

West's Tennessee Code Annotated _Title 71. Welfare _Chapter 3. Programs and Services for Children
_Part 5. Child Care Agencies

T. C. A. T. 71, Ch. 3, Pt. 5, Refs & Annos

T. C. A. § 71-3-501

§ 71-3-501. Definitions

Effective: July 9, 2012

As used in this part, unless otherwise exempted pursuant to § 71-3-503, and unless the context otherwise requires:

(1) "Care giver," "care givers," "care provider" or "care providers," means the person or persons or entity or entities directly responsible for providing for the supervision, protection, and basic needs of the child;

(2) "Child" or "children" means a person or persons under eighteen (18) years of age;

(3) "Child care" means the provision of supervision and protection, and, at a minimum, meeting the basic needs, of a child or children for less than twenty-four (24) hours a day;

(4) "Child care agency" or "agency" means and only where the context requires in any other provision of law, a place or facility, regardless of whether it is currently licensed, that is operated as a family child care home, a group child care home, a child care center, or a drop-in center, as those terms are defined in this part, or that provides child care for five (5) or more children who are not related to the primary caregiver for three (3) or more hours per day;

(5) "Child care center" means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least thirteen (13) children who are not related to the primary caregiver; provided, that a child care agency shall not be classified as a "child care center" that operates as a "group child care home" and keeps three (3) additional school-age children as permitted in subdivision (10); provided, further, that all children, related or unrelated shall be counted in the adult-to-child supervision ratios and group sizes applicable to child care centers; with the exception, that if the child care center is operated in the occupied residence of the primary caregiver, children nine (9) years of age or older who are related to the primary caregiver will not be counted in determining the adult-to-child supervision ratios or group sizes applicable to child care centers if such children are provided a separate space from that occupied by the child care center. The department may permit children in the separate space to interact with the children in the licensed child care center in such manner as it may determine is appropriate;

(6) "Commissioner" means the chief administrative officer in charge of the department of human services;

(7) "Department" means the department of human services;

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(8) "Drop-in center" means a place or facility operated by any person or entity providing child care, at the same time, for fifteen (15) or more children, who are not related to the primary caregiver, for short periods of time, not to exceed fourteen (14) hours per week and for not more than seven (7) hours per day for any individual child during regular working hours, Monday through Friday six o'clock a.m. (6:00 a.m.) to six o'clock p.m. (6:00 p.m.); provided, however, that a drop-in center may provide such child care during evenings after six o'clock p.m. (6:00 p.m.) and weekends, Friday, six o'clock p.m. (6:00 p.m.) through Sunday, ten o'clock p.m. (10:00 p.m.), so long as the drop-in center provides no more than a total of twenty (20) hours per week, exclusive of snow days, defined as days when the school of the affected child is closed; provided, further, that drop-in centers may provide such care during snow days; provided, however, that, notwithstanding any other requirements of this part, training requirements for the staff of this class of child care agency shall be limited to basic health and safety precautions and the detection and reporting of child abuse and neglect for children in care; provided, further, that, notwithstanding any other provision of this chapter to the contrary, drop-in centers operated by not-for-profit organizations that provide child care for no more than two (2) hours per day with a maximum of ten (10) hours per week without compensation, while the parent or other custodian is engaged in short-term activities on the premises of the organization, shall register as providing casual care and shall not be deemed to be a drop-in center or regulated as a drop-in center;

(9) "Family child care home" means any place or facility that is operated by any person or entity that provides child care for three (3) or more hours per day for at least five (5) children but not more than seven (7) children who are not related to the primary caregiver; provided, that the maximum number of children present in the family child care home, including related children of the primary caregiver shall not exceed twelve (12), with the exception that, if the family child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a "family child care home" if those children are provided a separate space from that occupied by the family child care home. The department may permit children in the separate space to interact with the children in the licensed family child care home in such manner as it may determine is appropriate;

(10) "Group child care home" means any place or facility operated by any person or entity that provides child care for three (3) or more hours per day for at least eight (8) children who are not related to the primary caregiver; provided, however, that the maximum number of children present in a group child care home, including those related to the primary caregiver, shall not exceed twelve (12) children, with the exception that, if the group child care home is operated in the occupied residence of the primary caregiver, children related to the primary caregiver nine (9) years of age or older will not be counted in determining the maximum number of children permitted to be present in a group child care home, if those children are provided a separate space from that occupied by the group child care home; and, provided, further, that up to three (3) additional school age children, related or unrelated to the primary caregiver, may be received for child care before and after school, on school holidays, on school snow days and during summer vacation. The department may permit children in the separate space to interact with the children in the licensed group child care home in such manner as it may determine is appropriate; and

(11) "Related" means the children, step-children, grandchildren, step-grandchildren, siblings of the whole or half-blood, step-siblings, nieces, nephews or foster children of the primary caregiver.

T. C. A. § 71-3-502

§ 71-3-502. Basis for licensing; regulations; license application; temporary license; non-transferability of license; transfer of operation to circumvent licensing laws or regulations; fees

Effective: July 9, 2012

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(a)(1) All persons or entities operating a child care agency as defined in this part, unless exempt as provided in § 71-3-503, must be licensed by the department as a child care agency.

(2)(A) The department has the authority to issue regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, for the licensing of any persons or entities subject to any provisions of this part and for enforcement of appropriate standards for the health, safety and welfare of children in their care.

(B) To the extent they are not inconsistent with the statutory provisions of this part, the regulations of the department that are in effect July 1, 2000, shall remain in force and effect until modified by regulatory action of the department.

(3) The department's regulations of child care agencies shall be developed based upon consideration of the criteria in subdivisions (a)(3)(A)--(F). In determining whether to initially grant a license or whether to take any licensing action involving a licensed child care agency, the statutory criteria in subdivisions (a)(3)(A)--(F) may be cited and considered by the department and by the child care agency board of review as the basis for such action in addition to the regulations:

(A) The safety, welfare and best interests of the children in the care of the agency;

(B) The capability, training and character of the persons providing or supervising the care of the children;

(C) Evidence that the expected performance of the caregivers, supervisors or management of the child care agency seeking initial licensure or renewal of licensure will be such as to protect children in care from injury, harm or the threat of injury or harm; or, during licensure, that the actual performance of any of the duties of caregivers, supervisors or management of a licensed child care agency demonstrates or has demonstrated a level of judgment that a reasonable person would exercise or would have exercised, under existing or under reasonably foreseeable circumstances, that would prevent or would have prevented injury, harm, or the threat of injury or harm, to any child in care;

(D) The quality of the methods of care and instruction provided for the children;

(E) The suitability of the facilities provided for the care of the children; and

(F) The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.

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(4) The department shall promulgate regulations that address the following areas:

(A) Training for directors and care givers as follows:

(i) Pre-employment training for directors, including, but not limited to, training in interviewing and evaluating care givers for service in an agency;

(ii) Training for care givers that includes, but is not limited to, two (2) hours of preservice orientation as well as six (6) hours within the first six (6) months of employment, of the training required in the proposed rules from the most recent standards committee, appointed pursuant to this part, and specifically provided in the committee's proposed Tenn. Comp. R. & Regs. 1240-4-3-.07; and

(iii) The department of human services shall promulgate rules that consider the prior education and experience of a registered nurse who is seeking approval under the department's rules as a director of a child care agency that operates as part of a facility licensed under title 68 as a nursing home;

(B) Liability and accident insurance coverage, including minimum amounts of coverage based upon insurance industry standards, for both facilities and vehicles owned, leased or contracted for by the child care agency; provided, that this requirement shall not apply to a child care agency that is under the direct management of a self-insured administrative department of the state, a county, a municipality or any combination of those three (3); and

(C)(i) Education of the parents of children in day care regarding the benefits of immunizing their children against influenza.

(ii) The department of human services shall work to increase immunization awareness and participation among parents of children in child care agencies by working with the department of health in publishing on the department's web site information about the benefits of annual immunization against influenza for children six (6) months of age to five (5) years of age.

(iii) The department shall work with child care agencies and providers to ensure that the information is annually distributed to parents in August or September.

(5) The department shall enact these regulations by emergency rule to be effective July 1, 2000; provided, however, permanent rules shall be promulgated pursuant to the Uniform Administrative Procedures Act.

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(6)(A) The department of human services licensure rules for child care centers serving preschool children contained in Tenn. Comp. R. & Regs. 1240-4-3-.07(4)(e), and licensure rules for child care centers serving school-age children contained in Tenn. Comp. R. & Regs. 1240-4-6-.07(4)(f), and in any other portions of those rules, that were part of the amendments filed as permanent rules for each rule on September 29, 2000, enacted on December 13, 2000, and effective on July 1, 2001, and that define or reference the age groups for "infants" as being comprised of children who are six (6) weeks to twelve (12) months of age, and the age groups for "toddlers" as being comprised of children who are thirteen (13) months to twenty-three (23) months of age, shall expire on July 19, 2001.

(B) "Infant" and "toddler" categories of children in the care of a child care agency licensed pursuant to this part shall be defined as follows, until otherwise modified by rule of the department:

(i) "Infants" shall be comprised of children six (6) weeks to fifteen (15) months of age; and

(ii) "Toddlers" shall be comprised of children twelve (12) months to thirty (30) months of age.

(C) All other department rules not specifically designated to expire by the provisions of subdivision (a)(6)(A), or affected by the definitions in subdivision (a)(6)(B), including, but not limited to, the definitions or references to the age range for the "2 year old" category in the care of a child care agency, descriptions or definitions of any other age groups of children, adult to child ratios, and, except as modified by ch. 436 of the Public Acts of 2001, and the effective dates of the rules, shall remain in full force and effect or shall become effective in accordance with the department's regulations.

(D) The department of human services shall have authority to immediately implement emergency rules effective on July 19, 2001, or as soon thereafter as possible, to define the age groups for "infants" and "toddlers" as defined by subdivision (a)(6)(B) and to make any conforming rule changes in the text or in the adult to child supervision charts contained in Tenn. Comp. R. & Regs. 1240-4-3 or 1240-4-6 or in any other rule of the department that may be necessary to implement the changes made by this section relative to the age range definition for the "infant" and "toddler" groups. Permanent rules shall be implemented as otherwise provided by the Uniform Administrative Procedures Act.

(b)(1) The department shall assist applicants or licensees in meeting the child care standards of the department unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the agency's care and that regulatory action affecting the agency's license is warranted. All costs and expenses arising from or related to meeting the child care standards of the department shall be borne entirely by the applicant or licensee; provided, the department may, in its discretion, provide from available funds for technical assistance to child care agencies, and the training of child care givers.

(2) If a licensee is denied the renewal of a license, if a license is revoked, or if any applicant for a license cannot meet the standards, then the department shall offer reasonable assistance to the parent, guardian or custodian of the child in planning for the placement of such children in licensed child care agencies or other suitable care.

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(c) Application for a license to operate a child care agency shall be made in writing to the department in such manner as the department determines and shall be accompanied by the appropriate fee set forth in the fee schedule in subsection (g).

(d)(1) A person or entity that does not have an existing license may apply for either a restricted or unrestricted temporary license. The purpose of the temporary license is to permit the license applicant to begin the operation of a child care agency after meeting certain minimum requirements and to demonstrate during the temporary licensing period that it has the ability to attain and maintain compliance with all licensing laws and regulations.

