment for Active/Outdoor Play
  - Balls
  - Bats
  - Tether ball
  - Croquet set
  - Badminton set
  - Horseshoes
  - Wheel toys

## M. Meal and snack patterns

### 1. Meal and Snack Patterns for Children Ages 1-13 Years

AGES	1 up to 3 years	3 up to 6 years	6 up to 13 years
<b>BREAKFAST</b>			
Milk, fluid	½ cup	¾ cup	1 cup
Juice or fruit or vegetable	¼ cup	½ cup	½ cup
Bread	½ slice	½ slice	1 slice
Cereal: Cold dry	¼ cup or 1/3 oz.	1/3 cup or ½ oz.	¾ cup or 1 oz.
Cereal hot cooked	¼ cup	¼ cup	½ cup
<b>SNACK (supplement)</b> <i>(select 2 of these 4 components)</i>			
Milk, fluid	½ cup	½ cup	1 cup
Meat or meat alternate	½ ounce (cooked weight)	½ ounce (cooked weight)	1 ounce (cooked weight)
Juice or fruit or vegetable	½ cup	½ cup	¾ cup
Bread/cereal, enriched or whole grain			
Bread or	½ slice	½ slice	1 slice
Cereal: cold dry or	¼ cup or 1/3 oz.	1/3 cup or ½ oz.	¾ cup or 1 oz.
Hot cooked	¼ cup	¼ cup	½ cup
<b>LUNCH OR SUPPER</b>			
Milk, fluid	½ cup	¾ cup	1 cup
Meat or meat alternate			
Meat, poultry, or fish, cooked (lean meat w/out bone)	1 ounce (cooked weight)	1 ½ ounces (cooked weight)	2 ounces (cooked weight)
Cheese	1 ounce	1 ½ ounces	2 ounces
Egg	½	¾	1
Cooked dry beans/peas	¼ cup	3/8 cup	½ cup
Peanut butter	2 tablespoons	3 tablespoons	4 tablespoons
Vegetable/fruit (two or more)	¼ cup total	½ cup total	¾ cup total
Bread or bread alternate, enriched or whole grain	½ slice	½ slice	1 slice

**NOTE:** Meals and snacks provided by the licensee shall comply with meal and snack patterns of the **Food and Nutrition Service, U. S. D. A.**, as stated above.

## 2. Infant Meal Patterns

0-3 months	4-7 months	8-months-1 year
<b>Breakfast</b>		
4 - 6 fl. ounces formula (a) or breast milk (b, c)	4 – 8 fl. Ounces formula (a) or breast milk (b, c)	6 – 8 fl. ounces formula (a) or breast milk (b, c) and 2 - 4 tbsp. infant cereal (a); 1 - 4 tbsp. fruit and or/vegetable and 1 - 4 Tbsp. fruit and/or vegetable
<b>Lunch or supper</b>		
4 - 6 fl. ounces formula (a) or breast milk (b, c)	4 - 8 fl. ounces formula (a) or breast milk (b, c)  0 – 3 Tbsp. Infant cereal (a, d)  0 - 3 Tbsp. Fruit and/or vegetable (d)	6-8 ounces fl. formula (a) or breast milk (b, c) and 2-4 tbsp. infant cereal (a) and/or 1-4 tbsp. meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ - 2 ounces cheese or 1-4 ounces cottage cheese, cheese food, or cheese spread and 1 – 4 Tbsp. fruit and/or vegetable
<b>Supplements</b>		
4-6 fl. Ounces formula (a) or breast milk (b, c)	4-6 fl. ounces formula (a) or breast milk (b, c)	2-4 fl. ounces formula (a) or breast milk, (b, c) or fruit juice (e); and 0-1/2 slice bread (d, f) or 0-2 crackers (d, f)

- (a) Infant formula and dry infant cereal shall be iron-fortified.
- (b) It is recommended that breast milk be served in place of formula from birth through 11 months.
- (c) For some breastfed infants who regularly consume less than the minimum amount of breast milk per serving, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.
- (d) A serving of this component shall be optional.
- (e) Fruit juice shall be full-strength.
- (f) Bread and bread alternates shall be made from whole grain or enriched meal or flour.
- (g) NOTE: Formula and foods to be provided by the licensee to infants shall be planned with the infant's parent(s)/guardian(s) or by the child's physician with the parent(s)/guardian(s) knowledge and consent.
- (h) Meals and snacks provided by the licensee to infants shall comply with infant meal patterns of the **Food and Nutrition Service, USDA**, as stated above.

### III. APPENDICES

#### A. Application for a license to operate a family/group day care/nighttime home

DHR-CDC-712  
Revised 1/06

STATE OF ALABAMA  
DEPARTMENT OF HUMAN RESOURCES

APPLICATION FOR A LICENSE TO OPERATE  
A DAY CARE/NIGHTTIME HOME

First Application

Application for Renewal

In accordance with Title 38, Chapter 7, Code of Alabama 1975, application is hereby made for a license to operate a:

Family Day Care/Nighttime Home

Group Day Care/Nighttime Home

Name of Applicant: \_\_\_\_\_  
*First Middle Maiden Last*

List all names you have been known by: \_\_\_\_\_

Applicant's Date of Birth: \_\_\_\_\_  
*Month Day Year*

Social Security Number of Applicant: \_\_\_\_\_  
*(NOTE: Social Security Number is required by the Department's Administrative Rules for identification purposes.)*

Address of Applicant: \_\_\_\_\_  
*Number and Street City State Zip Code County*

Telephone Number of Applicant: (        ) \_\_\_\_\_

Name of Applicant's Spouse: \_\_\_\_\_  
*First Middle Last*

List all names your spouse has been known by: \_\_\_\_\_

Spouse's date of birth: \_\_\_\_\_  
*Month Day Year*

Do you own or rent your home? \_\_\_\_\_

If you rent, attach a written statement from the owner of the home giving permission for you to operate a day care/nighttime home.

Will you provide transportation for children in your care? \_\_\_\_\_

For what age children will you provide care? \_\_\_\_\_

What days of the week will you provide care? \_\_\_\_\_

What hours of the day will you provide care? \_\_\_\_\_

**List addresses of all places you have lived in the past five years, if different from your present address:**

Number and Street	City	State	Zip Code	County

**List each person living in your home:**

Full Name	Date of Birth	Relationship to you	Occupation/school attending/attended	Social Security Number

*(NOTE: Social Security Number is required by the Department's Administrative Rules for identification purposes.)*

**REFERENCES:**

List at least three (3) persons you have known for at least two (2) years who are not related to you or any member of your household by blood, marriage, or adoption. Information must be complete and accurate.



Month Day Year

Social Security Number of Assistant Caregiver: \_\_\_\_\_  
(NOTE: Social Security Number is required by the Department's Administrative Rules for identification purposes.)

Address of Assistant Caregiver: \_\_\_\_\_  
(Number and Street) (City) (State) (Zip Code) (County)

Telephone Number of Assistant Caregiver: (\_\_\_\_\_) \_\_\_\_\_

**Name of Second Substitute**, if application is for a group day care/nighttime home:

\_\_\_\_\_  
First Middle Maiden Last

Second Substitute's Date of Birth: \_\_\_\_\_  
Month Day Year

Social Security Number of Second Substitute: \_\_\_\_\_  
(NOTE: Social Security Number is required by the Department's Administrative Rules for identification purposes.)

Address of Second Substitute: \_\_\_\_\_  
(Number and Street) (City) (State) (Zip Code) (County)

Telephone Number of Second Substitute: (\_\_\_\_\_) \_\_\_\_\_

**BACKGROUND INFORMATION:**

**Child Care:**

Have you ever applied for or held any license or approval or been registered or certified to operate a child care facility of any kind in any county, state, or country? \_\_\_\_\_

If yes, give details.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Criminal History Background Information Checks:**

In accordance with Alabama law, (Act 2000-775, effective November 1, 2000, the criminal history background information check shall be completed on each applicant for a license, each licensee, each adult household member, substitute, caregiver, volunteer, and domestic worker, as well as any other person who has contact with the children or unsupervised access to the children shall be reviewed.

If this is your first application, you must complete a Mandatory Criminal History Notice Form and a Criminal History Information Consent and Release Form. The cost for the criminal history check is \$49, (cashier's check or money order, no personal checks). The fee must be submitted with the fingerprints and the consent form. Required forms are available from the Department. If you previously had a criminal history check done for the Department of



**NOTICE OF PENALTY FOR FALSE STATEMENTS**

In accordance with Title 38, Chapter 7, Section 16, Code of Alabama 1975, any person, group of persons, association or corporation who makes materially false statements in order to obtain a license or permit shall be guilty of a misdemeanor and shall be fined not less than \$100.00 nor more than \$1,000.00 or be imprisoned in the county jail not longer than one year, or both, and, in case of an association or corporation, imprisonment may be imposed upon its officers who knowingly participated in the violation. Understanding the penalties for false statements, I attest that the statements in this application are true and correct, to the best of my knowledge and belief.

***NOTE: The application for renewal of a license shall be submitted at least 30 calendar days prior to the expiration of the current license.***

**By signing this form, I am affirming that the above statements I have made are true and factual to the best of my knowledge; and I am granting permission for all persons, organizations, or agencies listed above to be contacted for information regarding my background.**

\_\_\_\_\_/\_\_\_\_\_  
**Signature** **Date**

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**Return the completed application form and any attachments to the \_\_\_\_\_  
County Department of Human Resources at the address below:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## B. Mandatory Criminal History Check Notice

<b>Agency Name:</b> _____
<b>Address:</b> _____
<b>City:</b> _____ <b>State:</b> <u>Alabama</u> <b>Zip:</b> _____

Alabama law requires that a criminal history background information check be conducted on applicants for certain DHR positions and on all persons who hold a license or work in a Department of Human Resources licensed child care or adult care home, a foster or adoptive home approved by the Department of Human Resources, or a licensed child placing agency, including all officers and agents of the entity. You are required to provide full, complete, and accurate information on your criminal conviction history upon application for a license or employment. This information shall be used to determine your suitability to provide care to children, the elderly, or disabled individuals. Unless a criminal history background information check report and suitability determination have previously been obtained, you must complete a written request and consent for a criminal history background information check with fingerprints at the time of application for employment. Refusal to complete these documents or providing false information shall result in refusal of employment, approval, or licensure. The term conviction includes a determination of guilt by a trial, by a plea of guilty, or a plea of nolo contendere. Any individual determined to have submitted false information shall be referred to the district attorney or law enforcement for investigation and possible prosecution. An individual who intentionally falsifies any information on the statement is guilty of a Class A misdemeanor, punishable by a fine of not more than two thousand dollars (\$2,000) and imprisonment for not more than one year.

Convictions for any of the following crimes shall make an individual unsuitable for employment, volunteer work, approval, or licensure:

1. Murder, manslaughter, or criminally negligent homicide.
2. A sex crime.  
A sex crime includes the following:
  - a) Enticing a child to enter a vehicle, room, house, office, or any other space for immoral purposes, as proscribed by Section 13A-69 of the Code of Alabama 1975.
  - b) Incest, when the offender is an adult and the victim is a minor, as proscribed by Section 13A-13-3 of the Code of Alabama 1975.
  - c) Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44 of the Code of Alabama 1975.
  - d) Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or Section 13A-12-112 of the Code of Alabama 1975.
  - e) Rape in the first or second degree, as proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code of Alabama 1975.
  - f) Sexual misconduct, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.
  - g) Sexual torture, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.
  - h) Sexual abuse in the first or second degree, as proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code of Alabama 1975.
  - i) Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code of Alabama 1975.
  - j) Soliciting a child by computer for the purposes of committing a sexual act and transmittal obscene material to a child by computer as proscribed by Sections 13A-6-110 and 13A-6-111 of the Code of Alabama 1975.
  - k) Violation of the Alabama Child Pornography Act, as proscribed by Sections 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197 of the Code of Alabama 1975.
  - l) Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs a. to k., inclusive.
  - m) A crime listed in the Community Notification Act, Chapter 20 of Title 15 of the Code of Alabama 1975.
3. A crime that involves the physical or mental injury or maltreatment of a child, the elderly, or an individual with disabilities.
4. A crime committed against a child.
5. A crime involving the sale or distribution of a controlled substance.
6. Robbery.
7. Conviction for a violation or attempted violation of an offense committed outside the State of Alabama is a sex crime or any other crime the offense would be a crime in Alabama.

