HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 896

LICENSING OF BEFORE AND AFTER SCHOOL CHILD CARE FACILITIES

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Historical Note: The chapter is based substantially upon chapter 892 of title 17, Hawaii Administrative Rules. [Eff 1/25/82; am 7/15/83; am 9/30/85; R 2/9/89]

§17-896-1 Definitions. For the purpose of this chapter:

"Acting director" means a person who assumes the responsibilities of director of the child care facility in the absence of the director.

"After or before school care aide" means a person responsible for helping the leader carry out the direct care of the children, under the direction of the program leader or assistant program leader.

"After or before school care assistant program leader" means a person responsible for planning, carrying out, or both, direct care of the children under the direction of the program leader.

"After or before school care program leader" means a person responsible for planning, carrying out, or both, the direct care of the children in the program. For example, making contact with parents, keeping appropriate records, observing and evaluating the child's development, supervising staff and volunteers,

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and working cooperatively with the director and other staff toward achieving program goals and objectives.

"After school care" means child care provided after the close of the regular school day during the academic year and summer for children ages four years and eight months and older who are enrolled in public or private elementary schools.

"Before school care" means child care provided before the opening of the regular school day during the academic year for children four years and eight months and older who are enrolled in public or private elementary schools.

"Child" means any person who has not reached the age of eighteen.

"Child care" means those situations where a person or organization has agreed to assume and has been entrusted with the responsibility for the child's supervision, development, safety, and protection apart from the parent or guardian. Care shall be for a part of a twenty-four hour day.

"Child care center (CCC)" or "group child care center (GCCC)" means a place other than a private home, maintained by an individual, organization, or agency for the purpose of providing child care. The term child care center or group child care center shall include child nurseries, nursery school groups, preschool child play groups, parent cooperatives, drop-in child care centers, after or before school, holiday, and summer care for elementary school age children, or other similar units operating under any name.

"Child development associate (CDA)" means any person credentialed by the council for early childhood professional recognition (national association for the education of young children) to assume primary responsibility for a group of young children in a developmental early childhood program.

"Compliance" means conformity in fulfilling formal or official requirements of chapter 17-896.

"Council for early professional recognition (national association for the education of young children)" means the agency contracted by the U. S. Department of Health and Human Services to grant the child development associate (CDA) credential.

"County building code" means the building code used by the applicable counties.

"Director," "principal," or "program coordinator," means the person at the facility having responsibility for its administration and program.

"Emergency" means an unforeseen combination of circumstances which calls for immediate action.

"First aid kit" means materials and equipment in one location in a suitable container for meeting medical emergencies. A first aid kit shall be of the type approved by the american red cross, american medical society, or the state department of health.

"Form 14" means a printed form made available by the state department of health or the state department of education to record a child's immunizations and health record.

"Group child care home (GCCH)" means a facility that may be an extended or modified family child care home which provides care to no more than twelve children during any part of a twenty-four hour day. Group child care homes are licensed under the rules for group child care centers.

"Guardian" means a person other than a child's parents who has legal authority over and responsibility for a child.

"Handicapped child" means a child who is medically determined blind, deaf, mentally retarded, or emotionally disturbed, or is orthopedically or otherwise chronically handicapped.

"Ill" or illness" is a subjective term which shall be defined by each provider with regard to admitting or not admitting sick children to child care.

"Lavatory" means a vessel or basin for washing which is in conformity with plumbing codes in force in the State.

"License" means a certificate of approval issued by the state department of human services authorizing the operation of a child care facility.

"Local sanitary codes" means the specific rules set up by a county, the state department of health, or a comparable federal agency, which govern aspects of health and safety.

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"Minor deficiencies" means deficiencies which do not involve risk to life, health, or safety of the children enrolled at the child care center.

"Policy" means a principal plan for the management of a child care facility.

"Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, egg, meat, poultry, fish, shellfish, edible crustacea, or other ingredients in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms.

"Provisional license" or "temporary permit" means a temporary license issued at the discretion of the department for a maximum period of six months to a child care facility which is unable to conform to all the rules at the time the license is issued.

"Qualified nutrition consultant" means a dietitian or nutritionist who meets the advanced educational requirements for membership in the American Dietetic Association and is eligible for registration; or one who has a master's degree in Public Health Nutrition or Nutritional Sciences.