(2) An applicant shall receive a temporary license upon the presentation of satisfactory evidence that:

(A) The facility that is proposed for the care of children has received fire safety and environmental safety approval, and that, after appropriate inspection, the department has determined that the site does not endanger the safety or welfare of children;

(B) The applicant and the personnel who will care for the children are capable in all substantial respects of caring for the children;

(C) The applicant has the ability to attain and maintain compliance with the licensing laws and regulations, both during the temporary and the annual license period;

(D) The applicant, owner, director or an employee of the agency has not previously been associated in an ownership or management capacity with any child care agency that has been cited by the department for violations of this part or the department's regulations, including the agency for which the application is pending, unless the department determines that a reasonable basis exists to conclude that such individual is otherwise qualified to provide child care; and

(E) The criteria in subdivision (a)(3) support the issuance of a restricted or unrestricted license.

(3) If the department determines that any of the criteria in subdivision (d)(2) has not been, or cannot be met, then it may deny the application for a temporary license; or, if the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.

(4)(A) Within one hundred twenty (120) days of the issuance of the temporary license, the department shall determine whether an annual or restricted annual license shall be issued to the applicant. If the department determines that the applicant has fully complied with all provisions of subdivision (d)(2) and with all other laws and

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regulations governing the specific classification of child care agency for which the application was made, and that the child care agency has demonstrated the ability to maintain compliance with all licensing regulations during the annual license period, and that it has a reasonable likelihood of maintaining annual licensure, the department shall issue an annual license; or, if the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license that permits operation of a child care agency, but limits the agency's authority in one (1) or more areas of operation.

(B) If the applicant has not satisfactorily demonstrated compliance with the requirements for licensing as determined by the department, the annual license may be denied by the department.

(5) The licensee shall post the license in a clearly visible location as determined by the department so that parents or other persons visiting the agency can readily view the license and all the information on the license.

(6)(A)(i) The license shall describe the ownership of the child care agency, the person who is charged with the day-to-day management of the child care agency, and, if the agency is owned by a person other than the director, or if the agency is under the ownership or direction or control of any person or entity who is not also the on-site director or manager of the agency, the license shall also state the corporate or other name of the controlling person or entity, its address and telephone number where the parents, guardians or custodians may have contact regarding the agency's operations.

(ii) If the child care agency is operated by a public or private nonprofit entity and is subject to the control or direction of a board of directors or other oversight authority, the license shall list the name, address and telephone number of the chair of the board or other executive head of such controlling body.

(B) In order for a child care agency to offer before or after-school services under this part, the department must issue a license bearing a notation that the agency is authorized to provide before or after-school care services. An agency may not offer such services unless its license bears such notation.

(7)(A) In granting any license, the department may limit the total number of children who may be enrolled in the agency regardless of the agency's physical capacity or the size of its staff.

(B) Adult/child ratios and group sizes in group child care homes and child care centers may exceed requirements set by rule of the department of human services by up to ten percent (10%), rounded to the nearest whole number, for no more frequently than three (3) days per week; provided, however, infant and toddler groups may never exceed the required ratios and group sizes. The department may terminate the variance from the rule in individual cases under the provisions for issuance of a restricted license pursuant to § 71-3-502.

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(C)(i) The department may promulgate rules, under the Uniform Administrative Procedure Act, to provide for the amounts of liability coverage for any personal vehicles that are not owned, operated by, or contracted by the child care agency for the transportation of children enrolled in the agency, but which are utilized by parents, staff or volunteers only for occasional field trips for children enrolled at the agency.

(ii) Such rules must provide that any vehicles not owned, operated by, or contracted for by the agency for any transportation of children enrolled at the agency, and which are utilized only as described in subdivision (d)(7)(C)(i) for field trips must provide evidence of currently effective liability coverage for such non-agency vehicles in amounts sufficient to provide adequate coverage for children being transported by such vehicles.

(iii) The department shall also promulgate rules providing that, on and after May 1, 2005, all vehicles used by or on behalf of a child care center to provide transportation of children, that are designed to transport six (6) or more passengers, shall be equipped with a child safety monitoring device that shall prompt staff to inspect the vehicle for children before an alarm sounds. In order to facilitate the affordability of such devices for centers, the department is authorized to establish a grant program to subsidize a portion or all of the cost of such devices for centers; provided, however, that the department may only use private donations that it receives for such purpose to fund the grants. Only devices approved by the department are authorized for use on such a vehicle. This subdivision (d)(7)(C)(iii) shall not apply:

(a) When all children in a vehicle are five (5) years of age and in kindergarten, or older than five (5) years of age, except that if any one (1) of such children is developmentally or physically disabled or nonambulatory then this subdivision (d)(7)(C)(iii) shall apply; or

(b) To vehicles used exclusively for the provision of occasional field trips.

(iv) Vehicles used by a licensed child care agency for the transportation of children shall be subject only to color and marking requirements promulgated by the department and shall be exempt from any other such requirements that may be set forth in state law or local ordinance. Color and marking requirements shall be issued by the department, in consultation with the department of safety, as deemed appropriate for the safe operation, proper identification, or registration of the vehicle.

(v) Such rules shall prohibit a newly hired employee or existing employee who is full-time or part-time, or, as defined by the department, a substitute employee of a child care agency, or a contractor or other persons or entities providing any form of transportation services for compensation to a child care agency, from engaging in any form of driving services involving children in a child care agency until the employee or substitute employee has undergone a drug test and the results are negative for illegal drug use. The rules shall provide exceptions for emergency transportation requirements in limited circumstances, as deemed appropriate by the department.

(8) If the department fails to issue or deny an annual license within one hundred twenty (120) days of the granting of the temporary license, the temporary license shall continue in effect, unless suspended, as provided in § 71-3-509, until such determination is made. If an annual license is denied following the issuance of a temporary license, and if a timely appeal is made of the denial of the annual license, the temporary license shall remain in effect, unless

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suspended, until the board of review renders a decision regarding the denial of the annual license.

(9) If a temporary or annual license is denied, or an annual license is restricted, the applicant may appeal the denial or restriction as provided in § 71-3-509.

(e)(1) Except as provided in this subsection (e), no license for a child care agency shall be transferable, and the transfer by sale or lease, or in any other manner, of the operation of the agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the agency shall be required to close immediately. If the transferee has made application for, and is granted, a temporary license, the agency may continue operation under the direction of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

(2) If the department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the department, the department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in § 71-3-509.

(3)(A) The license of any agency shall not be voided nor shall any pending appeal be voided pursuant to this subsection (e) solely for the reason that the agency is subject to judicial orders directing the transfer of control or management of a child care agency or its license to any receiver, trustee, administrator or executor of an estate, or any similarly situated person or entity.

(B) If the current licensee dies, and provided that no licensing violations require the suspension, denial or revocation of the agency's license, the department may grant family members of the licensee, or administrators or executors of the licensee, a new temporary license to continue operation for a period of one hundred and twenty (120) days. At the end of such period, the department shall determine whether an annual or extended license should be granted to a new licensee as otherwise provided in this section.

(C) Nothing in this subsection (e) shall be construed to prevent the department from taking any regulatory or judicial action as may be required pursuant to the licensing laws and regulations that may be necessary to protect the children in the care of such agency.

(f)(1) Following the expiration of a least one (1) annual license, the department may issue an extended license to a licensee who seeks renewal of an existing license if the department determines that the licensee has demonstrated that its methods of child care and its adherence to licensing laws and regulations are clearly appropriate to justify an extended licensing period. An extended license may not be granted as the first license immediately following any temporary license.

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(2) The department may by rule establish any criteria for the issuance of an extended license; provided, no extended license shall exceed three (3) years in duration.

(3) At the time renewal of the license is sought, or at any other time during the licensing period, the department may reduce the period of the extended license to a shorter period if it determines that the licensee has failed to demonstrate continued adherence to the requirements for the issuance of the extended license. The licensee may appeal such action as provided in § 71-3-509.

(4) The issuance of an extended license shall not be construed in any manner to prevent the department from suspending or revoking the license, placing an agency on probation, or imposing a civil penalty, if it determines that such action is appropriate.

(g)(1) Prior to January 1, 2001, the licensing fees as they existed for child care agencies on June 30, 2000, shall apply. On and after January 1, 2001, the following licensing fees shall apply to applications for licenses for child care agencies licensed pursuant to this part:

(1) Family child care homes	Annual fee	\$100
	Biennial fee	\$150
	Triennial fee	\$175
(2) Group child care homes	Annual fee	\$125
	Biennial fee	\$175
	Triennial fee	\$200
(3) Child care centers (Less than 100 children)	Annual fee	\$200
	Biennial fee	\$250
	Triennial fee	\$300
(4) Child care centers (100-250 children)	Annual fee	\$400
	Biennial fee	\$450
	Triennial fee	\$500

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(5) Child care centers (More than 250 children)	Annual fee	\$500
	Biennial fee	\$550
	Triennial fee	\$600
(6) Drop-in centers	Annual fee	\$200
	Biennial fee	\$250
	Triennial fee	\$300

Notwithstanding any other law to the contrary, in order to address the need for and encourage the development of extended child care for parents working at nights or on weekends, or for any other nontraditional child care needs for which the department determines that available child care is inadequate or unavailable in all or any part of the state, the department may promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, providing for alternative fee schedules in order to recognize and encourage the development of care to meet such needs.

(h) All licensure application and renewal fees collected by the department from family child care homes, group child care homes, child care centers and drop-in centers shall be paid into the general fund, but shall be earmarked for, and dedicated to, the department. Such earmarked fees shall be used by the department exclusively to improve child care quality in this state by funding activities that include child care provider training activities, but excluding any costs associated with conducting criminal background checks. Increased fees shall be used solely for a variety of training options, which can be accessed by agencies, organizations and individuals for grants for workshops, conferences and scholarships that improve the quality of child care in this state.

(i) Notwithstanding any provisions of title 13, chapter 7, to the contrary, upon adoption of a resolution by a two-thirds ($\frac{2}{3}$) vote of the county legislative body, any zoning authority, in determining the suitability of a request for any use of property for the establishment or alteration of any child care agency, may consider the criminal background of the person or persons making a request to such board, or may consider the criminal background of any person or persons who will manage or operate such child care agency. The board may require the person to submit a fingerprint sample and a criminal history disclosure form and may submit the fingerprint sample for comparison by the Tennessee bureau of investigation pursuant to § 38-6-109, or it may conduct the background check by other means as it deems appropriate. The zoning authority shall be responsible for all costs associated with obtaining such criminal background information.

(j)(1)(A) No later than August 1, 2001, the department of human services, in consultation with the Tennessee commission on children and youth, shall establish and implement a mandatory child care agency report card system

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in conformity with subdivision (j)(2), and a separate and voluntary child care agency rated licensing system in conformity with subdivision (j)(3).

(B) The report card system and the rated licensing system shall be used for the purpose of evaluating, individually and collectively, all child care agencies licensed or approved by the department pursuant to this part so that parents or other caretakers of children enrolled, or being considered for enrollment, at a child care agency, may make more informed decisions regarding the care of their children by comparing the quality of services offered by child care agencies, and to encourage the improvement of out-of-home child care for Tennessee's children. It is the legislative intent that the report card and rated licensing process established pursuant to subdivisions (j)(2) and (3) shall be developed in a manner to be easily usable by parents or guardians of children to make informed choices related to childcare.

(C) For purposes of subdivisions (j)(1)-(4), the term "child care agencies" shall include child care centers, group child care homes and family child care homes as defined by this part.

(2)(A) The mandatory report card system shall become effective August 1, 2001. Each child care agency shall receive a report card evaluation during the first licensing cycle of the child care agency that begins after October 1, 2001, and annually thereafter. The mandatory report card shall include an annual evaluation of the child care agency by the department that shall be required for each child care agency. The report card shall reflect key indicators of performance comparison among all Tennessee child care agencies. Key indicators shall include, but not be limited to, the following:

(i) Health and safety;

(ii) Training, education, certification, and credentials of all supervisory staff, including the director or licensee;

(iii) Staffing ratios;

(iv) Child development and enrichment;

(v) Accreditation status; and

(vi) Adequacy of physical facilities.