### CRIMINAL HISTORY STATEMENT

**Have you ever had a suitability determination made by the Department of Human Resources in connection with a previous criminal history information background check? Yes ( ) No ( ). If yes, send form to DHR.**

**Have you ever been convicted of a crime? Yes ( ) No ( ). If yes, state on the lines below the date, crime, location, punishment imposed, and whether the victim was a child or an elderly or disabled individual.**

\_\_\_\_\_  
Date \_\_\_\_\_ Signature \_\_\_\_\_ Print name \_\_\_\_\_  
Social Security Number \_\_\_\_\_

C. Medical report for persons giving care to children

DHR-CDC – 737  
Revised 1/01

**MEDICAL REPORT FOR PERSONS GIVING CARE TO CHILDREN**

Name:	Date of birth:
Address:	Position in child care facility:

**To the examining medical doctor, physician's assistant, or certified nurse practitioner:**

**This examination is needed to determine my physical ability to care for children, to perform services in a child care facility, or to have contact with the children. I hereby authorize you to furnish a report of my examination to:**

\_\_\_\_\_  
*Name of child care facility or Department of Human Resources*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**TESTS** (to be completed if other verification is not attached):

Date and result of Intradermal Tuberculin Test (Mantoux): \_\_\_\_\_  
(Required for initial examination only)

Date and result of chest x-ray if Mantoux was positive: \_\_\_\_\_

**HISTORY** of any chronic disease or disability that may affect his/her ability to care for children or perform services in a child care facility: Yes ; No .

**PHYSICAL LIMITATIONS** that may affect his/her ability to care for children or perform services in a child care facility: Yes ; No .

If "YES", please explain:

\_\_\_\_\_  
\_\_\_\_\_

In my opinion, the physical examination reveals that the above-named person is free of any infectious or contagious disease and is physically fit to care for children, to perform services in a child care facility or to have contact with the children.

If not, please explain:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of medical doctor, physician's assistant, or certified nurse practitioner

\_\_\_\_\_  
Date

**Child's Medical Report**

*(This form may be used for household members younger than 19 years of age)*

**Child's Name:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Name of Child's Parent or Guardian:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **Telephone Number:** \_\_\_\_\_

**In addition to a medical report or medical screening, a Certificate of Immunization (ADPH-F-IMM-50) is required for each child two months to five years of age and for five year olds who are not enrolled in public or private school.**

**History of Allergies:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**I examined this child on (date) \_\_\_\_\_ . I find him/her to be in good physical condition and free of contagious and infectious diseases, except as noted below.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Physician, Physician's Assistant, Certified Nurse Practitioner

\_\_\_\_\_  
Date

**D. Application form for staff**

**DHR –CDC- 1947**

Revised 1/06

**APPLICATION FORM FOR STAFF**

(including caregivers, employees, teachers, substitutes, volunteers, cooks, bus drivers, domestic workers)

Date \_\_\_\_\_

Position \_\_\_\_\_

<b>Name:</b>	_____			
	Last	First	Middle	Maiden (if applicable)
<b>Address:</b>	Street: _____			
	City: _____			
	State: _____		Zip Code _____	
<b>Telephone Number:</b> (    )			<b>Date of Birth:</b>	
<b>Driver's License Number:</b>			<b>Expiration Date of Driver's license:</b>	

**EDUCATION:**

EDUCATION	School/Institution	Dates Attended	Diploma/Degree/Certificate
Elementary			
High School			
College			
Graduate			
Other			

**CHILD CARE TRAINING:**

List all courses, workshops, and conferences related to child development and early childhood education. Attach additional pages if necessary. Attach copies of certificates received.

Title of course/Workshop/conference	Sponsor	Location	Date(s)	Number of hours

**EMPLOYMENT HISTORY:**

List in order beginning with your most recent employment. Attach additional pages if necessary.

Employer	Employer's Address	Position/Job	Date(s) Worked	Reason for leaving

**REFERENCES:**

List at least three persons who are not related to you by blood, marriage, or adoption. to be contacted as references. **At least one must be a former employer.** Addresses must be complete and accurate.

Name of Former Employer: \_\_\_\_\_  
Last
First
Middle

Address: \_\_\_\_\_  
Street
City  
 \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_  
State
Zip Code
Area Code
Telephone Number

Name: \_\_\_\_\_  
Last
First
Middle

Address: \_\_\_\_\_  
Street
City  
 \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_  
State
Zip Code
Area Code
Telephone Number

Name: \_\_\_\_\_  
Last
First
Middle

Address: \_\_\_\_\_  
Street
City  
 \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_  
State
Zip Code
Area Code
Telephone Number

**Criminal History Background Information Checks:**

In accordance with Alabama law, (Act 2000-775, effective November 1, 2000), the criminal history background information check shall be completed on each substitute, caregiver, volunteer, and domestic worker, as well as any other person who has contact with the children or unsupervised access to the children shall be reviewed.

You must complete a Mandatory Criminal History Notice Form and a Criminal History Information Consent and Release Form. The cost for the criminal history check is \$49, (cashier's check or money order, no personal checks). The fee must be submitted with the fingerprints and the consent form. Required forms are available from the Department. If you previously had a criminal history check done for the Department of Human Resources and the required information is on file, it is not necessary to complete a criminal history check.

**Current Criminal Charges:**

Are there any current criminal charges against you? \_\_\_\_\_

If yes, give details.

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**Clearance of State Central Registry on Child Abuse/Neglect:**

A completed REQUEST FOR CLEARANCE OF STATE CENTRAL REGISTRY ON CHILD ABUSE/NEGLECT (DHR-DFC-1598) shall be obtained for each caregiver, substitute, volunteer, domestic worker, and any other person who has contact with the children or unsupervised access to the children.

**By signing this form, I am affirming that the above statements I have made are true and factual to the best of my knowledge; and I am granting permission for all persons, organizations, or agencies listed above to be contacted for information regarding my background.**

---

**Signature**

**Date**



---

7. To your knowledge, does this person have qualities, traits, or abilities that make him/her particularly suitable to care for children? Yes  No  Please explain.

---

---

8. Do you know of any reason why this person might not be suitable to care for children? Yes  No  If yes, please explain.

---

---

9. If you have any additional comments about this person you feel would be useful when considering his/her application for employment in a child care facility, please state below.

---

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---

---

Signature

Date

Telephone number

**Please return this form to:**

Name of person requesting information: \_\_\_\_\_

Name of day care/nighttime facility: \_\_\_\_\_

Address of facility:

Street: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone Number: (\_\_\_\_\_) \_\_\_\_\_

If you prefer **not** to provide a reference for this person, please sign here and return this form to the address above.

---

Signature

Date

F. Verification that staff persons/caregivers have read the Minimum Standards

VERIFICATION THAT STAFF PERSONS/CAREGIVERS HAVE READ THE  
MINIMUM STANDARDS

Written and signed verification stating that staff persons have read the Minimum Standards, must be in each staff person's file in the home.

I have read the Minimum Standards for Family/Group Day Care and Nighttime Homes. I understand that I must comply with these regulations while I am employed by

\_\_\_\_\_. Failure to do so could result in  
*(Name of licensee)*

immediate termination of employment.

\_\_\_\_\_  
Signature of staff person/caregiver

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Licensee

\_\_\_\_\_  
Date





**H. Authorization for administering medication**

**DHR-CDC-1949**

**AUTHORIZATION FOR ADMINISTERING MEDICATION/MEDICAL PROCEDURES**

Dear Parent/guardian,

Your written permission is required to administer medication or medical procedures to your child. Any prescription drug or over-the-counter drug sent to the child care facility must be in its original container and must be clearly labeled with your child's name, the name of the drug, and directions for administering the drug. A new authorization form is needed each week. If it is absolutely necessary for your child to be given medication while at the child care facility, **please complete the following information.**

**Child's Name** \_\_\_\_\_

**Prescription Number** \_\_\_\_\_

**Name of Medication** \_\_\_\_\_

**Amount of medication to be given at each dosage** \_\_\_\_\_

**Instructions (how to give or apply, such as give by mouth, apply to skin, inhale, drops in eyes, etc.)**  
\_\_\_\_\_

**Time of last dosage given at home** \_\_\_\_\_

**Time(s) of dosage(s) to be given at the child care facility** \_\_\_\_\_

*Please give my child the above-named medication at the time(s) and in the amount(s) indicated.*

\_\_\_\_\_  
**Signature of parent/guardian** **Date**

**To be completed by licensee/staff/caregiver**

Date medication given	Time medication given	Signature of person giving medication

**I. Injury/illness report form**

**DHR-CDC-1950**

Revised 1/06

**INJURY/ILLNESS REPORT FORM  
Child Care Facilities (Homes/Centers)**

Any injury or illness requiring emergency medical treatment, of a child while in the care of the child care facility, must be reported to the Department of Human Resources within 24 hours after occurrence, followed by a written report within 5 days. This report must be made by the licensee or the person responsible for the child. A copy of the report must be kept in the child's file at the child care facility.

<b>Name of Licensee/Operator:</b>  <b>Family Day Care/Nighttime Home</b> <input type="checkbox"/> <b>Group Day Care/Nighttime Home</b> <input type="checkbox"/>	<b>Address of Child Care Facility:</b> <b>Street:</b> _____  <b>City:</b> _____ <b>County:</b> _____
<b>Child's Name:</b>	<b>Child's Date of Birth:</b>
<b>Date injury/illness occurred:</b>	<b>Time injury/illness occurred:</b>
<b>Name of Child's Parent/guardian:</b>	<b>Time Parent/guardian was contacted:</b>

**Describe the injury/illness, including type, severity, location: (If reporting an injury, describe how it occurred)**


**Give the name, address, and telephone number of the physician or emergency medical personnel contacted, the time and date contact was made, and the physician's comments and diagnosis regarding the injury/illness:**


**Was the Department of Human Resources notified within 24 hours? Yes  No**

<b>Signature of Staff Person/Caregiver in Charge:</b>	<b>Date:</b>
<b>Signature of Licensee:</b>	<b>Date:</b>



K. Public notice form

## PUBLIC NOTICE

A copy of the Minimum Standards for Family/Group Day Care Homes and Nighttime Homes-Regulations, and Procedures may be obtained by contacting the Department of Human Resources.

**Address:**

**Telephone number:**

Complaints regarding known or suspected violations of the Minimum Standards, may be reported to the Department of Human Resources at the address and telephone number above.

Information regarding substantiated licensing complaints and violations of the Minimum Standards may be obtained from the Department of Human Resources at the address and telephone number above.







## **M. Alabama Law**

**NOTE:** *The following excerpts of Alabama law are printed in this document as a resource. These laws are not a part of the regulations promulgated by the Department of Human Resources.*

### **Title 38, Code of Alabama 1975, Chapter 7, Child Care**

#### **§ 38-7-1. Short title.**

This chapter shall be known and may be cited as the Child Care Act of 1971. (Acts 1971, 3rd Ex. Sess., No. 174, p.4423, § 1.)