(B) The department shall not fail to recognize the credentials of any accrediting agency based solely upon the religious affiliation or ethnicity of the organization granting accreditation to a child care agency.

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(C) The report card shall not include an overall numeric or alpha score, grade or rating of the child care agency.

(D)(i) The annual mandatory report card shall reflect the child care agency's performance under the key indicators in subdivision (j)(2)(A).

(ii) Upon completion, the report card shall be clearly marked and conspicuously posted at each child care agency for review by the parents of children enrolled, or being considered for enrollment, at the child care agency.

(E)(i) During the first licensing cycle of each child care agency that begins October 1, 2001, the mandatory report card evaluation shall also include, as determined by the department, an evaluation of the child care agency, based upon the use of a valid and reliable program assessment instrument for evaluating the quality of child care programs through direct observation of the agency's child care program.

(ii) During the first licensing cycle of each child care agency that begins October 1, 2001, the program assessment instrument scores shall not be included either on the report card or as an overall separate numeric or alpha score, grade or rating on the license or as an attachment to the license, and the department shall only provide to the child care agency a separate document with the results of the child care agency's program assessment instrument evaluation.

(iii) Beginning October 1, 2002, the mandatory annual report card shall include, in addition to the agency's performance under the key indicators established pursuant to subdivision (j)(2)(A), and, notwithstanding any other provisions of subdivisions (j)(1)-(3) to the contrary, the agency's overall program assessment instrument score and any accompanying explanatory text related to the instrument.

(F) The department, and the advisory council created by subdivision (j)(5), are urged to review the key indicators for the report card and the rated licensing system created by this subsection (j) to determine if questions regarding those key indicators should be revised.

(3)(A) The rated licensing system shall become effective on August 1, 2001. The rated licensing system shall include an evaluation of the key indicators described in subdivision (j)(2)(A), including the results of a program assessment instrument as described in subdivision (j)(2)(E)(i). A child care agency may qualify for the rated licensing system by demonstrating, through evaluation of the key indicators and the program assessment instrument, that the child care agency exceeds basic licensing standards as outlined in the rated licensing criteria determined by the department.

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(B) Participation in the rated licensing system shall be voluntary for each qualified child care agency. Qualified child care agencies that volunteer to participate in the rated licensing system must apply in writing to the department following receipt of the report card issued pursuant to subdivision (j)(2) in such manner as the department may prescribe.

(C) Qualified child care agencies that volunteer to participate in the rated licensing system shall receive a child care quality rating. The participating agency may voluntarily post the rating prior to October 1, 2002. On and after October 1, 2002, the child care agency shall be required to post the rating. The rating shall be posted by the agency with its license in a conspicuous place for review by the parents or other caretakers of a child enrolled, or being considered for enrollment, at the child care agency.

(D) Beginning August 1, 2001, any qualified child care agency that agrees to voluntarily participate in the rated licensing system established by this subdivision (j)(3) and that accepts the department's child care assistance subsidy payments, may receive higher subsidy payments, as determined by the department, based upon the child care quality rating and subject to available funding in the department's budget.

(E) A child care agency may at any time voluntarily withdraw from the rated licensing system by submitting a notice in writing to the department in such manner as the department prescribes. The department may also determine at any time, in such manner as the department may prescribe, that the child care agency no longer meets the rated license criteria for the agency's rating. In either event, the child care agency shall no longer be eligible to display that rating or to use it in any informational materials related to the agency, nor shall it continue to receive increased child care subsidy payments, if any, based upon that rating. The rating shall be immediately removed from display at the agency. The department shall have standing to seek appropriate regulatory action under its rules, or to seek injunctive relief, to enforce this subdivision (j)(3)(E).

(4)(A) Effective August 1, 2001, there is created a twelve-member advisory council to be appointed by the governor. The sole purpose of the advisory council shall be to provide recommendations to the department regarding the report card and the rated licensing system established pursuant to subdivisions (j)(1)-(3).

(B) The council shall be composed of six (6) representatives of child care centers, three (3) representatives of group child care homes, and three (3) representatives of family child care homes. There shall be two (2) representatives of child care centers from each grand division. There shall be one (1) representative from each grand division for group child care homes and one (1) representative from each grand division for family child care homes. Members shall serve two-year terms, and may be reappointed. Any vacancy shall be filled by the governor from the same grand division and class of child care agency. The members shall serve without compensation. Members shall be subject to removal by the governor for good cause. Members shall, to the extent possible, be appointed so as to represent a cross section of private-pay and subsidized child care providers and the ethnic populations represented in the child care industry.

(C) The advisory council shall elect from among its membership a chair, vice-chair and such other officers as the council deems necessary.

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(D) The advisory council shall meet at least once each year, and shall meet more frequently as the business of the council may require. The council may be called to meet by the commissioner of human services at any time it becomes necessary between regular meetings to provide timely reviews of the department's proposed changes to the report card process or the rated licensing system.

(E) Consultation by the department with the council shall be mandatory; provided, however, that failure of the council to meet and deliver to the department its responses or recommendations regarding the department's proposed changes within a reasonable period of time following written notice to the council chair by the department of the need for a review of the department's proposed changes shall negate any further mandatory consultation requirement established by this paragraph.

(F) The advisory council recommendations shall be applicable only for any proposed changes to the annual report card or rated licensing system established by this subsection (j) that are proposed by the department after August 1, 2001. Consultation with the advisory council shall not be required for any plans developed by the department for the design or implementation of the annual report card or rated licensing system prior to August 1, 2001.

(5) The commissioner and the comptroller of the treasury may, in their discretion, conduct audits of the records of any child care providers as they may determine are necessary to verify that the expenditures by a child care provider of state or federal child care subsidy funds are being made according to state or federal requirements.

(6) Any child care agency that knowingly provides false information or that fails to provide any information to the department, the comptroller, or their agents or designees:

(A) That is required or necessary to perform any of the provisions of this title or to enforce state or federal law or regulations, or child care subsidy or licensing requirements;

(B) That fails to allow entrance by any person designated by the department to perform the report card or rated licensing evaluation required by subdivisions (j)(1)-(3); or

(C) That continues to display expired or revoked licensing ratings in violation of subdivision (j)(3)(E) after written notice by the department;

shall be subject to denial or revocation of its license by the department, and may also be subject to a civil penalty of five hundred dollars (\$500) imposed by the department.

(k) The department is authorized to review possible dangers to children and workers in child care facilities from carbon monoxide gas and to issue such rules and regulations as it may deem necessary.

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(1)(1) The department of human services shall make available to child care providers licensed by the department a curriculum guideline in any suitable format addressing personal safety containing a component related to the prevention of child sexual abuse and shall allow child care providers licensed by the department to choose terminology and instructional methods that accomplish the goal of providing clear, effective and appropriate instruction in personal safety. The department is encouraged to distribute a sample curriculum that is developmentally-appropriate and age-appropriate, child-friendly and family-friendly, and designed to be acceptable to a broad range of providers, parents and legal guardians.

(2) The personal safety curriculum that will be implemented by the child care provider must be made available so parents and legal guardians have the opportunity to review it and so parents and legal guardians will be aware of this component of the child care provider's curriculum. The department shall develop a standard notification form to be provided to the parents or legal guardians by the child care agency. The notification form shall contain the following information:

(A) The method of instruction and sample terminology used in the personal safety/child sexual abuse curriculum;

(B) The availability of the instructional materials for review by the parents or legal guardians; and

(C) A place for the parents or legal guardians to sign acknowledging they have been provided an opportunity to review the personal safety curriculum, have been notified of the child sexual abuse/personal safety curriculum for their child and the individual record for each child shall include a copy of the signed notification form.

(3) If a parent has questions regarding the personal safety component of the quality early childhood education curriculum, then the provider or a representative of the provider shall meet with the parent and discuss the personal safety component of the curriculum.

(4) The department of human services is expressly authorized and directed to implement by emergency rules, effective October 1, 2008, a rule regarding implementation of this requirement for the personal safety curriculum; provided, that any permanent rules shall be promulgated pursuant to the Uniform Administrative Procedures Act.

T. C. A. § 71-3-503

§ 71-3-503. Program and facilities exempt from licensing

Effective: April 1, 2013

(a) A program or activity that falls within the definition of a child care agency shall be exempt from the licensing requirements of this part upon demonstration of clear and convincing evidence that it meets one (1) of the following exemptions in subdivisions (a)(1)-(11), or, if no specific exemption exists in subdivisions (a)(1)-(11), there is clear and convincing evidence demonstrating that the program or activity meets the criteria of subsection (c):

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(1) Entities or persons licensed or otherwise regulated by other agencies of the state or federal government providing health, psychiatric or psychological care or treatment or mental health care or counseling for children while the entity or person is engaged in such licensed or regulated activity;

(2) Preschool or school age child care programs, a Title I program, a school-administered head start or an even start program, and all state-approved Montessori school programs, that are subject to regulation by the department of education or other departments of state government;

(3) Private or parochial kindergartens for five-year-old children if such kindergartens operate on the public school kindergarten schedule;

(4) Child care centers operated by church-related schools, as defined by § 49-50-801, which shall be subject to regulation by the department of education pursuant to title 49, chapter 1, part 11;

(5) EDUCATIONAL PROGRAMS. To qualify for an educational program exemption, a child care agency must meet the following criteria:

(A) That the sole or primary purpose of the program is:

(i) To prepare children for advancement to the next educational level through a prescribed course of study or curriculum that is not typically available in a department-regulated child care setting;

(ii) To provide specialized tutoring services to assist children with the passage of mandatory educational proficiency examinations; or

(iii) To provide education-only services to special needs children; and

(B) That the program time scheduled to be dedicated to the educational activity is reasonably age appropriate for the type of activity and the ages served;

(6)(A) "Parents' Day Out" or similar programs operated by a religious institution or religious organization that provide custodial care and services for children of less than school age, with no child attending more than two (2) days in each calendar week for not more than six (6) hours each day;

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(B) Existing and all future programs shall register with the department their intent to operate a Parents' Day Out program prior to offering the service, and, as evidence of their exempt status, these programs shall maintain records that include, at a minimum, dates and times of each child's attendance;

(C) The records and forms shall be made available during regular business hours to the commissioner or commissioner's designee;

(D) Each separate location or campus of a religious institution or religious organization shall be considered a separate religious institution or religious organization for the purpose of Parents' Day Out or any similar program;

(7) RECREATIONAL PROGRAMS. To qualify for a recreational program exemption, a child care agency must meet the following criteria:

(A) That the sole or primary purpose of the program or activity is to provide recreational services, e.g., organized sports or crafts activities;

(B) That the sole or primary purpose of the program or activity is dedicated to recreational activities for a substantial portion of the hours of operation;

(C) That the majority of program staff responsible for the direct delivery of services possesses specialized qualifications that are directly related to the recreational services being offered;

(D) That at least seventy-five percent (75%) of any individual child's program time is spent engaging in the recreational activities that are reasonably age appropriate for the type of activity and the ages served;

(E) That the supervision or care of children, or other types of child care-related services, is incidental to its overall purpose; and

(F) That no individual child could participate in the program or activity:

(i) For more than seven (7) hours per day; or

(ii) If a child participates for more than seven (7) hours per day, that such child could not continue to participate for more than seven (7) consecutive weeks and for no more than one hundred twenty (120) days per calendar year;