#### **§ 38-7-2. Definitions.**

Terms used in this chapter, unless the context otherwise requires, have the meanings ascribed to them in this section. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number, and the word "shall" is always mandatory and not merely directory:

(1) **CHILD.** Any person under 19 years of age, a person under the continuing jurisdiction of the juvenile court pursuant to § 12-15-32, or a person under 21 years of age in foster care as defined by the department of human resources.

(2) **CHILD-CARE INSTITUTION or INSTITUTION FOR CHILD CARE.** A child-care facility where more than 10 children are received and maintained for the purpose of providing them with care or training or both, or transitional living program services, but does not include:

a. Any institution for child care which is under the ownership or control, or both, of the state of Alabama, or which is operated or certified or licensed by another agency or department of the state of Alabama;

b. Any juvenile detention home established and operated by the state of Alabama;

c. Any bona fide boarding school in which children are primarily taught branches of education corresponding to those taught in public schools, grades 1 through 12, or taught in public elementary schools, high schools or both elementary schools and high schools.

(3) **CHILD-PLACING AGENCY.** A public or private child-care facility which receives, places or arranges for the placement of any child or children in adoptive or foster family homes or other facilities for child care apart from the custody of the child's or children's parents. The term "child-placing agency" includes, but is not limited to, all agencies established and maintained by a municipality or other political subdivision of the state of Alabama to protect, guard, train or care for children outside their own homes, but does not include any circuit court or juvenile court or any duly appointed juvenile probation officer or youth counselor of the court who receives and places children under an order of the court.

(4) **DAY CARE CENTER.** Any child-care facility receiving more than 12 children for daytime care during all or part of a day. The term "day care center" includes, but is not limited to, facilities commonly called "child-care centers," "day nurseries", "nursery schools", "kindergartens" and "play groups", with or without stated educational purposes. The term further includes, but is not limited to, kindergarten or nursery schools or other daytime programs operated as a part of a private school and receiving children younger than lawful school age for daytime care for more than four hours a day, with or without stated educational purposes. The term does not include any of the following:

a. Kindergartens or nursery schools or other daytime programs operated by public elementary systems or secondary level school units or institutions of higher learning.

b. Kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age.

c. Kindergartens or nursery schools or other daytime programs operated as a part of a private school and receiving children younger than lawful school age for four hours a day or less, with or without stated educational purposes.

d. Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where transient children are cared for temporarily while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and readily available. The facilities shall meet local and state fire and health requirements.

e. Any type of day care center that is conducted on federal government premises.

f. Special activities programs for children of lawful school age including, but not limited to, athletics, crafts instruction and similar activities conducted on an organized and periodic basis by civic, charitable and governmental organizations provided local and state fire and health requirements are met.

(5) **DAY CARE HOME.** A child-care facility which is a family home and which receives not more than six children for care during the day.

(6) **DEPARTMENT.** The department of human resources of the state of Alabama.

(7) **FACILITY FOR CHILD CARE or CHILD-CARE FACILITY.** A facility established by any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody, in any facility as defined in this chapter, established and maintained for the care of children.

(8) **FOSTER FAMILY HOME.** A child-care facility in a residence of a family where the family receives a child or children, unrelated to that family, for the purpose of providing

family care or therapeutic family care and training, or transitional living program services on a full-time basis. The types of foster family homes are defined as follows:

a. BOARDING HOME. A foster family home wherein the foster family receives a child or children and receives payment for their care. The number of children so received shall not exceed six, unless the children are of common parentage.

b. FREE HOME. A foster home which does not receive payment for the care of a child or children and which may or may not receive the child or children for the purpose of adoption.

(9) GROUP DAY CARE HOME. A child care facility which is a family home and which receives at least seven but no more than twelve children for care during part of the day where there are at least two adults present and supervising the activities.

(10) GROUP HOME. A child-care facility where at least seven but not more than 10 children are received and maintained for the purpose of providing them with care or training or both.

(11) MATERNITY CENTER. A facility in which any person, agency or corporation receives or cares for one or more minor pregnant girls, except that the term does not include hospitals.

(12) NIGHT CARE FACILITY. A child-care facility which is a center or a family home receiving a child or children for care during the night. A "night care facility" is further defined as follows:

a. NIGHTTIME CENTER. A facility which is established to receive more than twelve children for nighttime care.

b. NIGHTTIME HOME. A family home which receives no more than six children for nighttime care.

c. GROUP NIGHTTIME HOME. A child care facility which is a family home which receives at least seven but no more than twelve children for nighttime care and where there are at least two adults present and supervising the activities.

(13) RELATED. Any of the following relationships by blood, marriage or adoption: parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, halfbrother, halvesister, uncle or aunt, and their spouses.

(14) TRANSITIONAL LIVING FACILITY. A child-care facility or program that is designed to give opportunities to practice independent living skills to eligible persons at least 16 years of age and under 21 years of age in foster care on a variety of residential settings with varying degrees of care and supervision.

**§ 38-7-3. License to operate or conduct child- care facility-Required; exemption for church preschool programs, filing of notices, maintaining records, etc., form for affidavits by parents or guardians; investigation of complaints by district attorney.**

No person, group of persons or corporation may operate or conduct any facility for child care, as defined in this chapter, without being licensed or approved as provided in this chapter; provided, however, that nothing in this section or in this chapter prohibits an employee of the department from carrying out the duties of the department as provided in this title. Provided, further, the provisions of this chapter shall not apply to preschool programs which are an integral part of a local church ministry or a religious nonprofit elementary school, and are so recognized

in the church or school's documents, whether operated separately or as a part of a religious nonprofit elementary school unit, secondary school unit or institution of higher learning under the governing board or authority of said local church or its convention, association, or regional body to which it may be subject; provided that notice is filed by the governing board or authority of the church or school with the department that said church or school meets the definition of a local church ministry or a religious nonprofit elementary school under terms of this Act and are exempt from regulation by the department and a notice of intent to operate said programs is given to the appropriate fire and health departments so that said facilities shall be inspected in accordance with the state and local fire and health requirements for such programs. In addition, all exempt churches hereunder shall publish annually, on church letterhead, a notice to the department certifying that the following records are being maintained by the church: fire and health inspection reports; immunization verifications for all children; medical history forms for all staff and children and that the following information shall be available to parents or guardian prior to enrolling their children in said church ministry; staff qualifications; pupil-staff ratio; discipline policies; type of curriculum used in the learning program; the religious teachings to be given each child; and the type of lunch program available; provided further that prior to enrolling and annually thereafter parents or guardian and a responsible individual representing the governing board as authority of the church or school be required to sign and file with the department the affidavits provided by this Act that the parents or guardian have been notified by said responsible individual that the church or school has filed notice and is exempt from regulation by the department. The district attorney of the county in which the preschool program is located shall, upon proper presentment of charges, investigate at his discretion any allegations against any such church under the laws of the State of Alabama.

**FORM OF AFFIDAVIT for Parent/Guardian)**

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_

Before me, a notary public in and for said state and county, appeared \_\_\_\_\_ and is known to me, after being duly sworn or affirmed, says as follows:

That affiant is the parent or legal guardian of the minor child/children \_\_\_\_\_; that affiant has been notified by \_\_\_\_\_, a representative of \_\_\_\_\_ church/school, that said church or school has filed notice and is exempt under law from regulation by the department of human resources.

\_\_\_\_\_  
Parent/Legal Guardian  
Sworn, or affirmed to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

**FORM OF AFFIDAVIT for Church/School**

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_

Before me, a notary public in and for said state and county, appeared \_\_\_\_\_ and is known to me, after being duly sworn or affirmed says as follows:

That affiant is the designated representative of \_\_\_\_\_ church/school and that the below listed parents/guardians have been notified prior to enrollment/re-enrollment that \_\_\_\_\_ church/school has filed notice with and is exempt under law from regulation by the department of human resources: \_\_\_\_\_.

\_\_\_\_\_ Representative  
Sworn or affirmed to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_ Notary Public

**§ 38-7-4. Same-Application; investigation; application to operate foster family home may be made to licensed child-placing agency.**

Any person, group of persons or corporation who or which receives children or arranges for care or placement of one or more children unrelated to the operator shall apply for a license or for approval to operate one of the types of child-care facilities defined in this chapter. Application for such license or approval to operate a child-care facility shall be made to the department in the manner and on forms prescribed by it. The department, upon receiving such application, shall examine the premises of the child-care facility, including buildings, equipment, furnishings and appliances thereof and shall investigate the person responsible for the care of children therein. If, upon such examination of the facility and investigation of the persons responsible for care of children, the department is satisfied that the facility and the responsible persons reasonably meet standards prescribed for the type of child-care facility for which application is made, the department shall issue a license or an approval in the proper form, designating on said license or approval the type of child-care facility, and, except for a child-placing agency, the number of children to be served at any one time. Application to operate a foster family home may be made to a licensed child-placing agency as defined in subdivision (7) of section 38-7-2, and such licensed child-placing agency may examine said foster family home and investigate persons therein responsible for the care of children, and, upon being satisfied that the foster family home and the responsible persons reasonably meet standards prescribed by the department, said licensed child-placing agency may issue an approval to said foster family home. (Acts 1971, 3rd. Ex. Sess., No. 174, p. 4423, § 4.)

**§ 38-7-5. Same -- Issuance and term; temporary permits.**

(a) Licenses or approvals shall be issued in such form and manner as prescribed by the department and are valid for two years from the date issued, unless revoked by the department or voluntarily surrendered by the licensee, or by the child-care facility designated on the notice of approval, provided that:

(1) Licenses or approvals for boarding home are valid for one year from the date of issuance, unless revoked by the department, or by the licensed child-placing agency

which issued the approval, or unless voluntarily surrendered by the licensee or by the child-care facility designated on the notice of approval;

(2) Approvals for free homes shall continue in effect until notice of disapproval is given by the department, or by the licensed child-placing agency which issued the approval, or until the child-care facility designated on the notice of approval voluntarily withdraws.

(b) The department may issue a six-month permit to a facility for child care to allow such facility reasonable time to become eligible for a full license; provided, however, that no such six-month permit shall be issued to a foster family home. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 5.)

#### **§ 38-7-6. Same -- Renewal; reexamination; renewal of approval of boarding home.**

(a) A licensed or approved child care facility operating under this chapter shall apply for renewal of its license or approval, the application to be made to the department on forms prescribed by it; provided, however, that application for renewal of approval of a boarding home may be made to the licensed child-placing agency which issued the approval.

(b) The department shall reexamine every child-care facility for renewal of license or approval, including in that process, but not limited to, the examination of the premises and records of the facility and the persons responsible for the care of children as the department considers necessary to determine that minimum standards for licensing or approval continue to be met; provided, however, that in the case of a boarding home approved by a licensed child-placing agency, such reexamination may be made by said agency. If the department or the licensed child-placing agency, as the case may be, is satisfied that the facility continues to meet and maintain minimum standards which the department prescribes and publishes, the department shall renew the license or approval to operate the facility or the licensed child-placing agency shall renew its approval of a boarding home. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 6.)

#### **§ 38-7-7. Same-Department to establish minimum standards for licensing; factors to be considered, children in need of special treatment; department to offer consultation.**

(a) The department shall prescribe and publish minimum standards for licensing and for approving all child-care facilities, as defined in this chapter. In establishing such standards the department shall seek the advice and assistance of persons representative of the various types of child-care facilities. The standards prescribed and published under this chapter shall include regulations pertaining to:

(1) The operation and conduct of the child-care facility and the responsibility it assumes for child care;

(2) The character, suitability and qualifications of the applicant and other persons directly responsible for the care and welfare of children served;

(3) The general financial ability and competence of the applicant to provide necessary care for children and to maintain prescribed standards;

(4) The number of individuals or staff required to insure adequate supervision and care of the children served;

(5) The appropriateness, safety, cleanliness and general adequacy of the premises, including maintenance of adequate fire prevention and health standards conforming to state laws and municipal codes to provide for the physical comfort, care, well-being and safety of children served;

(6) Provisions for food, clothing, educational opportunities, program, equipment and individual supplies to assure the healthy physical and mental development of children served, consistent with the definitions contained in this chapter;

(7) Maintenance of records pertaining to the admission, progress, health and discharge of children, and provisions for confidentiality of such records;

(8) Filing of reports with the department; and

(9) Discipline of children.