(8) **CAMP PROGRAMS.** To qualify for a camp program exemption, a child care agency must meet the following criteria:

(A) That the primary purpose of the program or activity is to provide intensive recreational, religious, outdoor or other activities that are not routinely available in full-time child care;

(B) That the program or activity operates exclusively during the summer months and less than ninety (90) days in any calendar year; and

(C) That the enrollment periods for participation in the program or activity clearly define the duration of the program or activity and exclude drop-in child care;

(9)(A) "Casual care" operations consisting of places or facilities operated by any person or entity that provides child care, at the same time, for a minimum of five (5) children, but less than fifteen (15) children, who are not related to the primary caregiver, during short periods of time that do not exceed ten (10) hours per week or six (6) hours per day for any individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child;

(B) These operations shall register with the department their intent to conduct casual care of children, and, as evidence of their exempt status, these operations shall maintain records that include, at a minimum, the children's names, ages, addresses, dates and times of attendance, the parents' or custodians' names, addresses, and intended whereabouts while the children are in care, and the telephone numbers of persons to contact in the event of an emergency. All records shall be made available at any time to any authorized representative of the department;

(C) Failure to comply with the requirements of this subdivision shall subject the violator to a civil penalty by the department not to exceed five hundred dollars (\$500) for the first violation and not to exceed one thousand dollars (\$1,000) for subsequent violations, and the department may seek injunctive relief in the chancery or circuit court of the county where the place or facility is located to prevent further operation of the place or facility or to obtain entry to conduct any inspection of the operation;

(10)(A) Any program or facility operated by, or in affiliation with, any Boys and Girls Club that provides care for school-aged children and that holds membership in good standing with Boys and Girls Clubs of America and that is certified as being in compliance with the purposes, procedures, voluntary standards and mandatory requirements of Boys and Girls Clubs of America;

(B) Any such Boys and Girls Club that applies to participate in state or federally funded programs that require

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child care licensing by the state as a term of eligibility may elect to apply to the department for child care licensing and regulation. Upon meeting departmental standards, the Boys and Girls Club may be licensed as a child care center/provider;

(C) The department is hereby authorized to grant a waiver from any rule concerning grouping of children and adult/child ratios for child care centers to any Boys and Girls Club that falls within both subdivisions (a)(11)(A) and (a)(10)(A) and (B), and that is providing after-school child care to mixed groups of school-aged children; and

(11) Nurseries, babysitting services and other children's activities that are not ordinarily operated on a daily basis, but are associated with religious services or related activities of churches or other houses of worship. Such services or activities may include limited special events that shall not exceed fourteen (14) days in any calendar year.

(b)(1) Exempt programs under subdivisions (a)(3), (6) and (9) shall post a sign stating, "This facility is not required to be licensed by the state as a child care agency."

(2) When a parent, custodian or guardian initially registers a child with an exempt program under subdivisions (a)(3), (6) and (9), which is required to post a sign pursuant to this subsection (b), the parent, custodian or guardian shall sign a form indicating that the parent, custodian or guardian has been advised and understands that the program is not licensed and is not required to be licensed by the state as a child care agency. The same language that is required to be placed on the sign shall be printed on such form at least in 16-point type with a signature line for the parent, custodian or guardian immediately following such language. The signed form shall be maintained with the records of the exempt entity.

(c) In analyzing whether the program or activity is exempt pursuant to this section, unless the department determines upon clear and convincing evidence that the program or activity qualifies for an exemption based upon the criteria set forth in subdivisions (a)(1)-(11), the department shall consider the following nonexclusive criteria to determine if the program or activity is clearly distinguishable from child care services typically regulated by the department and otherwise qualifies for exemption from licensing:

(1) The sole or primary purpose of the program or activity is to provide specialized opportunities for the child's educational, social, cultural, religious or athletic development, or to provide the child with mental or physical health services;

(2) The time period in which the program or activity provides these opportunities is consistent with a reasonable time period for the completion of the program or activity, considering the age of each child served and the nature of the program;

(3) The primary purpose of the program or activity is not routinely available or could not be made routinely available in the typical child care settings regulated by the department;

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(4) Parents could reasonably be expected to choose the program or activity because of the unique nature of what it offers, rather than as a substitute for full-time, before or after school, holiday or weather-related child care; and

(5) If the program or activity is regulated by any other federal, state or local agency, it is required by such other agency to comply with standards that substantially meet or exceed department licensing regulations.

(d)(1) The department shall not be required to grant exemptions to programs or activities that offer otherwise exempt opportunities or services as a mere component of a program or activity that the department determines primarily constitutes substitute child care.

(2) No program or activity shall be exempt from licensing solely for the reason that the care and supervision of children that constitutes child care is offered only on a part-time or periodic basis.

(3) Exemption from licensure does not exempt the program or activity from compliance with any other local, state or federal requirements.

(e) A child care agency claiming an exemption pursuant to this section may submit to the department's licensing director, or designee, a sworn, written request for exemption in such manner and form as the department may require. The request shall provide a detailed description of the operation of the program or activity, the program's or activity's purpose and the applicant's basis for claiming an exemption. The department shall provide a written response to the exemption request stating the reasons the exemption was granted or denied.

T. C. A. § 71-3-504

§ 71-3-504. Injunctions against unlicensed operations

Effective: July 9, 2012

(a) The department may, in accordance with the laws of this state governing injunctions, maintain an action in the name of the state of Tennessee to enjoin any person, partnership, association, corporation or other entity from establishing, conducting, managing or operating any place or facility providing services to children without having a license as required by law, or from continuing to operate any such place or facility following suspension of a license or following the effective date of the denial or revocation of a license.

(b) In charging any defendant in a complaint for such injunction, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a place, home or facility of any kind that is a child care agency, as defined in this part or to charge that the defendant is about to do so without having in effect a license as required by law, or that the defendant continues to operate any such place or facility following suspension of a license, or following the effective date of the denial or revocation of a license, without averring any further or more particular facts concerning the case.

T. C. A. § 71-3-505

§ 71-3-505. Criminal violations

(a) Any person or entity operating a child care agency, as defined in § 71-3-501, without being licensed by the department or who continues to operate such agency while a suspension of the license is in effect, or who operates a child care agency following the effective date of a denial or revocation of a license, commits a Class A misdemeanor.

(b) Each day of operation without an effective license constitutes a separate offense.

(c)(1) It is unlawful for any person who is an operator, licensee or employee of a child care agency to make any statement, whether written or verbal, knowing such statement is false, including, but not limited to, statements regarding:

(A) The number of children in the child care agency;

(B) The area of the child care agency used for child care; or

(C) The credentials, licensure or qualification of any care giver, employee, substitute or volunteer of the child care agency, when such statement is made to a parent or guardian of a child in the care of such agency, to any state or local official having jurisdiction over such agencies, or to any law enforcement officer.

(2) In order for subdivision (c)(1) to apply, the falsity of the statement must place at risk the health or safety of a child in the care of the child care agency.

(3) A violation of subdivision (c)(1) is a Class A misdemeanor.

(4) This subsection (c) includes statements made in any child care agency license application that misrepresents or conceals a material fact that would have resulted in the license being denied.

(5) In addition to any punishment authorized under this subsection (c), the department may also take any licensure action authorized under this part.

T. C. A. § 71-3-506

§ 71-3-506. Public agencies; licensure and audits

Effective: July 9, 2012

Any child care agency, as defined in this part, that is under the direct management or control of an administrative department of the state, a county, municipality, or development district, or any combination of these, shall be subject to licensure pursuant to this part; provided, however, that the requirements for audits set forth in former § 71-3-502(j)(6)(C) and (D) shall be satisfied by audits that are conducted by the comptroller of the treasury or other public agency auditors.

T. C. A. § 71-3-507

§ 71-3-507. Criminal history violation information required of persons having access to children; review of vulnerable persons registry; verification; exclusion from access to children

Effective: April 8, 2013

(a)(1) The following shall complete a disclosure form in a manner approved by the department disclosing criminal records, juvenile records histories and the status of such person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, the state's sex offender registry and status as an indicated perpetrator of abuse or neglect in the records of the department of children's services and the department of human services, or in any jurisdiction, and shall agree to release all such records to the childcare agency and to the department to verify the accuracy of the information contained on the disclosure form:

(A) A person applying to work with children as a paid employee, director or manager with a childcare agency as defined in § 71-3-501, with any detention center or temporary holding resource as described in § 37-5-109, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or who applies for any license, that is not the renewal of an existing license or otherwise seeks to be an operator, as defined by the rules of the department, of a childcare agency as defined in § 71-3-501 and who has significant contact with children in the course of such role and is not otherwise exempted from the application of this section by rules of the department;

(B) A person who is a new substitute staff person, paid or unpaid, and who is to be used by the childcare agency to meet childcare standards and who serves as a substitute for more than thirty-six (36) hours in any one (1) calendar year; or

(C) A person fifteen (15) years of age or older who resides in a childcare agency that is being licensed initially or who moves into a childcare agency following initial licensure.

(2)(A) Persons subject to the requirements of subdivision (a)(1) shall also supply a fingerprint sample in a manner prescribed by the department and by the Tennessee bureau of investigation (TBI), and shall submit to a fingerprint-based background review of criminal history records, and juvenile records that are available to the TBI, to be conducted by the TBI, and shall submit to a review of the person's status on the department of health's vulnerable

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persons registry under title 68, chapter 11, part 10, the state sex offender registry, and pursuant to § 71-3-515, a review of the person's status in the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, and, if determined necessary by the department, a review of any available juvenile records in juvenile court.

(B) All persons subject to the requirements of subdivision (a)(1), and all persons applying to work with the department in any position in which any significant contact with children is likely in the course of the person's employment with the department, shall have the fingerprint-based background review, including juvenile records available to the TBI, and the registry and perpetrator records and juvenile records reviews required by subdivision (a)(2)(A) completed as required by this section prior to assuming any role described in subdivision (a)(1) or prior to employment with the department; and if the person is fifteen (15) years of age or older and:

(i) The person is a resident of a childcare agency, the person must have the fingerprint-based background review, including juvenile records available to the TBI, and the registry and perpetrator records reviews, and if determined necessary by the department juvenile court records reviews, required by subdivision (a)(2)(A) completed prior to the granting of any license that is not the renewal of an existing license to the childcare agency in which the person resides at the time of initial application; or

(ii) If the person is to become a resident of the childcare agency, the person must have the reviews required by subdivision (a)(2)(B)(i) completed prior to the person's becoming a resident of the childcare agency.

(C) The person or entity with which a person subject to subdivision (a)(1) will be, or is, associated shall be responsible for obtaining and submitting as directed by the department the fingerprint sample and any information necessary to process the fingerprint-based background reviews and reviews required by this section prior to the person's assumption of any role described in subdivision (a)(1).

(3) The disclosure forms shall include at a minimum the following information:

(A) The social security number of the applicant, substitute or resident;

(B) The complete name of the applicant, substitute or resident;

(C) Disclosure of information relative to any violations of the law, including pending criminal or juvenile charges of any kind, and any conviction or juvenile adjudication involving a sentence or suspended or reduced sentence, and a release by the person of all records involving the person's criminal and juvenile background history and records relative to the person's status on the department of health's vulnerable persons registry maintained pursuant to title 68, chapter 11, part 10, on the state's sex offender registry and the status of the person as an indicated perpetrator of abuse or neglect of a child or adult as determined by any agency of this state or any other jurisdiction; and

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(D) A space for the person to state any circumstances that should be considered in determining whether to allow the person who has a criminal, juvenile, registry or abuse or neglect records history to be employed or to provide substitute services or to remain as a resident in the agency.

(4) The form shall notify the person that falsification of required information may subject the person to criminal prosecution, and that the person's employment, licensing or other status or circumstances in the childcare agency or the department is dependent upon the person's criminal and available juvenile records history status, the person's status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, and on the state's sex offender registry, and, pursuant to § 71-3-515, the person's status as an indicated perpetrator of abuse or neglect of children or adults as contained in the records of the department of children's services and the department of human services.

(5) A copy of the disclosure form shall be maintained in the childcare agency's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant for a license or as operator or for employment with the department.

(b)(1) The disclosure form, or information contained on the form, obtained pursuant to this section, together with the fingerprints of the person, shall be submitted by the childcare agency for its applicants, licensees, operators, substitutes or residents, and by the department for its applicants, to the appropriate department staff or state contractors providing fingerprinting services, in the format required by the department and the TBI. The department or contractor will transmit the necessary information to the TBI for completion of the fingerprint-based background review of criminal records and juvenile records that are available to the TBI.

(2) The TBI shall compare the information and the fingerprint sample received with the computer criminal history files maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases and shall conduct the fingerprint and criminal history background check for the person pursuant to § 38-6-109. It shall report the existence of any criminal or juvenile history involving the person to the department, which shall inform the childcare agency and the person regarding the person's ability to assume a position for which a background review is required by this section.

(3) The results of the inquiry to the TBI shall be documented in the records of the childcare agency for the person for whom the background check is sought, and the department shall also maintain a record of the results of all persons for whom a criminal background history is received.

(4) The department shall notify in writing the appropriate district attorney general of any falsification of the information on the disclosure form.

(5)(A) The department shall pay to the TBI the cost of processing the criminal history background fingerprint check requested by the agency or by the department as set forth in § 38-6-109. Payment of the costs is to be made in accordance with §§ 38-6-103 and 38-6-109.

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(B) The childcare agency shall be responsible for all costs associated with obtaining, handling and processing of the fingerprint sample that is submitted to the TBI.

(C) The department shall only be responsible for payment for one (1) processing fee that is required by the TBI. If the fingerprint sample is rejected and if any further costs are required to process the fingerprint, the childcare agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample.

(c)(1) All persons subject to subsection (a), and employees of the department's licensing division, shall also be subject to a review by the department of their status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, on the state's sex offender registry, and a review conducted pursuant to § 71-3-515, of their status in the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults and, if determined necessary by the department, a review of any available juvenile records in juvenile court.

(2) The department shall conduct the review for license applicants and operators.

(3) The results of the inquiry to the registries and the departments' records shall be maintained in the person's records at the agency and with the department.

(d) The childcare agency or the department shall not permit a person to assume any role described in subdivision (a)(1) prior to the completion of a review of the criminal history and juvenile records available to the TBI and the juvenile court, including the fingerprint-based background review, review of the department of health's vulnerable persons registry and the state's sex offender registry, and, pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, and, if determined necessary by the department, juvenile court records reviews. The reviews must demonstrate that the person is not subject to a criminal history or a juvenile history or a history on the registries or in the records of the department of children's services or the department of human services that would, as described in this part, disqualify or otherwise exclude the person from any role described in subdivision (a)(1).

(e)(1)(A)(i) Whether obtained by use of the procedures established in this section or whether information is obtained by any other means, no person shall be employed with, be a licensee or operator of, provide substitute services to, or have any access whatsoever to children in a childcare agency as defined by this part, nor shall the person be employed with the department in a position having significant contact with children, whose criminal or available juvenile background records, registry or perpetrator records demonstrate that the person has been convicted of, pled guilty or no contest to an offense or lesser included offense, is the subject of a juvenile petition or finding that would constitute an offense or lesser included offense, or whose criminal or juvenile background history report or other information demonstrates the existence of a pending warrant, indictment, presentment or petition, involving:

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(a) The physical, sexual or emotional abuse or neglect of a child;

(b) A crime of violence against a child or any person;

(c) Any offense determined by the department, pursuant to properly promulgated rules, to present a threat to the health, safety or welfare of children;

(d) The identification of the person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, or on the state's sex offender registry, or, whose status, pursuant to a review under § 71-3-515, of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, or if determined necessary by the department, reviews of available juvenile court records, demonstrate a history that would require the person's exclusion under this part.

(ii) No person who is currently charged with or who has been convicted of or pled guilty to a violation of § 39-13-213, § 55-10-101, § 55-10-102 or § 55-10-401, or any felony involving use of a motor vehicle while under the influence of any intoxicant, may, for a period of five (5) years after the date of the conviction or felony plea, be employed as or serve as a driver transporting children for a childcare agency.

(B)(i) Upon receipt from the department of the criminal and juvenile fingerprint-based background report or other information regarding the criminal, juvenile, vulnerable persons, sex offender or perpetrator records histories of a person about whom this information was obtained, the department shall notify the childcare agency and the person of the person's clearance to assume a position with the childcare agency or that the person must be excluded from positions or circumstances with the agency described in subdivision (a)(1) or from any access to children.

(ii) The childcare agency, and the department for its employees, shall immediately exclude any person from employment, from substitute services or from any access whatsoever to children in the childcare agency or, if a resident of a childcare agency, the agency shall exclude the resident from access to children in the childcare agency, if the criminal, juvenile, registry, perpetrator records history or other information regarding the person place the person within the prohibited categories established in subdivision (e)(1)(A). The department shall deny the license or operator status of any such person. If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (f), the person shall remain excluded or that person's license or operator status shall be denied until it is determined by the department that there is a basis for an exception from the exclusion.

(iii) The failure of a childcare agency to exclude a person with a prohibited criminal, juvenile, vulnerable persons or sex offender registry or perpetrator records history at a childcare agency from employment with the agency, or from the provision of substitute services to children in the agency, or the failure, as determined by the department, to adequately restrict the access of a resident or any other person in a childcare agency to children being cared for by the agency, shall subject the childcare agency to immediate suspension of the

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agency's license by the department.

(2) Any person who is excluded pursuant to this section or whose license or operator status is denied or revoked based upon the results of a disclosure form statement, fingerprint-based background, criminal or juvenile records history, registry or perpetrator history review pursuant to this part, or other records review, may appeal the exclusion to the department within ten (10) days of the mailing date of the notice of such exclusion to the subject person.

(3) If timely appealed, the department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in which the appellant may challenge the accuracy of the determination.

(4) The appellant may not collaterally attack the factual basis of an underlying exclusionary record except to show that the appellant is not the person identified on the record. Further, except to show that the appellant is not the person identified on the record, the appellant may not collaterally attack or litigate the facts that are the basis of a reported pending criminal or juvenile charge except to show that the charge was, or since the report was generated, has been dismissed, nolle, has resulted in an acquittal or has been expunged.

(f)(1) The department may by rule provide for a review process that utilizes an advisory group of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and childcare providers, or other persons it determines are appropriate, to consider and, if appropriate, recommend to the department exemptions from the exclusions established by this section, or for any other exclusions of persons established pursuant to the department's rules, that are based on the person's criminal background or juvenile background history or from the records of the person maintained in the vulnerable persons or sex offender registries or contained in the indicated perpetrator records of the departments of children's services or human services.

(2) Any exemption granted must be based upon extenuating circumstances that would clearly warrant the exemption, and this determination shall be made in writing in the record of the department and of the childcare agency and shall be open to public inspection.

(3) If an exemption rule is promulgated by the department under this part or by any state agencies utilizing the methods authorized by subsection (g) or (h), the person who is not granted an exemption from the exclusion upon review of the person's criminal, juvenile, registry or other records history pursuant to this part may have this issue considered in an administrative appeal as provided by subsection (e).

(g)(1)(A) A child care agency as defined in § 37-5-501 or § 71-3-501, a child care program as defined in § 49-1-1102, the department of children's services, the department of education, the department of human services, the department of mental health and substance abuse services, the department of intellectual and developmental disabilities and any other state agency or any person or entity that contracts with the state may require the persons set forth in subdivisions (g)(1)(A)(i)-(iii) to undergo a background or records review of any kind, to complete a disclosure form stating the person's criminal and juvenile records history and agree to release all records involving

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the person relating to the criminal, juvenile and perpetrator records history of the person to the entities described in this subdivision (g)(1)(A), and, if further required by the requesting entity, to supply a fingerprint sample and submit to a fingerprint-based review of criminal and juvenile records available to the TBI to be conducted by the TBI. The person may also be required to submit to a review of the person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10, and on the state's sex offender registry, and pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, and, if determined necessary by the agency, department or contractor, a review of any available juvenile records in juvenile court. The results of these inquiries shall be maintained in the person's records. Failure or refusal of a person to submit to or complete the disclosures, background and records reviews required by the entities in this subdivision (g)(1)(A) shall result in the immediate exclusion of the person from any position or status for which these reviews are required by this section:

(i) A person applying to work or substitute, or currently working, in any capacity as a paid employee, licensee or operator, substitute or volunteering, with children with the entities in subdivision (g)(1)(A) or who otherwise has access to children in those entities;

(ii) An applicant for a foster parent position or an applicant to be an adoptive parent, or a current foster parent or a current prospective adoptive parent with the department of children's services; or

(iii) A person fifteen (15) years of age or older who resides in a childcare agency licensed pursuant to this part or title 37, chapter 5, part 5, and who is not otherwise required by subdivision (a)(1), or who is not otherwise required by any other law.

(B) Nothing in this subsection (g) shall be construed to mean that any other law that mandates that fingerprint-based background, registry or any records review be conducted on applicants for employment, licensee, operator, substitute, volunteer or agency resident status is made voluntary, repealed or superseded in any manner by this subsection (g), and this section is supplementary to, and is not in lieu of, any mandatory provisions for such other statutorily required background, registry or records checks.

(2) The disclosure form shall contain the information described in subdivisions (a)(3) and (a)(4).

(3) A copy of the disclosure form shall be maintained in the requesting entity's records of the persons for whom the background check is sought.

(4)(A) The fingerprints of the person shall be submitted by the entity authorized by this subsection (g) to do so, to the TBI in the format required by the bureau.

(B) The TBI shall compare the information received and the fingerprints of the person with the computer criminal history files, and juvenile history files available to and maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases to verify the accuracy of the criminal or juvenile violation

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information pursuant to § 38-6-109, and shall report the existence of any criminal or juvenile history involving the person to the requesting entity; and if the report was made to an entity that is licensed by any state agency, the bureau shall also send a copy of the report showing the criminal or juvenile history to the state agency.

(C)(i) For a person who was not subject to a fingerprint-based or other records screening prior to assuming a role described in subdivision (g)(1)(A), that person's existing status in the role shall be conditional upon the satisfactory outcome of any requested fingerprint-based background review, criminal, and available juvenile records review, and upon vulnerable persons and sex offender registries and department of children's services and department of human services perpetrator records, reviews, and, if determined necessary by the entity, a review of any available juvenile records in juvenile court, that may be conducted pursuant to this section; provided, however, that if a person is initially applying to assume any type of role described in subdivision (g)(1)(A), and an entity described in subdivision (g)(1)(A) utilizes this subsection (g) as a pre-employment screening procedure, the person shall not assume the role until satisfactory completion of the reviews.

(ii) In either circumstance in subdivision (g)(4)(C)(i), the criminal and available juvenile history and fingerprint-based background review, the vulnerable persons and sex offender registry review and any review of the perpetrator records of the departments of children's services and human services must demonstrate that the person is not subject to a criminal or juvenile history or a history on these registries or in such records that would, as described in this part, disqualify or otherwise exclude that person from any role described in subdivision (g)(1)(A). If the fingerprint-based background or records review, or any other information from any other source confirms that subsection (e) is applicable, that person shall not be permitted to have further contact with children in such role, except as otherwise permitted by this section.