(b) If, in a facility for child care, there are children diagnosed as mentally ill, mentally retarded or physically handicapped who are determined to be in need of special mental treatment or of nursing care, or both mental treatment and nursing care, the department shall seek the advice and recommendation of the department of mental health or the state board of health, of both, regarding the residential treatment and nursing care provided by the facility.

(c) The department, in applying standards prescribed and published, as herein provided, shall offer consultation through employed staff or other specified persons to assist applicants and licensees in meeting and maintaining minimum requirements for a license and to help them otherwise to achieve programs of excellence related to the care of children served. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 7.)

### **§ 38-7-8. Same -- Revocation or refusal to renew the license -- Grounds.**

The department may revoke or refuse to renew the license or the approval of any child-care facility or refuse to issue a full license to the holder of a six-month permit should the license or the child-care facility designated on the notice of approval or the holder of a six-month permit:

(1) Consistently fail to maintain standards prescribed and published by the department;

(2) Violate the provisions of the license issued;

(3) Furnish or make any misleading or any false statements or report to the department;

(4) Refuse to submit to the department any reports or refuse to make available to the department any records required by the department in making investigation of the child-care facility for licensing purposes, provided, however, that the department shall not revoke or refuse to renew a license in such case unless it has made written demand on the person, firm or corporation operating the facility requesting such report or reports and such person, firm or corporation fails or refuses to submit such records for a period of 10 days;

(5) Fail or refuse to submit to an investigation by the department;

(6) Fail or refuse to admit authorized representatives of the department at any reasonable time for the purpose of investigation;

(7) Fail to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child care as required under standards prescribed by the department, or as otherwise required by any law, regulation or ordinance applicable to such facility;

(8) Refuse to display its license or permit; or

(9) Fail to maintain financial resources adequate for the satisfactory care of children served in regard to upkeep of premises and provisions for personal care, medical services, clothing, learning experience and other essentials in the proper care, rearing and training of children. (Acts 1971, 3rd Ex. Sess, No. 174, p. 4423, § 8.)

**§ 38-7-9. Same -- Aggrieved party entitled to hearing; review of final decision or action of department; bond; when decision may be set aside; section not applicable to boarding homes and free homes.**

In the event a party or an applicant for a license or a licensee is denied a license or a renewal of a license or has a license suspended or revoked for the operation of a child-care facility required by this chapter to be licensed by the department, or in the event an application for such a license or renewal of a license is not acted upon with reasonable promptness, or in the event an approval required by this chapter to be issued by the department is denied or revoked or unduly delayed, any aggrieved party may appeal to the department for a fair hearing of his case. Notice and opportunity for a fair hearing and notice of right to counsel shall be given the appellant by the department, and at this hearing any party at interest may appear and present any relevant facts. The decision or action of the department on any fair hearing on any such appeal shall be final and binding and shall be complied with.

Any party aggrieved by a final decision or action of the department refusing to grant or to issue, or suspending or revoking a license or an approval for the operation of any child-care facility required by law to be licensed or approved by the department is entitled to a review of such final decision or action by filing a complaint with the circuit court in the county in which the child-care facility is located or in the circuit court of Montgomery County, Alabama. All such complaints shall be filed within 30 days from the date of such final decision or action, and a review shall be granted as a matter of right upon the filing with the department of a bond for security of costs of said review and upon filing said complaint both with the register or clerk of the circuit court, as designated hereunto, and with the department. The court may set aside the final decision of the department only upon a finding of the court that such final decision was illegal, capricious, or unsupported by the evidence. Upon motion of either party or upon its own motion the court may at its discretion take additional evidence. The provisions of this section shall not apply to boarding homes and free homes as defined in this chapter. (Acts 1971, 3rd Ex. Sess., No 174, p. 4423, § 9.)

**§ 38-7-10. Same -- Investigation of operation without license; report to attorney general for prosecution.**

Whenever the department is advised or has reason to believe that any person, group of persons or corporation is operating a child-care facility without a license or an approval or a

six-month permit, it may make an investigation to ascertain the fact. If it finds that the child-care facility is being operated or has operated without a license or an approval or a six-month permit, it shall report the results of its investigation to the attorney general and to the appropriate district attorney for prosecution; provided, however, that the department may delay in making said report to the attorney general for a reasonable period of time, not to exceed 60 days, in order to give the person, group of persons or corporation operating the child-care facility reasonable opportunity to apply for a license or an approval or a six-month permit, and therefore, to meet the standards prescribed in this chapter. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 10.)

### **§ 38-7-11. Inspection of facilities.**

The department shall have the right and its authorized representatives shall be afforded reasonable opportunity, to inspect any child-care facility seeking a license or an approval or a six-month permit pursuant to this chapter, any child-care facility seeking a renewal of a license or an approval or a six-month permit pursuant to this chapter and any child-care facility which is operating under a license or an approval or a six-month permit issued pursuant to this chapter. Such inspection shall include, but not be limited to, premises, services, personnel, program, accounts and records, interviews with agents and employees of the child-care facility being inspected and interviews with any child or other person within the custody or control of said child-care facility. Such inspection shall be made at any reasonable time, without prior notice and as often as necessary to enforce and administer the provisions of this chapter. It shall be the duty of the department, through its agents, to conduct the inspections authorized hereinabove. If any such inspection of a licensed or approved child-care facility discloses any condition, deficiency, dereliction or abuse which is, or could be hazardous to the health, the safety of the physical, moral or mental well-being of the children in the care of the child-care facility being inspected, the same shall at once be brought to the attention of the department, and the department shall have the power to revoke without notice the license or approval or six-month permit of such child-care facility. In this event, the child-care facility shall not operate during the pendency of any proceeding for fair hearing, or judicial review, except under court order. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 11.)

### **§ 38-7-12. Advertisements.**

A child-care facility licensed or approved or operating under a six-month permit issued by the department may publish advertisements of the services for which it is specifically licensed or approved or issued a permit under this chapter. No person, unless licensed or approved or holding a permit as a child-care facility, may cause to be published any advertisement soliciting a child or children for care or placement. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 12.)

**§ 38-7-13. Records to be kept by child-care facility; use and disclosure of information.**

Every child-care facility shall keep and maintain such records as the department may prescribe pertaining to the admission, progress, health and discharge of children under the care of the facility. Records regarding children and facts learned about children and their relatives shall be kept confidential by the child-care facility and by the department. The department is authorized to promulgate rules and regulations governing the custody, use and disclosure of information in such records. Any person who has arrived at the age of 19 and who was placed by the department or by a licensed child-placing agency shall have the right to receive from the department or from the licensed child-placing agency information concerning his placement; except, that the name and address of a natural parent or relative shall be given by the department or the licensed child-placing agency only with the consent of said natural parent or relative. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 13.)

**§ 38-7-14. Reports by child-care facility.**

Every child-care facility shall make reports to the department on forms prescribed by the department and at times required by the department, giving information pertaining to the children under care and such other facts as the department may require. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 14.)

**§ 38-7-15. Conditions precedent to bringing child into state for purposes of adoption or placement in child-care facility.**

(a) No person or agency shall bring or send any child into the state of Alabama for the purpose of placing him or procuring his adoption or placing him in any child-care facility, as defined herein, without first obtaining the consent of the department. The department shall have the power to impose and enforce reasonable conditions precedent to the granting of such consent. Such conditions shall be for the purpose of providing the same care and protection for the child coming into the state of Alabama for placement or adoption as are afforded to a child who is born in the state of Alabama, and such conditions shall include the following:

(1) The department shall be authorized to designate an agency in another state from which said child is being brought or sent, or in which said child's parents or guardian may be found, to interview said parent or parents or guardians, or at least one of them, for the purpose of obtaining social information, background information and medical information about said child;

(2) The department shall be authorized to receive such information from the designated agency in the other state;

(3) The department shall be authorized to receive the birth certificate of said child from the designated agency in the other state or from other appropriate agency in the other state;

(4) The department shall be authorized to make a thorough investigation of the proposed foster parent or parents, and their home, to determine whether or not they are

financially able, physically able and morally fit to have the care, supervision, training and control of said child;

(5) The department shall be authorized to make a thorough investigation of any child-care facility to which any child is being brought or sent to determine conformity to minimum standards prescribed herein for approval or licensing and to determine the suitability of such child-care facility for the care, supervision, training and control of said child.

(6) In case said child, subsequent to being brought into the state of Alabama, becomes dependent, neglected or delinquent prior to his adoption or becoming of legal age of majority, said child shall be subject to the laws of the state of Alabama as if he were a resident child of this state;

(7) The child will be placed in conformity with the rules and regulations of the department;

(8) The person with whom the child is placed shall be responsible for his proper care and training;

(9) The department shall have the right of visitation and supervision of the child and the home or the child-care facility in which he is placed until adoption becomes final or the child becomes 18 years of age;

(10) The department may, pursuant to the provisions of this chapter, prescribe the conditions of an agreement or contract with the designated out-of-state agency, when a child is brought into the state of Alabama.

(b) The person or agency receiving the child in Alabama shall report to the department at such reasonable times as the department may direct, as to the location and well-being of the child, so long as he shall remain within the state and until he shall have reached the age of 18 years or shall have been legally adopted. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 15.)

### **§ 38-7-16. Penalties; burden of proof of relationship.**

Any person, group of persons, association or corporation who:

(1) Conducts, operates or acts as a child-care facility without a license, or a six-month permit or an approval to do so in violation of the provisions of this chapter;

(2) Makes materially false statements in order to obtain a license or permit;

(3) Fails to keep the records and make the reports provided under this chapter;

(4) Advertises any service not authorized by the license or permit held;

(5) Publishes any advertisement in violation of this chapter;

(6) Receives within this state any child in violation of section 38-7-15;

(7) Violates any other provision of this chapter or any reasonable rule or regulation adopted and published by the department for the enforcement of the provisions of this chapter, shall be guilty of a misdemeanor and shall be fined not less than \$100.00 nor more than \$1,000.00 or be imprisoned in the county jail not longer than one year, or both, and, in case of an association or corporation, imprisonment may be imposed upon its officers who knowingly participated in the violation.

In a prosecution under this chapter, a defendant who relies upon the relationship of any child to himself has the burden of proof as to that relationship. (Acts 1971, 3rd. Ex. Sess., No. 174, p. 4423, § 16.)

**§ 38-7-17. Duty of district attorney to enforce chapter or prosecute violations.**

It shall be the duty of every district attorney or assistant district attorney within the circuit, county or other territory for which he is elected or appointed to institute action for the enforcement of the provisions of this chapter or to prosecute action for the violation of the provisions of this chapter, or both. (Acts 1971, 3rd Ex. Sess., No. 174, p. 4423, § 17.)

**§ 38-7-18. Mandatory state subsidized child day-care services program.**

(a) There is hereby provided a mandatory state subsidized child day-care services program within the department of human resources for a minimum average of 6,500 eligible children at not less than the current department of human resources payment rates for a payment-to-provider cost of not less than \$8,600,000.00, annually, based on fiscal year ending September 30, 1987.

(b) There is hereby provided, in addition to any and all other appropriations to the department of human resources, a conditional appropriation of \$2,400,000.00 from the Alabama special educational trust fund for the fiscal year beginning October 1, 1987, to the department of human resources, to provide child day-care services for an additional 1,800 eligible children. The appropriation herein provided is conditional upon the condition of the Alabama special educational trust fund as ascertained by the governor, and shall be released only upon orders of the governor. (Acts 1987, No. 87-822, § 1, 2.)

## **Title 26, Chapter 14, Reporting of Child Abuse or Neglect**

### **§ 26-14-1. Definitions.**

For the purposes of this chapter, the following terms shall have the meanings respectively ascribed to them by this section:

(1) **ABUSE.** Harm or threatened harm to a child's health or welfare. Harm or threatened harm to a child's health or welfare can occur through nonaccidental physical or mental injury, sexual abuse or attempted sexual abuse or sexual exploitation or attempted sexual exploitation. "Sexual abuse" includes rape, incest and sexual molestation as those acts are defined by Alabama law. "Sexual exploitation" includes allowing, permitting or encouraging a child to engage in prostitution and allowing, permitting or encouraging or engaging in the obscene or pornographic photographing, filming or depicting of a child for commercial purposes.

(2) **NEGLECT.** Negligent treatment or maltreatment of a child, including the failure to provide adequate food, medical treatment, clothing or shelter; provided, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone, shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services be provided to the child, where his health requires it.

(3) **CHILD.** A person under the age of 18 years.

(4) **DULY CONSTITUTED AUTHORITY.** The chief of police of a municipality or municipality and county; or the sheriff, if the observation of child abuse or neglect is made in an unincorporated territory; or the department of human resources; or any person, organization, corporation, group or agency authorized and designated by the department of human resources to receive reports of child abuse and neglect; provided, that a "duly constituted authority" shall not include an agency involved in the acts or omissions of the reported child abuse or neglect. (Acts 1975, No. 1124, p. 2213, § 1, Acts 1981, No. 81-615, p. 1031, Acts 1981, No. 81-789, p. 1387.)

### **§ 26-14-2. Purpose of chapter.**

In order to protect children whose health and welfare may be adversely affected through abuse and neglect, the legislature hereby provides for the reporting of such cases to the appropriate authorities. It is the intent of the legislature that, as a result of such efforts, and through the cooperation of state, county, local agencies and divisions of government, protective services shall be made available in an effort to prevent further abuses and neglect, to safeguard and enforce the general welfare of such children, and to encourage cooperation among the states in dealing with the problems of child abuse. (Acts 1975, No. 1124, p. 2213, § 1.)

### **§ 26-14-3. Mandatory reporting.**

(a) All hospitals, clinics, sanitariums, doctors, physicians, surgeons, medical examiners, coroners, dentists, osteopaths, optometrists, chiropractors, podiatrists, nurses, school teachers and officials, peace officers, law enforcement officials, pharmacists, social workers, day care workers or employees, mental health professionals or any other person called upon to render aid or medical assistance to any child, when such child is known or suspected to be a victim of child abuse or neglect, orally, either by telephone or direct communication immediately, followed by a written report, to a duly constituted authority.

(b) When a report is made to a law enforcement official, such official subsequently shall inform the department of human resources of the report so that the department can carry out its responsibility to provide protective services to the respective child or children. (Acts 1965, No. 563, p. 1049, § 1; Acts 1967, No. 725, p. 1560, Acts 1975, No. 1124, p. 2213, § 1.)

#### **§ 26-14-4. Permissive reporting.**

In addition to those persons, firms, corporations and officials required by Section 26-14-3 to report child abuse and neglect, any person may make such a report if such person has reasonable cause to suspect that a child is being abused or neglected. (Acts 1975, No. 1124, p. 2213, § 1.)

#### **§ 26-14-5. Contents of reports.**

The reports provided for in this chapter shall state, if known, the name of the child, his whereabouts, the names and addresses of the parents, guardian or caretaker and the character and extent of his injuries. The written report shall also contain, if known, any evidence of previous injuries to said child and any other pertinent information which might establish the cause of such injury or injuries, and the identity of the person or persons responsible for the same. (Acts 1965, No. 563, p. 1049, § 2; Acts 1975, No. 1124, p. 2213, § 1.)

#### **§ 26-14-6. Temporary protective custody.**

A police officer, a law enforcement official or a designated employee of the state or county department of human resources may take a child into protective custody, or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his custody, without the consent of the parent or guardian, whether or not additional medical treatment is required, if the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to that child's life or health. However, such official shall immediately notify the court having jurisdiction over juveniles of such actions in taking the child into protective custody; provided, that such custody shall not exceed 72 hours and that court of competent jurisdiction and the department of human resources shall be notified immediately in order that child-protective proceedings may be initiated. During

such period of temporary custody, the director of the county department of human resources may give or cause to be given effective consent for medical, dental, health and hospital services for any abused or neglected child. (Acts 1975, No. 1124, p. 2213, § 1.)

**§ 26-14-7. Duties of department of human resources.**

(a) The state or county department of human resources shall make a thorough investigation promptly upon either the oral or written report. The primary purpose of such an investigation shall be the protection of the child.

(b) The investigation, to the extent that is reasonably possible, shall include:

- (1) The nature, extent and cause of the child abuse or neglect;
- (2) The identity of the person responsible therefor;
- (3) The names and conditions of other children in the home;
- (4) An evaluation of the parents or person responsible for the care of the child;
- (5) The home environment and the relationship of the child or children to the

parents or other persons responsible for their care; and

- (6) All other data deemed pertinent.

(c) The investigation may include a visit to the child's home, an interview with the subject child, and may include a physical, psychological or psychiatric examination of any child or children in that home. If the admission to the home, school or any other place that the child may be, or permission of the parent or other persons responsible for the child or children, for the physical, psychological or psychiatric examination, cannot be obtained, then a court of competent jurisdiction, upon cause shown, shall order the parents or persons responsible and in charge of any place where the child may be to allow the interview, examinations and investigation. If, before the examination is complete, the opinion of the investigators is that immediate removal is necessary to protect a child or children from further abuse or neglect, a court of competent jurisdiction, on petition by the investigators and with good cause being shown, shall issue an order for temporary removal and custody.

(d) The county department of human resources shall make a complete written report of the investigation, together with its recommendations. Such reports may be made available to the appropriate court, the district attorney and the appropriate law enforcement agency upon request. The county department of human resources shall make a written report or case summary, together with services offered and accepted to the state's central registry on forms supplied by the registry for that purpose. (Acts 1975, No. 1124, p. 2213, § 1.)

**§ 26-14-8. Establishment of central registry; confidentiality of records and reports.**

(a) The state department of human resources shall establish a statewide central registry for reports of child abuse and neglect made pursuant to this chapter. The central registry shall contain, but shall not be limited to:

- (1) All information in the written report;
- (2) Record of the final disposition of the report, including services offered and

services accepted;

(3) The names and identifying data, dates and circumstances of any persons requesting or receiving information from the registry;

(4) The plan for rehabilitative treatment; and

(5) Any other information which might be helpful in furthering the purposes of this chapter.

(b) The state department of human resources shall establish and enforce reasonable rules and regulations governing the custody, use and preservation of the reports and records of child abuse and neglect. The use of such reports and records shall be limited to the purposes for which they are furnished and by the provisions of law under which they may be furnished. The reports and records of child abuse and neglect shall be confidential, and shall not be used or disclosed for any purposes other than:

(1) To permit their use to prevent or to discover abuse or neglect of children through the information contained therein; or

(2) For investigation of child abuse or neglect by the police or other law enforcement agency; or

(3) For use by a grand jury upon its determination that access to such reports and records is necessary in the conduct of its official business; or

(4) For use by a court where it finds that such information is necessary for the termination of an issue before the court; or

(5) For use by any person engaged in bona fide research who is authorized to have access to such information by the commissioner of the state department of human resources; or

(6) For use by any person authorized by a court to act as a representative for an abused or neglected child who is the subject of a report; or

(7) For use by a physician who has before him a child whom he reasonably suspects may be abused or neglected; or

(8) For use by an attorney or guardian ad litem in representing or defending a child or its parents or guardians in a court proceeding related to abuse or neglect of said child.

(c) Any violation of this provision of confidentiality shall be a misdemeanor and punishable accordingly. (Acts 1975, No. 1124, p. 2213, § 1.)

#### **§ 26-14-9. Immunity from liability for actions under chapter.**

Any person, firm, or corporation or official participating in the making of a report or the removal of a child pursuant to this chapter, or participating in a judicial proceeding resulting therefrom, shall, in so doing, be immune from any liability, civil or criminal, that might otherwise be incurred or imposed. (Acts 1965, No. 563, p. 1049, § 3; Acts 1975, No. 1124, p. 2213, § 1.)

#### **§ 26-14-10. Doctrine of privileged communications not grounds for exclusion of evidence as to child's injuries.**

The doctrine of privileged communication, with the exception of the attorney-client privilege, shall not be a ground for excluding any evidence regarding a child's injuries or the cause thereof in any judicial proceeding resulting from a report pursuant to this chapter. (Acts 1965, No. 563, p. 1049, § 4; Acts 1975, No. 1124, p. 2213, § 1).

**§ 26-14-11. Appointment of attorney to represent child.**

In every case involving an abused or neglected child which results in a judicial proceeding, an attorney shall be appointed to represent the child in such proceedings. Such attorney will represent the rights, interests, welfare and well-being of the child, and serve as guardian ad litem for said child. (Acts 1975, No. 1124, p. 2213, § 1.)

**§ 26-14-12. Establishment of regulations by department of human resources.**

The state department of human resources may establish such regulations as may be necessary to implement this chapter and to encourage cooperation with other states in exchanging reports to effect a national registration system. (Acts 1975, No. 1124, p. 2213, § 1).

**§ 26-14-13. Penalty for failure to make required report.**

Any person who knowingly fails to make the report required by this chapter shall be guilty of a misdemeanor and shall be punished by a sentence of not more than six months' imprisonment or a fine of not more than \$500.00. (Acts 1965, No. 563, p. 1049, Section 5, Acts 1975, No. 1124, p. 2213, § 1.)

## **Title 26, Chapter 15, Child Abuse Generally**

### **§ 26-15-1. Short title.**

This chapter shall be known and may be cited as The Alabama Child Abuse Act. (Acts 1977, No. 502, p. 658, § 1).

### **Section 26-15.2. "Responsible person" defined.**

For the purposes of this chapter, wherever used, "responsible person" means a child's natural parent, stepparent, adoptive parent, legal guardian, custodian or any other person who has the permanent or temporary care or custody or responsibility for the supervision of a child. (Acts 1977, No. 502, p. 658, § 2).

### **§ 26-15.3. Torture, willful abuse, etc., of child under 18 years of age by responsible person.**

A responsible person, as defined in § 26-15-2, who shall torture, willfully abuse, cruelly beat or otherwise willfully maltreat any child under the age of 18 years shall, on conviction, be punished by imprisonment in the penitentiary for not less than one year nor more than 10 years. (Acts 1977, No. 502, p. 658, § 3.)

### **§ 26-15-4. Effect of chapter upon existing rights or liabilities, pending prosecutions, etc.**

All proceedings pending and all rights and liabilities existing, acquired or incurred on May 11, 1977 are hereby saved and may be consummated according to the law in force when they are commenced. This chapter shall not be construed to affect any prosecution pending or begun before May 11, 1977. (Acts 1977, No. 502, p. 658, § 5.)

## **Title 41, Chapter 22, State Government**

### **ADMINISTRATIVE PROCEDURE.**

#### **§ 41-22-19. Grant, denial, renewal, etc. of licenses.**

(a) The provisions of this chapter concerning contested cases shall apply to the grant, denial, revocation, suspension, or renewal of a license.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by certified mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.