(iii) A person's employment or contract status shall not remain in a conditional status for a position with any state agency for which federal law or regulations do not permit the state agency to license or approve the position until all necessary licensing requirements are met, unless specifically authorized by state or federal law or regulation to the contrary.

(iv) The employment status of persons for whom a post-employment fingerprint-based background, registry or record review was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a childcare agency for whom these reviews were conducted after license approval, and who were not otherwise subject to pre-status applicant or access reviews and to the exclusionary provisions provided in this section, shall be governed by any regulations that may govern their status in a regulated entity or by applicable employment law.

(D) The results of the inquiry to the TBI or other registry or records review shall be documented in the records of the entity requesting the reviews. If the entity is regulated by, or is a contractor to, this state, the entity shall immediately report exclusionary results of the criminal and juvenile history background, registry or perpetrator records reviews to its regulatory or contracting state agency.

(E) If the information submitted on the disclosure form appears to have been falsified, the entity requesting the background check, or if the entity is regulated by or has a contract with this state, the regulatory or contracting agency shall notify the district attorney general of the falsification in writing.

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(F) Any costs incurred by the TBI in conducting the investigations of the applicants shall be paid by the entity that requests the investigation and information. Payment of the costs is to be made in accordance with §§ 38-6-103 and 38-6-109.

(h)(1)(A) As a supplemental method of criminal and juvenile background history review for any applicants for employment, for license or operator status, or for substitute or volunteer status with childcare agencies or childcare programs, or with the state agencies or their contractors, as listed in subdivision (g)(1) or with the entities that the state agencies may regulate, or for residents of new childcare agencies, or for current employees, licensees, operators, substitutes or volunteers of childcare agencies or for current residents of childcare agencies, those entities listed in subdivision (g)(1) that have an agreement for access to the TBI's criminal and available juvenile history database may require such persons to submit a disclosure form as set forth in subdivisions (a)(3) and (a)(4), a copy of which shall be maintained with the requesting entity's records, and agree to release all records involving the person relating to the criminal and available juvenile history of the person.

(B) Those entities with the agreement in subdivision (h)(1)(A) may then access directly the TBI's Tennessee crime information computer (TCIC) system and conduct a name search of Tennessee criminal and available juvenile history records by using only the information contained on the disclosure form completed pursuant to subdivision (h)(1)(A), or by using any other information available to the searching entity.

(2) If information obtained by this method indicates that there exists, or may exist, a criminal or juvenile record on the person, the entity conducting the search may further review the criminal and juvenile record history with the person and, as appropriate, with the entity with whom the person who is the subject of the review is associated, to obtain further verification. The requesting entity, at its own cost, may also request fingerprint samples as otherwise authorized by this section and submit the fingerprints for a complete Tennessee and federal criminal and available juvenile history background review pursuant to this section and § 38-6-109.

(3) The results of the search shall be maintained in the records of the person about whom the search was made and shall be subject to review by the regulating entities.

(4) Nothing in this subsection (h) shall be construed to mean that any other law that mandates that criminal and juvenile background reviews be conducted on applicants for employment, for license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by this subsection (h), and this subsection (h) is supplementary to, and is not in lieu of, any mandatory provisions for such other statutorily required criminal and juvenile background reviews.

(i) Subsections (e) and (f), including, but not limited to, the exclusion of persons from providing care or being licensed for the care of children or having access to children upon determination of the criminal, available juvenile, registry or perpetrator records background of such persons, the suspension of operations of or the denial or regulation of any license, certification or approval of any entities that fail to exclude persons with an exclusionary history, and the exemptions from the exclusionary provisions shall be applicable to those persons having exclusionary backgrounds or histories determined by the processes established by subsections (g) and (h) or by any

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other means.

(j) Any person disqualified by a state agency from care for or access to children based upon the results of any fingerprint-based, criminal, juvenile, registry, perpetrator records or other records review conducted under subsections (g) and (h), or by any other means may, as provided in subdivisions (e)(2)-(4), appeal that determination to a state agency that has made the request.

(k) Nothing in this section shall be construed to prevent the exclusion of any person from providing care for, from being licensed or certified or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background history or other record that would require the person's exclusion under this part is discovered and verified in any other manner other than through a procedure established pursuant to this section. All procedures, rules and appeal processes established pursuant to this section for the protection of children and the due process rights of excluded persons shall also be applicable to those persons.

(l) It is unlawful for any person to falsify any information required on the disclosure form required by this section. A person who knowingly fails to disclose on the disclosure form required information or who knowingly discloses false information or who knowingly assists another to do so commits a Class A misdemeanor.

T. C. A. § 71-3-508

§ 71-3-508. Inspection of persons or entities providing child care

(a) It is the duty of the department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care agencies or suspected child care agencies, as defined in § 71-3-501.

(b)(1) The department is given the right of entrance, privilege of inspection, access to accounts, records, and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.

(2) If refused entrance for inspection of a licensed, approved or suspected child care agency, the chancery or circuit court of the county where the licensed, approved or suspected child care agency may be located may issue an immediate ex parte order permitting the department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the department in executing such order and inspection. Refusal to obey the inspection order may be punished as contempt.

(3) Except where court orders prohibit or otherwise limit access, parents or other care takers of children in the care of a child care agency licensed pursuant to this part shall be permitted to visit and inspect the facilities and observe the methods for the care of their children at any time during which the children are in the care of the agency and, except those records of other children in the care of the agency and their parents or caretakers, shall further be permitted to inspect any records of the agency that are not privileged, or are not otherwise confidential, as provided

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by law or regulation, and the parents' or caretakers' access for these purposes shall not be purposely denied by the agency.

(c)(1) In the conduct of any investigations of any child care agency, the department, if it determines such to be necessary, may require the child care agency to enter into a plan for the safety of children in the agency's care pending the outcome of any investigation by the departments of human services or children's services, or by any law enforcement or regulatory agency.

(2)(A) Such plan may require, but is not limited to:

(i) The exclusion or restriction of any individuals from access to the children in care;

(ii) The closure or restricted use of any part or parts of the agency's facilities;

(iii) The reinspection of any of the agency's facilities by any other health, fire or safety agency;

(iv) The modification or elimination of any service provided, or of any procedures utilized or any program conducted by the agency; or

(v) The receipt of further training by the agency's management, staff or volunteers.

(B) The plan may be based upon any preliminary or upon any final findings by the department. The plan may be established in coordination with:

(i) The conduct of any child abuse or neglect investigation by the department of children's services;

(ii) Any criminal investigation by a law enforcement agency;

(iii) Any investigation of the child care agency by any other regulatory agency; or

(iv) In any combination of these investigations,

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and may be based upon any preliminary or final findings of such departments or agencies. The plan may also incorporate any recommendations of such departments or agencies based upon their preliminary or final findings.

(3) The department may enforce the provisions of the safety plan by civil penalty not to exceed five hundred dollars (\$500), by suspension of the agency's license if appropriate, by issuance of a restricted license to the child care agency, by denial or revocation of the child care agency's license, or by any combination of these penalties.

(4) Any plan that exceeds ninety (90) days when proposed or that continues for more than ninety (90) days may be appealed to the child care agency board of review.

(d) Any violation of the inspection rights established in this section is a Class A misdemeanor.

T. C. A. § 71-3-509

§ 71-3-509. Violations of licensing regulations; probation; civil penalties; suspension, denial and revocation of licenses; appeal procedures

Effective: July 9, 2012

(a) If any complaint is made to the department concerning any alleged violation of the laws or regulations governing a child care agency, the department shall investigate such complaint and shall take such action as it deems necessary to protect the children in the care of such agency.

(b)(1) If, during the licensing period, the department determines that a child care agency is not in compliance with the laws and regulations governing its operation, the department may place the agency on probation for a definite period of not less than thirty (30) days nor more than sixty (60) days, as determined by the department. Upon a determination by the department to place an agency on probation, the department shall serve written notice to the agency by personal delivery describing the violations of the licensing laws or rules that support the basis for the probationary status and the procedures for appeal of the probationary status. Ten (10) business days after the service of the probation notice on the agency, the department shall require the agency to post the notice of probation as directed by the department.

(2)(A) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the department of the violations that were the basis for the probation, in a conspicuous place as directed by the department and with the agency's license, and the agency shall immediately notify in writing the custodians of each of the children in its care of the agency's status, the basis for the probation and of the agency's right to an informal review of the probationary status.

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(B) If the agency requests an informal review within two (2) business days of the imposition of probation, either verbally or in writing to the department's licensing staff that imposed the probation, the department shall informally review the probationary status by a licensing supervisor or other designee who was not involved in the decision to impose the probation. The agency may submit any written or oral statements as argument to the licensing supervisor or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The licensing supervisor or designee shall render a decision in writing upholding, modifying or lifting the probationary status within seven (7) business days of the imposition of the probation.

(3) If the licensing supervisor or designee does not lift the probation under subdivision (b)(2)(B), the agency may also appeal such action in writing to the commissioner within five (5) business days of the receipt of the notice of the licensing supervisor or designee's decision regarding the agency's probationary status as determined in subdivision (b)(2)(B). If timely appealed, the department shall conduct an administrative hearing pursuant to the contested case, provisions of the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 3, concerning the department's action within fifteen (15) business days of receipt of the appeal, and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(4) This subsection (b) shall be discretionary with the department, and shall not be a prerequisite to any licensing action, to impose a civil penalty or to suspend, deny or revoke a license of a child care agency.

(c)(1) If the department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to this part, the department may assess a civil penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from fifty dollars (\$50.00) for minor violations up to a maximum of one thousand dollars (\$1,000) for major violations or violations resulting in death or injury to a child as defined in the rules of the department. Each day of continued violation constitutes a separate violation.

(2) The department shall by rule establish a graduated schedule of civil penalties designating the minimum and maximum civil penalties that may be assessed pursuant to this subsection (c). In developing the graduated civil penalty procedure, the following factors may be considered:

(A) Whether the amount imposed will be a substantial economic deterrent to the violator;

(B) The circumstances leading to the violation and the agency's history of violations;

(C)(i) The extent of deviation from the statutes, rules or orders governing the operation of the child care agency;

(ii) The severity of the violation, including specifically the level of risk of harm to the children in care of the

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person or entity caused by the violation; and

(iii) The penalty may be further classified based upon whether the violation resulted in the issuance of an order of summary suspension, denial or revocation of the license of the agency and whether death or injury of a child occurred as a result of violation;

(D) The economic benefits gained by the violator as a result of noncompliance;

(E) The agency's efforts to comply with the licensing requirements; and

(F) The interest of the public.

(3) The department shall assess the civil penalty in an order that states the reasons for the assessment of the civil penalty, the factors used to determine its assessment and the amount of the penalty.

(4) The order may be served on the licensee personally by an authorized agent of the department who shall complete an affidavit of service, or the order may be served by certified mail, return receipt requested.

(5) The licensee may appeal the penalty to the board of review by filing a request for an appeal in writing with the commissioner within ten (10) days of the service of the order.

(6)(A) Civil penalties assessed pursuant to this subsection (c) shall become final ten (10) days after the date an order of assessment is served if not timely appealed, or, if timely appealed, within seven (7) days following entry of the board's order unless the board's order is stayed.

(B) If the violator fails to pay an assessment when it becomes final, the department may apply to the chancery court for a judgment and seek execution of such judgment.

(C) Jurisdiction for recovery of such penalties shall be in the chancery court of Davidson County.