(d) If the agency finds that danger to the public health, safety, or welfare required emergency suspension of a license and states in writing its reasons for that finding, it may proceed without hearing or upon any abbreviated hearing that it finds practicable to suspend the license. The suspension shall become effective immediately, unless otherwise stated therein. The suspension may be effective for a period of not longer than 120 day and shall not be renewable. An agency shall not suspend the same license for the same or a substantially similar emergency within one calendar year from its first suspension unless the agency clearly establishes that it could not reasonably be foreseen during the initial 120-day period that such emergency would continue or would likely reoccur during the next nine months. When such summary suspension is ordered, a formal suspension or revocation proceeding under subsection (c) of this section shall also be promptly instituted and acted upon. (Acts 1981, No. 81-855, p. 1534, § 19.)

## Alabama Safety Belt Act of 1991

### Chapter 5B.

#### § 32-5B-2. Definitions.

For purposes of this chapter, the term “passenger car” means a motor vehicle with motive power designed for carrying 10 or fewer passengers. Such term does not include a motorcycle or a trailer.

#### § 32-5B-4. Use required.

(a) Each front seat occupant of a passenger car manufactured with safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 shall have a safety belt properly fastened about his body at all times when the vehicle is in motion.

(b) The provisions of subsection (a) shall not apply to:

(1) A child passenger under the purview of section 32-5-222, who is required to use a child passenger restraint system or a seat belt pursuant to section 32-5-222.

(2) An occupant of a passenger car who possesses a written statement from a licensed physician that he is unable for medical reasons to wear a safety belt.

(3) A rural letter carrier of the United States Postal Service while performing his duties as a rural letter carrier.

(4) A driver or passenger delivering newspaper or mail from house to house.

(5) Passengers in a passenger car with model year prior to 1965.

(6) Passengers in motor vehicles which normally operate in reverse.

#### §32-5-222. Child restraint seats

(a) Every person transporting a child under the age of six years in a motor vehicle registered in this state and operated on the roadways, streets, or highways of this state, shall provide for the protection of the child by properly using a child passenger restraint system meeting applicable federal motor vehicle safety standards. Provided that, with respect to a child who is either four or five years of age, the term “child passenger restraint system meeting applicable federal motor vehicle safety standards” shall be deemed to include seat belts installed by the motor vehicle manufacturer, dealer or owner. Provided that in no event shall failure to wear a child passenger restraint system be considered as contributory negligence. Provided that the term “motor vehicle” as used in this section shall not apply to trucks or buses having tonnage rating of one ton or more.

(b) No provision of this section shall be construed as creating any duty, standards of care, right, or liability between parent and child that is not recognized under the laws of the state of Alabama as they presently exist, or may, at any time in the future, be constituted by statute or decision.

(c) Any person violating the provisions of this section may be fined not more than \$10.00 for each offense.

(d) The provisions of this section notwithstanding, nothing contained herein shall be deemed a violation of any law which would otherwise nullify or change in any way the provisions or coverage of any insurance contract.

## **Title 38, Chapter 13, Criminal History Checks**

### **Alabama Act 2000-775**

#### **Criminal Background Checks on Persons Responsible for Children, Elderly, and Disabled**

##### **§ 38-13-1 Legislative findings and intent.**

Under the National Child Protection Act of 1993, Public Law 103-209, 42 U. S. C. '5119, et seq., the states are permitted to implement a computerized information system to provide child abuse crime information through the Federal Bureau of Investigation National Criminal History Record Information System. The states may conduct a nationwide criminal history background check for the purpose of determining whether an individual who shall have unsupervised access to children, the elderly, or individuals with disabilities has been convicted of a crime that bears upon the fitness of the individual to provide care to or have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities as defined in this chapter. The Legislature finds that there is an important state interest and it is in the best interest of the children, the elderly, and individuals with disabilities of Alabama to protect them from those persons who may inflict physical or mental injury or abuse, sexual abuse or exploitation, or maltreatment or other mistreatment upon children, the elderly, or individuals with disabilities. Therefore, it is the intent of the Legislature to provide for the implementation of a system that allows the Department of Human Resources, licensed child placing agencies, and child and adult care facilities to ensure that current licensees, license and volunteer applicants, prospective employees, current employees, and volunteers are suitable for employment, to perform volunteer work, or to hold a license, permit, approval, or certification and have not been convicted of a crime that bears upon their fitness to provide care or have responsibility for the safety or well-being of children, the elderly, or individuals with disabilities as defined in this chapter.

##### **§ 38-13-2 Definitions.**

When used in this chapter, the following words shall have the following meanings:

- (1) ADULT. An individual 19 years of age and older.
- (2) ADULT. CARE FACILITY. A person or entity holding a Department of Human Resources license or approval or certification to provide care, including foster care for adults.
- (3) APPLICANT. A person or entity who submits an application for license as a child care or adult care facility to the Department of Human Resources or a child placing agency, or an application for employment or for a volunteer position to a Department of Human Resources licensed child care or adult care facility. With regards to child care and adult care facilities in a home setting, the term includes an adult household member whose residence is in the home. The term also includes an individual who submits an application for a volunteer position or for employment with the Department of Human Resources in a position in which the person has unsupervised access to children, adults, or individuals with disabilities as one of the

essential functions of the job. The term also includes an applicant for approval as an adoptive parent of a child or as a foster parent of an adult or child.

(4) CARE. The provision of care, treatment, education, training, instruction, supervision, or recreation to children, adults, or individuals with disabilities.

(5) CARETAKER SETTING. A building, structure, or location, public or private property, or vehicle, utilized for or involved in the providing of care, education, training, instruction, or supervision of children, adults, or individuals with disabilities or transportation in connection with activity provided by a licensed, approved, or certified child or adult care facility.

(6) CHIEF EXECUTIVE OFFICER. The Commissioner of the Department of Human Resources, the director of a county department of human resources, or the head of an employer covered by this chapter, but not specifically enumerated.

(7) CHILD or CHILDREN. An individual under 19 years of age.

(8) CHILD CARE FACILITY. A person or entity holding a Department of Human Resources license, permit, or approval to provide child care, including foster care, under Chapter 7 of Title 38 of the Code of Alabama 1975. The term excludes exempt child care facilities.

(9) CHILD PLACING AGENCY. A person or entity licensed by the Department of Human Resources under Chapter 7 of Title 38 of the Code of Alabama 1975, issuing approvals to foster family homes and adoptive homes.

(10) CONVICTION. A determination of guilt as the result of a plea, including a plea of nolo contendere, or a trial.

(11) CRIMINAL HISTORY BACKGROUND INFORMATION CHECK. The review of any and all records containing any information collected and stored in the criminal record repository of the Federal Bureau of Investigation and the Alabama Department of Public Safety involving an arrest or conviction by a criminal justice agency, including, but not limited to, child abuse crime information as defined by 42 U. S. C. '5119, the National Child Protection Act of 1993, conviction record information, fingerprint cards, correctional data and release information, and identifiable descriptions and notations of convictions. Criminal history background information shall not include any analytical records or investigative reports that contain intelligence information or criminal investigation information.

(12) CURRENT. An individual who is presently employed, licensed or approved, or working as a volunteer on November 1, 2000.

(13) DAILY LIVING TASKS. Activities of daily living, including walking, working, learning, grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, transportation, managing money, maintaining a residence, writing, and using telephones, computers, and other automated communication devices.

(14) ELDERLY. An individual 65 years of age or older.

(15) EMPLOYEE. An individual currently in the service of an employer for compensation, full-time or part-time, and employed by contract or at will, in which the employer has the authority to control the person in the material details of how work shall be performed and when compensation shall be provided.

(16) EMPLOYER. An individual, person, group of persons, association, partnership, corporation, limited liability company or partnership, business, or other entity which hires employees, has volunteers, or contracts with others to provide personnel to work with or provide care to children, adults, or individuals with disabilities in a caretaker setting.

(17) ESSENTIAL FUNCTIONS. The fundamental, not merely marginal, job duties of the employment as determined by a written job description or the judgement of the employer.

(18) **EXEMPT CARE FACILITY.** A person or entity exempt by law from licensure by the Department of Human Resources or a child placing agency, including church day care, child centers, or elder centers.

(19) **INDIVIDUAL.** A natural person.

(20) **INDIVIDUAL WITH DISABILITIES.** A person with a mental or physical impairment who requires assistance to perform one or more daily living tasks.

(21) **LAW ENFORCEMENT.** The sheriff's department of a county or the police department of a municipality.

(22) **LICENSE.** A license, permit, certification, approval, registration, or other form of permission required by law by whatever designation for a child care facility, adult care facility, child placing agency, foster parent or foster home, adoptive parent or adoptive home, or any other person or entity in which an individual has unsupervised access to children, the elderly, or individuals with disabilities.

(23) **LICENSED SOCIAL WORKER.** A social worker licensed by the Alabama State Board of Social Work Examiners to conduct family home studies and psychosocial assessments in adoptive or custody cases by court order or for treatment not otherwise required to conduct a criminal history check.

(24) **LICENSEE.** Holder of a license or approval and an adult household member whose residence is in the home in regards to child care and adult care facilities in a home setting.

(25) **PERSON or ENTITY.** A natural person, sometimes referred to as an individual, an owner or operator of any adult care facility, child care facility, child placing agency, exempt child care facility, or licensee, whether an individual, corporation, limited liability company or partnership, partnership, association, or other legal entity or group, and a board member, an officer, member or partner of an entity who has direct contact with children, the elderly, or individuals with disabilities in care.

(26) **REASONABLE SUSPICION.** Belief by a prudent person that reasonable articulable grounds exist to suspect that the employee's past or present behavior should be reviewed to determine if such behavior or conduct bears upon the individual's fitness to teach or supervise or have responsibility for the safety and well-being of children, the elderly, or persons with disabilities as defined in this chapter.

(27) **REPORT.** A written statement of criminal history background information.

(28) **RESIDENCE.** Place of abode, domicile, or dwelling with intention to remain permanently and continuously or for an indefinite or uncertain length of time.

(29) **SEX CRIME.** Includes the following:

a. Enticing a child to enter a vehicle, room, house, office, or any other place for immoral purposes, as proscribed by Section 13A-6-69 of the Code of Alabama 1975.

b. Incest, when the offender is an adult and the victim is a minor, as proscribed by Section 13A-13-3 of the Code of Alabama 1975.

c. Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44 of the Code of Alabama 1975.

d. Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or Section 13A-12-112 of the Code of Alabama 1975.

e. Rape in the first or second degree, as proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code of Alabama 1975.

f. Sexual misconduct, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.

- g. Sexual torture, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.
- h. Sexual abuse in the first or second degree, as proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code of Alabama 1975.
- i. Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code of Alabama 1975.
- j. Soliciting a child by computer for the purposes of committing a sexual act and transmitting obscene material to a child by computer as proscribed by Sections 13A-6-110 and 13A-6-111 of the Code of Alabama 1975.
- k. Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197 of the Code of Alabama 1975.
- l. Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs a. to k., inclusive.
- m. A crime listed in the Community Notification Act, Chapter 20 of Title 15 of the Code of Alabama 1975.
- n. Conviction for a violation or attempted violation of an offense committed outside the State of Alabama or under federal law is a sex crime or any other crime if the offense would be a crime in Alabama.

(30) **SUITABILITY CRITERIA.**

- a. Convictions for any of the following crimes shall make an individual unsuitable for employment, volunteer work, approval, or licensure:
  - 1. Murder, manslaughter, or criminally negligent homicide.
  - 2. A sex crime.
  - 3. A crime that involves the physical or mental injury or maltreatment of a child, the elderly, or an individual with disabilities.
  - 4. A crime committed against a child.
  - 5. A crime involving the sale or distribution of a controlled substance.
  - 6. Robbery.
  - 7. A crime or offense committed in another state or under federal law which would constitute any of the above crimes in this state.
- b. Conviction for any crime listed in the Adoption and Safe Families Act, 42 U. S. C. '671(g)(20), shall disqualify a person from being approved or continuing to be approved as a foster parent or adoptive parent and a convicted person shall be deemed unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent.
- c. The Department of Human Resources may set other disqualifying convictions by rule under the Administrative Procedure Act, Section 41-22-1 of the Code of Alabama 1975, et seq., for Department of Human Resources licensed child or adult care facilities.

(31) **SUITABILITY DETERMINATION.** A decision that an individual is or is not suitable for employment, volunteer work, or licensure based upon the existence of a prohibited criminal conviction.

(32) **UNSUPERVISED ACCESS TO A CHILD OR CHILDREN, THE ELDERLY, OR AN INDIVIDUAL WITH DISABILITIES.** Contacts, interviews, questions, examinations, interaction, or communications outside the presence, supervision, and control of someone other than a child or elderly or disabled individual in care during the provision of care, education, training, instruction, supervision, or other employment or license related activities.

(33) VOLUNTEER. An individual who provides services without an express or implied promise of compensation, but shall not include the parent, family member, legal custodian, or legal guardian of a child, the elderly, or disabled individual in care.

(34) WRITTEN CONSENT. A signed statement by the applicant or employee containing all of the following:

a. The name, address, date of birth, race, gender, and Social Security number appearing on a valid identification document as defined in subsection (d) of 18 U. S. C. '1028. If the applicant does not have a Social Security number because of sincerely held personal beliefs, the Social Security number shall not be required and the Department of Human Resources and the Department of Public Safety shall provide an alternative means of identification and procedure.

b. Notice to the applicant or employee of the right to obtain a copy of the background check report, challenge the accuracy and completeness of any information contained in the report, and to obtain a prompt determination as to the validity of a challenge.

c. Name, address, and telephone number of the employer or licensing entity for which the criminal history information is being sought.

d. Release of the criminal history report to the Department of Human Resources.

**§ 38-13-3. Criminal history background information check required for certain individuals.**

(a) On November 1, 2000, every employer, child care facility, adult care facility, the Department of Human Resources, and child placing agency shall request the Department of Public Safety to conduct a criminal history background information check for the following:

(1) An employment applicant, employee or volunteer of an employer, child care facility, adult care facility, or child placing agency.

(2) A current foster parent for a child or adult or adult household member of a foster family or applicant and an adult household member of a foster family seeking approval to operate as a foster parent or foster family home for a child placing agency or the Department of Human Resources. No criminal history background information check shall be conducted under this chapter on a current foster parent or household member of a foster family if a Federal Bureau of Investigation and Alabama Department of Public Safety criminal history background information check has already been conducted under other law. Subsequent convictions of foster parents, or convictions entered into the system subsequent to the initial report, shall be sent by the Department of Public Safety to the Department of Human Resources as provided in this chapter.

(3) An applicant in a position in the Department of Human Resources which requires unsupervised access to children, the elderly, or individuals with disabilities as one of the essential functions of the job. No current employee of the Department of Human Resources shall be subjected to a criminal history background information check except upon reasonable suspicion. Criminal history background checks shall be required for prospective and current personnel under contract with the Department of Human Resources or working with another entity under contract with the Department of Human Resources, students, mentors, and volunteers in positions requiring unsupervised access to children, the elderly, or persons with

disabilities as one of the essential functions of the job. The Department of Human Resources shall pay any fees related to checks required pursuant to this subdivision.

(4) A current licensee or applicant for a license through the Department of Human Resources to operate a child care or adult care facility.

(5) A parent applicant for a child adoptive placement through the Department of Human Resources or child placing agency and any Department of Human Resources or child placing agency approved adoptive parent prior to entry of a final decree of adoption. No criminal history background information check shall be conducted under this chapter on a current adoptive parent or household member of an adoptive family if a Federal Bureau of Investigation and Alabama Department of Public Safety criminal history background information check has already been conducted under other law. Subsequent convictions of adoptive parents, or convictions entered into the system subsequent to the initial report, shall be sent by the Department of Public Safety to the Department of Human Resources as elsewhere provided in this chapter.

(b) An employer, child care facility, adult care facility, the Department of Human Resources, or a child placing agency may only request a criminal history background information check by its chief executive officer, or his or her designee authorized in writing and notarized, and law enforcement shall render assistance, including assistance in obtaining fingerprints required for submission of a request to the Department of Public Safety.

(c) Every employee, volunteer or applicant, for employment or a volunteer position, licensee, Department of Human Resources adoptive parent applicant or approved adoptive parent, or applicant for a license to the Department of Human Resources to operate a child care or adult care facility shall submit two sets of fingerprints and sign a written consent to obtain the criminal history background information. Fingerprints shall not be required when a disability prevents a person from being fingerprinted. Disabilities preventing fingerprinting include the loss of both hands, severe scarring of all fingers, closed paralytic hands, and similar disabilities. In cases involving disability, a written consent to obtain available criminal history background information by name only shall be obtained. No one who fails or refuses to give written consent or submit fingerprints necessary to obtain criminal history background information may be employed, allowed to perform volunteer or other work, approved or issued a license, or allowed to retain a license or approval by the Department of Human Resources, an employer, child care facility, adult care facility, or child placing agency.

(d) Child care facilities or adult care facilities exempt from Department of Human Resources licensing shall not be required to comply with this chapter, but may voluntarily collect and forward two complete acceptable sets of fingerprints, the written consent, and nonrefundable fee from applicants or employees to the Department of Public Safety to request a criminal history background information check which shall be processed pursuant to this chapter. Licensed social workers conducting home studies may also request a criminal history background check which shall be processed pursuant to this chapter. Provided, however, if a license-exempt child care facility operated as part of a church ministry or religious school does not choose to comply with this chapter on a voluntary basis, then the employee or prospective employee of the child care facility shall request a criminal history background check, and the request shall be processed in the same manner as for other employees or applicants under the provisions of this chapter. The Department of Human Resources shall, prior to the disbursement of any subsidized child care funds, require all employees and applicants of legally operating child care facilities to submit verification of the application for a criminal history background check and the results

thereof when obtained. Upon reasonable suspicion that the individual has a criminal conviction or has not had a criminal history background check conducted, the Department of Human Resources shall have the right to require employees of license-exempt facilities to submit each application for a criminal history background check and the results thereof when obtained.

**§ 38-13-4. Mandatory criminal history notice; suitability determinations; checks on subsequent activity.**

(a) Every employer, child care facility, adult care facility, the Department of Human Resources, and child placing agency required to obtain a criminal history background information check pursuant to this chapter shall obtain, prior to or upon the date of employment, or issuance of a license or approval or renewal thereof, and maintain in the agency or personnel file, a request with written consent for the criminal history background information check and a statement signed by the applicant, volunteer, or employee indicating whether he or she has ever been convicted of a crime, and if so, fully disclosing all convictions. The statement shall include a notice and questionnaire the same as or similar to the following:

"MANDATORY CRIMINAL HISTORY CHECK NOTICE: Alabama law requires that a criminal history background information check be conducted on all persons who hold a license or work in a Department of Human Resources licensed child care or adult care facility, a foster or adoptive home approved by the Department of Human Resources, or a licensed child placing agency, including all officers and agents of the entity. You are required to provide full, complete, and accurate information on your criminal conviction history upon application for a license or employment. This information shall be used to determine your suitability to provide care to children, the elderly, or disabled individuals. Unless a criminal history background information check report and suitability determination have previously been obtained, you must complete a written request and consent for a criminal history background information check with fingerprints at the time of application for employment. Refusal to complete these documents or providing false information shall result in refusal of employment, approval, or licensure. The term conviction includes a determination of guilt by a trial, by a plea of guilty, or a plea of nolo contendere. You are required to notify your employer, licensing agency, or entity where you are performing volunteer work of any criminal conviction occurring subsequent to the date of completion of this notice. Any individual determined to have submitted false information shall be referred to the district attorney or law enforcement for investigation and possible prosecution. An individual who intentionally falsifies or provides any misleading information on the statement is guilty of a Class A misdemeanor, punishable by a fine of not more than two thousand dollars (\$2,000) and imprisonment for not more than one year.

"Convictions for any of the following crimes shall make an individual unsuitable for employment, volunteer work, approval, or licensure:

- "1. Murder, manslaughter, or criminally negligent homicide.
  - "2. A sex crime.
  - "3. A crime that involves the physical or mental injury or maltreatment of a child, the elderly, or an individual with disabilities.
  - "4. A crime committed against a child.
  - "5. A crime involving the sale or distribution of a controlled substance.
- "A sex crime includes the following:

"a. Enticing a child to enter a vehicle, room, house, office, or any other space for immoral purposes, as proscribed by Section 13A-6-69 of the Code of Alabama 1975.

"b. Incest, when the offender is an adult and the victim is a minor, as proscribed by Section 13A-13-3 of the Code of Alabama 1975.

"c. Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44 of the Code of Alabama 1975.

"d. Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or Section 13A-12-112 of the Code of Alabama 1975.

"e. Rape in the first or second degree, as proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code of Alabama 1975.

"f. Sexual misconduct, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.

"g. Sexual torture, as proscribed by Section 13A-6-65 of the Code of Alabama 1975.

"h. Sexual abuse in the first or second degree, as proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code of Alabama 1975.

"i. Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code of Alabama 1975.

"j. Soliciting a child by computer for the purposes of committing a sexual act and transmittal of obscene material to a child by computer as proscribed by Sections 13A-6-110 and 13A-6-111 of the Code of Alabama 1975.

"k. Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197 of the Code of Alabama 1975.

"l. Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs a. to k., inclusive.

"m. A crime listed in the Community Notification Act, Chapter 20 of Title 15 of the Code of Alabama 1975.

"6. Conviction for a crime listed in the federal Adoption and Safe Families Act as prohibiting a person from being a foster parent or adoptive parent shall be deemed to make the convicted person unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent.

"7. Conviction for a violation or attempted violation of an offense committed outside the State of Alabama or under federal law is a sex crime or any other crime listed in this notice if the offense would be a crime listed in this notice in Alabama.

**"CRIMINAL HISTORY STATEMENT**

"Have you ever had a suitability determination made by the Department of Human Resources in connection with a previous criminal history information background check? Yes (\_\_\_) No (\_\_\_).

"Have you ever been convicted of a crime? Yes (\_\_\_) No (\_\_\_). If yes, state the date, crime, location, punishment imposed, and whether the victim was a child or an elderly or disabled individual.

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"Date \_\_\_\_\_ Signature \_\_\_\_\_."

(b) An individual who fails or refuses to provide a statement shall not be employed, allowed to work or volunteer, or issued a license or approval as defined in this chapter. Upon receipt of a signed criminal history statement which does not indicate conviction for a crime prohibiting employment under the suitability criteria, an employer, including the Department of

Human Resources, may employ an applicant or allow a volunteer or contract provider to work provisionally pending receipt of a suitability determination from the Department of Human Resources.

(c) No later than the five business days after employment or a reasonable time after completion of application for a license or approval, an employer, the Department of Human Resources, or child placing agency shall mail or deliver a request for a criminal history background information check to the Department of Public Safety accompanied by the following:

(1) Two complete sets of fingerprints, properly executed by a law enforcement agency or an individual properly trained in fingerprinting techniques.

(2) Written consent from the applicant, employee, or volunteer for the release of the criminal history background information to the Department of Human Resources.

(3) The fee.