(7) All sums recovered pursuant to this subsection (c) shall be paid into the state treasury, but shall be earmarked to be used by the department exclusively to improve child care quality in this state by funding activities that include, but are not limited to, child care provider training activities, but excluding any costs associated with conducting criminal background checks.

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(8) This subsection (c) relative to civil penalties shall be discretionary with the department, and shall not be a prerequisite to any licensing action to suspend, deny or revoke a license of a child care agency. Civil penalties may also be imposed in conjunction with the probation, suspension, denial or revocation of a license.

(d)(1) If the department determines that any applicant for a temporary license or for the renewal of an existing license has failed to attain, or an existing licensee has failed to maintain, compliance with licensing laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, the department may deny the application for the new or renewed license or may revoke the existing license; provided, that the department at any time may deny a temporary license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, that if the department determines that repeated or serious violations of licensing laws or regulations warrant the denial or revocation of the license, then, notwithstanding any provisions of § 4-5-320 or this subsection (d) to the contrary, the department may seek denial or revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application or before or after notice of the revocation.

(2) Notwithstanding § 4-5-320, the notice of denial or revocation may be served personally by an authorized representative of the department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.

(3) If application for the temporary, annual, or extended license is denied or if an existing license is revoked, the applicant may appeal the denial or revocation by requesting in writing to the department a hearing before the child care agency board of review within ten (10) days of the personal delivery or mailing date of the notice of denial or revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.

(4) The hearing upon the denial or revocation shall be heard by the board of review within thirty (30) days of the date of service of the notice of denial or revocation; provided, that, for good cause as stated in an order entered on the record, the board or the administrative law judge may continue the hearing. In order to protect the children in the care of the agency from any risk to their health, safety and welfare, the board or administrative law judge shall reset the hearing at the earliest date that circumstances permit.

(5)(A) If timely appeal is made, pending the hearing upon the denial or revocation, the child care agency may continue to operate pending the decision of the board of review unless the license is summarily suspended as provided in subsection (e).

(B) The board, as part of its decision regarding the status of the applicant's application for a license or the licensee's license, may direct that the child care agency be allowed to operate on a probationary or conditional status, or may grant or continue the license with any restrictions or conditions on the agency's authority to provide care.

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(e)(1) Subject to this subsection (e), if the department determines at any time that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the department pending any further proceedings for revocation, denial or other action. If the department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by this part.

(2) The department shall set forth with specificity in its order the legal and factual basis for its decision, stating in the order the specific laws or regulations that were violated by the agency, and shall state with specificity in the order the reasons that the issuance of the order of summary suspension is necessary to adequately protect the health, safety or welfare of children in the care of the child care agency. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or that have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.

(3) In issuing an order of summary suspension of a license, the department shall use, at a minimum, the following procedures:

(A) The department shall proceed with the summary suspension of the agency's license and shall notify the licensee of the opportunity for an informal hearing within three (3) business days of the issuance of the order of summary suspension;

(B) The notice provided to the licensee may be provided by any reasonable means and, consistent with subdivision (e)(2), shall inform the licensee of the reasons for the action or intended action by the department and of the opportunity for an informal hearing as permitted by subdivision (e)(3)(C);

(C)(i) The informal hearing described by this subdivision (e)(3) shall not be required to be held under the contested case provisions of the Uniform Administrative Procedures Act;

(ii) The hearing is intended to provide an informal, reasonable opportunity for the licensee to present to the hearing official the licensee's version of the circumstances leading to the suspension order;

(iii) The sole issues to be considered are:

(a) Whether the public health, safety or welfare imperatively require emergency action by the department;

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(b) What, if any, corrective measures have been taken by the child care agency following the violation of licensing laws or regulations and prior to the issuance of the summary suspension order that eliminate the threat to the public health, safety or welfare of the children in the care of the agency; and

(c) Whether the agency demonstrates a reasonable ability to maintain or continue compliance with all relevant licensing laws and regulations; and

(iv) The hearing official may lift, modify or continue the order of summary suspension;

(D) Subsequent to the hearing on the summary suspension, the department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license.

(4) The department shall by rule establish any further necessary criteria that it determines are required for the determination of circumstances that warrant imposition of the summary suspension order and any other necessary procedures for implementation of the summary suspension process.

(5) If the conditions existing in the child care agency present an immediate threat to the health, safety or welfare of the children in care, the department may also seek a temporary restraining order from the chancery or circuit court of the county in which the child care agency is located, seeking immediate closure of the agency to prevent further harm or threat of harm to the children in care, or immediate restraint against any violations of the licensing laws or regulations that are harming or that threaten harm to the children in care. The department may seek any further injunctive relief as permitted by law in order to protect children from the violations, or threatened violations of the licensing laws or regulations. The use of injunctive relief as provided by this subdivision (e)(5) may be used as an alternative, or supplementary measure, to the issuance of an order of summary suspension or any other administrative proceedings.

(f)(1) In determining whether to deny, revoke or summarily suspend a license, the department may choose to deny, revoke or suspend only certain authority of the licensee to operate and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to, transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency that the department determines should be restricted or modified to protect the health, safety or welfare of the children. The board of review, in considering the actions to be taken regarding the license, may likewise restrict a license or place whatever conditions on the license and the licensee it deems appropriate for the protection of children in the care of the agency.

(2) The actions by the department or the board authorized by this subsection (f) may be appealed as otherwise provided in this part for any denial, revocation or suspension.

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(g)(1) When an application for a license has been denied, or a license has been revoked, on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the board's or reviewing court's order.

(2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2) years from the effective date of the denial or revocation if not appealed, or, if appealed, from the effective date of the board's or reviewing court's order.

(3) If an application for a license has been denied, or a license has been revoked, on three (3) occasions, the agency shall not receive another license for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care agency if that person participated in such capacity in a child care agency that has been denied a license, or that had a license revoked, on three (3) occasions.

(5)(A) The time restrictions of subdivisions (g)(1) and (2) may be waived by the board of review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the commissioner, in a separate subsequent hearing before the board of review or, in the discretion of the commissioner, upon review by the commissioner.

(B) The agency must show to the board's or the commissioner's satisfaction that the agency has corrected the deficiencies that led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations. The decision of the board or the commissioner shall be reduced to an order, which shall be a final order pursuant to the Uniform Administrative Procedures Act, and may be appealed pursuant to § 4-5-322.

(C) No waiver may be granted for any permanent restriction that has been imposed pursuant to subdivision (g)(3).

(h)(1) In conducting hearings of the appeal of a denial or revocation of a license before the board of review or for review of summary suspension orders, it is the legislative intent that such hearings be promptly determined consistent with the safety of the children in the care of the child care agency appealing the department's licensing action and with the due process rights of the license applicants or licensees.

(2) If, however, the administrative procedures division of the office of the secretary of state certifies by letter to the recording secretary of the board of review that the division's contested case docket prevents the scheduling of a hearing on the appeal of the denial or revocation of a license before the board of review within the initial time frames set forth in this part, then the department shall have the authority to obtain an attorney who shall act as the administrative law judge to conduct the proceedings before the board. The substitute administrative law judge may be obtained by contract with a private attorney or by contract or agreement with another state agency. The substitute

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administrative law judge shall have all authority as an administrative law judge of the department of state. The hearing may be continued by order of the board for the purpose of obtaining a substitute judge.

(3) Hearings on summary suspension orders shall be heard by an administrative law judge from the administrative procedures division of the secretary of state's office, if the administrative law judge is available within the time frames for a summary suspension hearing. If the administrative procedures division of the secretary of state's office informs the department that an administrative law judge is unavailable, the department may obtain an administrative law judge or hearing officer who is not an employee of the department who may be obtained by the department by contract with a private attorney or by contract or agreement with another state agency. The administrative law judge or hearing officer shall have authority, as otherwise permitted in this section, to enter orders binding on the department resulting from show cause hearings involving summary suspension orders. If the administrative procedures division of the office of the secretary of state informs the department that the division's contested case docket prevents the scheduling of a hearing on the issuance of a summary suspension order within the initial time frames set forth in this part, and if the department is unable to obtain a private or state agency administrative law judge or hearing officer to hear the show cause hearing on the summary suspension order within the time frames set forth in this part, the department may utilize a hearing officer from the department's administrative review section.

(i) By July 1, 2000, any initial rules to implement this section shall be by emergency rules of the department; provided, however, that any permanent rules shall be promulgated pursuant to the Uniform Administrative Procedures Act.

T. C. A. § 71-3-510

§ 71-3-510. Board of review; composition

Effective: July 9, 2012

(a)(1) A child care agency licensing board of review shall review:

(A) Actions initiated by the departments of human services and children's services to deny or revoke or to otherwise limit any license except for summary suspension of, or probation involving, a license;

(B) Actions to review any civil penalties imposed by the department of human services; or

(C) Any safety plan implemented by the department of human services that will be, or has been in effect ninety (90) days or more.

(2)(A) In reviewing any licensing action pursuant to this part or pursuant to title 37, chapter 5, part 5, the board of review shall consist of nine (9) persons. Five (5) members of the board shall include the commissioners of health and education or their designees, the executive director of the commission on children and youth or designee, and a member from one (1) current or previous standards committee from the departments of human services and

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children's services. Four (4) persons shall be selected from a pool of up to twelve (12) representatives at-large to be selected by the five (5) stated board members, as follows:

(i) Four (4) shall be selected to serve for one (1) year;

(ii) Four (4) shall be selected to serve for two (2) years; and

(iii) Four (4) shall be selected to serve for three (3) years.

(B) Thereafter, each at-large representative shall be selected to serve for terms of three (3) years or until such representative's successor is selected.

(b) A quorum of the board shall consist of five (5) persons.

(c) In establishing a quorum for the board to conduct its review of the licensing actions of the departments, the chair shall randomly select the names of the at-large members of the board for the board's current licensing review action from the pool of twelve (12) persons selected pursuant to subsection (a) until the nine-member composition is reached or, if that is not possible, until a quorum is reached.

(d) The commissioner of education or the commissioner's designee shall serve as the chair of the board until a chair is selected by the board. The board shall elect a vice chair who shall serve in the absence of the chair. If the chair resigns, is unable to perform the duties of the chair or is removed, or the chair's term on the board expires, the commissioner of education shall appoint a new chair until the board can elect a chair. The vice chair shall have authority to sign all orders of the board in the absence of the chair and for actions of the panels under subsection (f).

(e) The recording secretary for the board shall be a member of the professional staff of the department of human services based upon an inter-agency agreement for the services of the recording secretary as the commissioners of children's services and human services may deem appropriate, and any person selected by the agreement of the departments shall serve as recording secretary for the board. The recording secretary shall be responsible for scheduling the board's meetings and arranging for the facilities to conduct the hearings of the board for both departments and such other duties as may be necessary to accommodate the business of the board. The recording secretary shall serve without additional compensation from the department.

(f) In order to complete the work of the board, the chair may appoint one (1) or more panels of the board with a quorum of five (5) members, at least two (2) of whom shall be randomly selected at-large members selected by the chair. The chair of the board shall appoint the chair of the panel. The panel shall have complete authority to hear any case under the board's jurisdiction and shall have complete authority to enter any necessary orders concerning licensing actions conducted before the board of review. Any orders of the panel shall be signed by the chair of the panel, or by the board chair or vice chair.

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(g) Any necessary regulations governing the board's procedure shall be promulgated by the department of human services, in consultation with the department of children's services, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2.

(h) Any applicant or licensee may petition the chancery court of Davidson County pursuant to § 4-5-322 for judicial review of the board's decision.

(i)(1) All members of the review board shall serve without pay.