(d) Upon receipt of a suitability determination from the Department of Human Resources that a person or entity is suitable for employment, volunteer work, licensure, or approval based on the criminal history background information check, an employer, a child care facility, adult care facility, a child placing agency, or the Department of Human Resources may make its own determination of employment, licensure, or approval. This chapter shall not create any right to employment, work, approval, or licensure. Upon receipt of a determination from the Department of Human Resources that an individual is unsuitable for employment, licensure, approval, or volunteer work, an employer, the child care facility, adult care facility, child placing agency, or Department of Human Resources shall terminate the individual from employment or volunteer work or shall not employ or use the individual. Termination of employment may be delayed by the employer to allow the individual to challenge either the accuracy or completeness of the criminal history information background report or the suitability determination made by the Department of Human Resources. The Department of Human Resources or child placing agency shall suspend or revoke a license or approval or deny a license or approval application to an individual receiving an unsuitability determination. As an alternative to termination of employment, the Department of Human Resources may transfer a permanent Merit System employee to an available position for which the employee is qualified where unsupervised access to children, the elderly, or persons with disabilities shall not be an essential function of the job.

(e) If a review of a criminal history background information check or other information received reveals that the person has submitted false information, the employer, child care facility, adult care facility, child placing agency, or Department of Human Resources shall terminate the employee or volunteer. The Department of Human Resources or child placing agency shall revoke the approval or license of a person or entity when the person or entity submits false information in a review of criminal history background information check or other information. The Department of Human Resources shall be notified of the false information and shall refer the case to an appropriate law enforcement agency or district attorney for investigation and prosecution.

(f) Only one criminal history background information check shall be required on an individual regardless of subsequent changes in employment or licensing or approval status. Subsequent criminal history background information checks may be conducted by the employer or licensing or approval entity. The licensing or approval entity shall pay the cost for subsequent criminal history background information checks. If the statement signed by the applicant or employee states that a criminal history background information check has been performed and

suitability determination issued on the individual, the employer or licensing agency may request at the time of application only a suitability determination from the Department of Human Resources on the check previously performed, within five business days of employment, or completion of license or approval application, submitting the same kind of information and consent for the request for suitability determination as required by the written consent for a criminal history background information check.

(g) Upon being notified that an individual has already had a criminal history background information check performed by the Department of Education pursuant to the Alabama Child Protection Act, Chapter 22A of Title 16 of the Code of Alabama 1975, the Department of Human Resources shall request and the Department of Education shall provide criminal history background reports and reports on subsequent convictions, or convictions entered into the system subsequent to the initial report, to the Department of Human Resources without the payment of an additional fee, provided there are no violations of federal laws.

#### **§ 38-13-5. Additional requirements.**

(a) An applicant, licensee, volunteer, or employee, upon request, shall submit the following items:

(1) Two functional, acceptable fingerprint cards, bearing the fingerprints of the individual, properly executed by a law enforcement agency or individual properly trained in fingerprinting techniques.

(2) Written consent authorizing the release of any criminal history background information to the Department of Human Resources.

(3) A written statement signed by the applicant, volunteer, or employee indicating whether he or she has ever been convicted of a crime, and if so, fully disclosing all convictions. The statement shall include a notice and questionnaire in the form required in subsection (a) of Section 38-13-4.

(4) The fee of an applicant.

(b) An applicant, licensee, volunteer, or employee shall notify the prospective or current employer, licensing agency, or entity for whom volunteer work is being performed of any criminal convictions occurring subsequent to the date of completion of the notice in Section 4.

#### **§ 38-13-6. Fees.**

(a) A nonrefundable fee to be paid for the criminal history background information check shall conform to the guidelines promulgated pursuant to 42 U. S. C. '5119, the National Child Protection Act of 1993, and state law.

(b) The Department of Public Safety may charge a fee in the amount prescribed in Chapter 2, commencing with Section 32-2-61, of Title 32 of the Code of Alabama 1975, for the cost of processing the request. The Department of Public Safety shall charge no larger fee for requests than charged for requests received from those entities. The fee charged for criminal history background information checks shall not exceed the statutory and regulatory amounts set under existing guidelines and no additional administrative fees, except for the cost of mailings,

shall be charged which would increase the cost of the criminal history background information check.

(c) An applicant for employment shall be responsible for the cost of the criminal history background information check. An applicant shall not be required to pay the fee until the prospective employing entity is prepared to consider the applicant and request a criminal history background information check. The chief executive officer of the prospective employing entity may pay the fee of an applicant.

(d) For any volunteer or applicant for a volunteer position, the fee for the criminal history background information check may be paid by the volunteer or by the entity requesting volunteer work.

(e) An applicant for a license or approval shall pay the fee for the criminal history background information check at the time the application for the license is submitted; except as provided herein, the Department of Human Resources may pay the fee for adult and child foster care applicants and child adoption applicants.

(f) For an employing entity that requests a criminal history background information check on a current employee, the employing entity shall pay the fee for the criminal history background information check. The employee may be required to pay the fee or a portion thereof provided there shall be no violation of federal minimum wage requirements.

(g) A fee paid for which a criminal history background information check is not performed shall be refunded to the applicant, the individual, or the entity requesting the criminal history background information check.

#### **§ 38-13-7. Duties of the Department of Public Safety and the Department of Human Resources; review of determinations.**

(a) Criminal history background information checks shall be performed by the Department of Public Safety upon request by an employer, child care facility, adult care facility, or child placing agency authorized to make a request, or the Department of Human Resources. The Department of Public Safety shall provide a criminal history background check within a reasonable time of the receipt of the request. National criminal history background checks shall be requested by the Department of Public Safety from the Federal Bureau of Investigation within a reasonable time of the request. The Department of Public Safety, upon receipt of the criminal history background report from the Federal Bureau of Investigation, shall forward the report to the Department of Human Resources within a reasonable period.

(b) Criminal history background information reports shall be sent directly from the Department of Public Safety to the Department of Human Resources within a reasonable time from the receipt of the report from the Federal Bureau of Investigation. A copy of a criminal history report from the Department of Public Safety and Federal Bureau of Investigation shall be sent by the Department of Human Resources to the applicant or employee by certified mail or personal service. The Department of Human Resources shall review the criminal history record information report and determine whether the applicant, employee, or volunteer meets the suitability criteria for employment or licensure based on the criminal history background information check. The Department of Human Resources shall issue a written suitability determination to the applicant or employee and to the licensing entity or chief executive officer of the child care facility or adult care facility requesting the criminal history background

information check. The Department of Public Safety shall notify the Department of Human Resources of a subsequent conviction, or convictions entered into the automated system subsequent to the initial report, for a crime committed on an individual for whom a criminal history background information report has been sent. The Department of Human Resources shall include the conviction in an amended or subsequent suitability determination.

(c) A person may contest the accuracy or completeness of the Alabama criminal history background information check pertaining to him or her with the Department of Public Safety according to procedures established by that agency. The person or his or her legal counsel may review at the Department of Human Resources a copy of the Alabama criminal history background information report from the Department of Public Safety. If, upon review by the Department of Public Safety, the information is determined to be incorrect or incomplete, the information shall be corrected appropriately, and the Department of Human Resources shall be provided with the corrected information.

(d) The Department of Human Resources shall issue a suitability determination and maintain a confidential file on individuals for whom a criminal history background information report or report updates have been received. The Department of Human Resources may issue a suitability determination based upon the criminal history report on file without the requirement of a new criminal history background information check. If no report or if only an incomplete criminal history report can be located in the files of the Department of Human Resources, the individual shall be required to submit to a new criminal history background information check.

(e) Within 30 days of the date of notification, an individual determined unsuitable for approval, licensure, employment, or volunteer work by the Department of Human Resources based upon a disqualifying conviction may request in writing reversal of the determination of unsuitability if the conviction is not for a sex crime or a crime committed against a child, an elderly individual, or an individual with disabilities. An individual with a conviction excluded by federal law from being approved as a foster or adoptive parent, as any other child care or adult care provider, or volunteer may not be considered for reinstatement. In the case of a felony conviction, 10 years shall have lapsed since the sentence was served or the probation or parole ended, whichever is later, with no subsequent conviction. In the case of a misdemeanor conviction, five years shall have lapsed since the sentence was served, or the probation or parole ended, whichever is later, with no subsequent conviction. The individual shall affirmatively demonstrate to the Department of Human Resources successful rehabilitation by clear and convincing evidence. In determining whether an individual has affirmatively demonstrated successful rehabilitation, all of the following shall be considered:

- (1) Nature and responsibility of the position which the convicted person would hold or has held.
- (2) Nature and seriousness of the offense committed.
- (3) Circumstances under which the offense occurred.
- (4) Date of the offense.
- (5) Age of the person when the offense was committed.
- (6) Whether the offense was an isolated or repeated incident.
- (7) Social conditions which may have contributed to the offense.
- (8) An available probation or parole record, report, or recommendation.
- (9) Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational

schooling, successful business or employment history, and the recommendation of his or her supervisors.

(f) The Department of Human Resources and the Department of Public Safety may adopt rules and regulations to implement the procedures and requirements of this chapter pursuant to the Administrative Procedure Act, Section 41-22-1, et seq.

#### **§ 38-13-8. Confidentiality and disclosure of reports.**

(a) All reports of criminal history background information received by the Department of Human Resources from the Department of Public Safety shall be confidential and marked confidential with no further disclosure and shall not be made available for public inspection.

(b) All criminal history background information reports shall be excluded from any requirement of public disclosure as a public record.

(c) Without additional public disclosure, the following release of the criminal history background information report shall not be construed to violate this section:

(1) Showing the report to the applicant or current employee.

(2) Release of the report to a court of competent jurisdiction in the event of litigation brought by the applicant or employee.

(3) Release of the report to a court of competent jurisdiction upon a finding that the information is material to the issues of the case before the court.

(4) Use of the report in preparation, investigation, and presentation during a criminal prosecution, or in any administrative proceeding involving the challenge to a suitability determination, or revocation of a license or denial of an application for a license by the Department of Human Resources.

(5) Release to anyone with the written consent of the employee or volunteer.

(d) A person having access to criminal history background information reports and releasing the reports pursuant to this chapter shall be required to maintain a register consistent with the National Child Protection Act of 1993, Public Law 103-209, 42 U. S. C. '5119, et seq.

(e) Nothing in this chapter shall be construed to prohibit the distribution of employment or licensing status information to an interested party.

#### **§ 38-13-9. Violations.**

(a) A person convicted of the following actions under this chapter shall be guilty of a Class A misdemeanor:

(1) Violating the confidentiality of records.

(2) Violating lawfully adopted policies pursuant to this chapter.

(3) Knowingly, willfully, and intentionally making or transmitting a false or misleading report or information concerning past convictions as required under this chapter.

(4) Knowingly, willfully, and intentionally failing to report subsequent convictions as required by this chapter.

(b) A person who knowingly submits false information concerning past convictions on an application for employment or other form required for disclosure of criminal convictions

may be subject to loss of employment and to the loss of any license issued by the Department of Human Resources or child placing agency.

**§ 38-13-10. No cause of action established; immunity not waived.**

Nothing in this chapter is intended to create or establish new causes of action in any court. Nothing in this chapter shall be construed as a waiver of any sovereign or qualified immunity.

**§ 38-13-11. Disposition of fees.**

All fees received by the Department of Public Safety for criminal history background information checks conducted pursuant to this chapter shall be deposited to the Public Safety Automated Fingerprint Identification System Fund, to be appropriated to and expended by the Department of Public Safety in accordance with Section 32-2-61.

**§ 38-13-12. Construction.**

This chapter is supplementary and shall be construed in pari materia with other laws; provided, however, that to the extent that this chapter specifically conflicts with other laws pertaining to criminal history background information checks, this law shall take precedence. Nothing contained in this chapter shall be construed to diminish, reduce, or conflict with the authority of the Department of Human Resources to interpret and apply appropriate federal and state laws governing that agency and its programs.