(2) The four (4) members at-large who are selected to serve on the board and the members from the standards committees of the departments shall receive reimbursement in conformity with law and regulations for their expenses incurred in the performance of their official duties pursuant to this part. Such expenses for the representatives from the standards committees from the respective department shall be paid from the funds appropriated to the departments.

(3) The expenses for the at-large members shall be shared equally by the departments of children's services and human services.

(4) All reimbursement for travel expenses shall be in accordance with the comprehensive state travel regulations applicable to state employees.

T. C. A. § 71-3-511

§ 71-3-511. Standards committees

Effective: July 1, 2011

(a) The commissioner of human services shall appoint a standards committee composed of twelve (12) citizens, three (3) from each grand division of the state, and three (3) at-large for the purpose of developing or reviewing standards and regulations for each class of child care agency defined in this part. The classes of child care regulated by the department shall be represented by members of the standards committee.

(b) For any new class of child care agency as defined in this part, the standards committee shall develop and recommend to the commissioner the standards and regulations for that new class of child care agency. The standards and regulations of each existing class of child care agency shall be reviewed by a standards committee beginning every four (4) years following the date of submission of its last recommendations or more frequently as the commissioner may direct.

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(c) The standards committee shall act in an advisory capacity to the commissioner in recommending any initial standards or regulations for any new class of child care agency or any changes to the existing standards or regulations of any class of child care agency.

(d) The committee shall cease to exist upon submitting its recommendations to the commissioner, but may be re-established by the commissioner at any time to further review its recommendations or to consider additional standards or regulations or to consider revisions to the standards or regulations.

(e)(1) In making appointments to the committee, the commissioner shall strive to ensure that at least one (1) person serving on the committee is sixty (60) years of age or older and that at least one (1) person serving on the committee is a member of a racial minority.

(2) Except as otherwise provided in this section, in making appointments to the standards committees, the departments shall strive to ensure that the membership of the standards committees includes a balance of representatives of the regulated industry and persons whose expertise would be of assistance to the departments. The departments shall appoint child advocates, social workers, attorneys, and other such persons with knowledge and expertise in the specified area, as well as citizen members to the committees.

(f) The members of the committee shall not receive any compensation for their services but shall be reimbursed for their travel to and from the committee meetings and for their meals and lodging in accordance with the state travel procedures and regulations.

T. C. A. § 71-3-512

§ 71-3-512. Five-year olds attending day care institutions lacking kindergarten status

(a) A family child care home, group child care home or child care center that lacks approved kindergarten status for purposes of § 49-6-201 shall not enroll or continue to enroll any child five (5) years of age during the period of the local education agency's regular school year, without first obtaining from the child's parents or legal guardians a signed acknowledgment of the fact that the child's attendance at the family child care home, group child care home or child care center does not satisfy the mandatory kindergarten prerequisite for the child's enrollment in the first grade.

(b) Any such signed acknowledgment shall be retained by the family child care home, group child care home or child care center for a period of two (2) years. Failure to comply with the requirements of this section may subject the family child care home, group child care home, or child care center to probation, denial or revocation of the child care agency license, or to civil penalty, by the department.

T. C. A. § 71-3-513

§ 71-3-513. Public records

Effective: July 9, 2012

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The records of any entity entering into a contract or grant with the state for child care broker services relating to such grant or contract shall be public records open for public inspection in accordance with § 10-7-503. Nothing in this section shall be construed to allow a social security number or residential address of any person to be considered a public record.

T. C. A. § 71-3-514

§ 71-3-514. Drug testing policy

Effective: July 1, 2009

(a)(1) All persons or entities operating a child care agency as defined in this part, unless exempt as provided in § 71-3-503, shall establish a drug testing policy for employees, directors, licensees and operators of child care agencies and for other persons providing services under contract or for remuneration for the agency, who have direct contact, as defined by the department, with a child in the care of the agency.

(2) The policy shall specify how testing should be completed by the child care agency and provide for immediate and effective enforcement action involving such persons by the child care agency in the event of a positive drug test.

(3) The policy shall be provided by the child care agency to persons employed or engaged for contract or remunerative services prior to July 1, 2009, and to all such persons upon initial employment or initial engagement in contract or remunerative services for the agency.

(4) The policy established pursuant to this section shall not supersede the requirements of § 71-3-502(d)(7)(C)(v) that all persons described in § 71-3-502(d)(7)(C)(v) satisfactorily complete a drug test prior to engaging in transportation services for children in a child care agency.

(b)(1) The policy shall require drug testing based upon reasonable suspicion that employees, directors, licensees, or operators of a child care agency, or other persons providing services under contract or for remuneration for the agency are engaged in the use of illegal drugs.

(2) The policy shall require persons employed or engaged for contract or remunerative services prior to July 1, 2009, to have a drug test based upon reasonable suspicion that the persons are engaged in the use of illegal drugs.

(3) Events that may give rise to reasonable suspicion for purposes of requiring a drug test include, but are not limited to:

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- (A) Deterioration in job performance or changes in personal traits or characteristics;
 - (B) Appearance in a specific incident or observation which indicates that an individual is under the present influence of drugs;
 - (C) Changes in personal behavior not attributable to other factors;
 - (D) Involvement in or contribution to an accident where the use of drugs is reasonably suspected, regardless of whether the accident involves actual injury; or
 - (E) Alleged violation of or conviction of criminal drug law statutes involving the use of illegal drugs or prescription drugs.
- (c) A child care agency shall, at no expense to the state, maintain for five (5) years and immediately make available to the department upon request a copy of drug testing results for an individual who is employed as a caregiver, director, licensee or operator at the child care agency, or for other persons providing services under contract or for remuneration for the agency, who have direct contact with children in the care of the agency.
- (d) It shall be the responsibility of the individual who is to be tested to pay the appropriate fees necessary to obtain a drug test pursuant to the policy established by a child care agency. Drug testing results obtained under this section are confidential and may be disclosed only for purposes of enforcing this part.
- (e) Notwithstanding subsection (a), a licensee or operator of a family child care home who has direct contact with children in the care of the family child care home shall submit to a drug test at the expense of the licensee or operator, when the department has reasonable suspicion to believe that the licensee or operator is engaged in the use of illegal drugs.
- (f) A child care agency that does not comply with this section is subject to the department:
- (1) Denying the application for a license;
 - (2) Denying the application for a license renewal; or
 - (3) Suspending or revoking a license issued.

T. C. A. § 71-3-515

§ 71-3-515. Potential employees; abuse or neglect of a child or adult; procedure to provide names

Effective: April 8, 2013

(a) The department of children's services and the department of human services shall develop a procedure whereby the names and other identifying information for all potential employees of the department of human services in that department's licensing division and adult protective services program and any persons who are subject to § 71-2-403 or § 71-3-507, and who, under those sections, may have contact with children in a childcare agency or with adults in an adult day care agency licensed by the department of human services, shall be submitted to the department of children's services and the department of human services adult protective services program to determine if the potential employees or other persons subject to those provisions were found by the department of children's services or the department of human services adult protective services program to have perpetrated abuse or neglect of a child or adult.

(b) No person shall be reported as an indicated perpetrator of abuse or neglect for purposes of this part or chapter 2, part 4 of this title, by either the department of children's services or the department of human services adult protective services program unless it is determined that the due process rights of the person were either offered, but not accepted, or were fully concluded pursuant to the rules of the department of children's services or the department of human services and applicable state and federal law.

T. C. A. § 71-3-516

Formerly cited as TNSTS71-3-534

§ 71-3-516. Drop-in centers; snow day usage by school-age children

Effective: July 9, 2012

Any license for a drop-in center issued under this part shall specify whether the center is appropriate for handling school-age children on snow days. A drop-in center may not accept any school-age child for care unless the department determines that center is an appropriate and safe location for such children on snow days. The department shall determine whether the center has adequate space for school-age children and shall set a limit on the number of such children that a center may accept on any one day. No child thirteen (13) years of age or older may be cared for by a drop-in center on a snow day. The center shall also provide to the department a list of trained care givers and other staff who are available for emergency calling and shall annually update such list.

T. C. A. § 71-3-517

§ 71-3-517. Written multi-hazard plan

Effective: July 1, 2013

(a) All persons or entities operating a child care agency as defined in this part, excluding drop-in child care centers and those programs and facilities exempt from licensing as provided in § 71-3-503, shall, in consultation with appropriate local authorities and local emergency management, develop a written multi-hazard plan to protect children in the event of emergencies, including, but not limited to, fires, tornados, earthquakes, chemical spills, and floods. Such persons or entities shall also inform parents and guardians of children attending the child care agency

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of the plan.

(b) The written plan required pursuant to this section shall include:

(1) Procedures for child care agency staff to notify parents in an emergency;

(2) The development of designated relocation sites and evacuation routes to those sites;

(3) Reunification plans for children and families; and

(4) Written individualized plans for accommodating a child's special needs in an emergency situation.

(c) The child care agency shall maintain documentation that the emergency plan is reviewed monthly.

(d) All child care agency staff persons shall be trained on the plan annually.

(e) The child care agency shall implement these emergency procedures through timely practice drills to meet local regulations and local emergency services plans and shall maintain documentation of drills for one (1) year. Such drills shall involve the following:

(1) At least one (1) fire drill shall be conducted monthly;

(2) Child care agencies shall alternate drills each month to cover each shift while children are present, including extended care hours;

(3) At least one (1) drill other than fire shall be conducted every six (6) months; and

(4) All drills shall be conducted in such a way as to simulate, as closely as is practical, conditions of a real emergency, with alarms to be utilized and evacuation plans to be practiced.

(f)(1) Emergency telephone numbers for the following entities shall be posted next to all child care agency

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telephones and shall be readily available to all child care agency staff members:

- (A) Fire department;
- (B) Police department and sheriff's office;
- (C) Nearest hospital emergency room;
- (D) Department of children's services child abuse hotline;
- (E) Local emergency management agency;
- (F) Ambulance or rescue squad;
- (G) Poison control center; and
- (H) Department of human services child care complaint hotline.

(2) If a generic emergency number, including, but not limited to, 911 service, is operable in the community, it shall also be posted in the manner prescribed in this subsection (f).

(g) All contact information for parents, guardians, and emergency personnel shall be readily available to all child care agency staff, including work, home and cell phone numbers.

T. C. A. § 71-3-518

§ 71-3-518. Placement of children; one parent on active duty in the armed forces

Effective: July 1, 2013

On or after July 1, 2013, unless otherwise prohibited by federal or state law, no child care agency licensed pursuant to this part shall place a child with at least one (1) parent or legal guardian that serves on active duty in the armed forces of the United States on a wait list behind a child with no parent or legal guardian serving on active duty in the armed forces of the United States.

T. C. A. § 71-3-519

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§ 71-3-519. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-520

§ 71-3-520. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-521

§ 71-3-521. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-522

§ 71-3-522. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-523

§ 71-3-523. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-524

§ 71-3-524. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-525

§ 71-3-525. Repealed by 1984 Pub.Acts, c. 789, § 6

T. C. A. § 71-3-526

§ 71-3-526. Repealed by 1984 Pub.Acts, c. 789, § 6

T. C. A. § 71-3-527

§ 71-3-527. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-528

§ 71-3-528. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-529

§ 71-3-529. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-530

§ 71-3-530. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-531

§ 71-3-531. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

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T. C. A. § 71-3-532

§ 71-3-532. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-533

§ 71-3-533. Repealed by 2000 Pub.Acts, c. 981, § 1, eff. July 1, 2000

T. C. A. § 71-3-534

§ 71-3-534. Transferred to § 71-3-516 by the Code Commission in 2012.

Effective: July 9, 2012