"Regularly" means the typical or normal pattern of a child care facility, or a practice or schedule that is routine and uniform and is not subject to unexplained or irrational variations.

"Rules" means the rules developed by the department of human services to set minimum standards of care and safety for the protection of children in child care.

"Single service utensils" means the supplies or equipment used once to serve food (e.g. paper plates, cups, disposable forks).

"Staff member" means child care, office, maintenance, and other support personnel who are employed by the child care facility, including volunteers.

"State child care advisory committee" means a group of people appointed by the department of human services to advise the department on matters regarding child care, including child care rules.

"Substitute" means a person who serves as a replacement for not more than ten consecutive working

days when another caregiver is absent on an emergency or unplanned basis.

"Supervision" means the act of being within sight or hearing distance of the children to insure the safety and protection of the children.

"Teacher," "teacher-director," "head teacher," "lead teacher," or "program leader" means a person responsible for planning and implementing all or part of the program activities, preparing program materials, and supervising and training other staff.

"Temporary hire" means a person who serves as a replacement when another caregiver is absent on a planned basis.

"Temporary permit" - see provisional license.

"USDA child care food program" means the food standards established by the United States Department of Agriculture.

"Volunteers" means persons offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the program. [Eff 2/9/89; am and comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §§346-151, 346-162)

SUBCHAPTER 1

LICENSING PROCEDURE

§17-896-2 Application. (a) A completed application to operate a before and after school child care center must include the following:

(1) A signed department application form;
(2) A written statement of operation policies;
(3) Verification that the facility meets the applicable county codes;
(4) Completed employment history clearance forms;
(5) Results of the criminal history clearance and child abuse/neglect history check as indicated in (A) and (B) below:
    (A) Applicants and employees shall provide such criminal history records, child abuse/neglect history, employment information, and consent

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to conduct such checks as may be required by state or federal law. Such information and consent shall be given upon forms supplied by the department.

(B) The department shall conduct criminal history, employment history and child abuse/neglect history checks on all applicants and their employees; applicants shall conduct employment history checks on all prospective employees.

(b) The date of application shall be the date a signed application form and all required information and documentation are received by the department.

(c) Notification of the disposition of the completed application shall be the date a signed application for certificate of approval shall be issued no later than ninety days from the date the completed application as defined in section 17-896-2(a) is received.

(d) If the department fails to issue a notification of the disposition of the application within ninety days, the application shall be deemed approved and a license shall be issued. [Eff 2/9/89; am and comp DEC 19 2002] (Auth: HRS §346-20) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833; SLH 1986; 50 Fed Reg. 2089)

§17-896-3 Inspection and issuance of license. (a) In exercising its authority to license a before or after school program or renew, suspend, or revoke the license, the department shall analyze the qualifications of staff, review the facility's written policies and program provisions, and inspect the facility.

(b) Authorized representatives of the department and parents or guardians of the children in care may visit the facility at any time during the hours of operation for purposes of observing, monitoring or inspecting the facilities, activities, staffing, and other aspects of the program and facility.

(c) The department may call on political subdivisions and governmental agencies for appropriate assistance within the agencies' authorized fields.

(d) The applicant or licensee shall cooperate with the department by providing access to its facilities, records, and staff. Failure to comply with reasonable requests may constitute grounds for denial, suspension, or revocation of license.

(e) After the initial licensure, the licensee shall ensure that new employees comply with section 17-896-2(a)(5).

(1) New employees and rehires shall be fingerprinted no later than five working days of employment.

(2) Any applicant, employee, or rehired employee who has left the state for six consecutive months or more is required to be fingerprinted again within five working days of beginning employment.

(f) Annual state name checks and child abuse/neglect history checks shall be conducted. The applicants and employees shall provide consent to the department to conduct such checks no later than five working days of the employment anniversary date or the anniversary date of the last consent to a state name check.

(g) The department shall request the applicant or licensee to terminate the employment of an employee who has a criminal history, employment history, or child abuse/neglect history, which poses a risk to children in care. Any such request shall be in writing and shall state those criminal convictions, employment history, or child abuse/neglect history which indicate a risk to children. The standard to be applied in disqualification of an applicant or an employee based on these checks shall be:

(1) Except as stated in section (B) below, felony convictions of any offenses against the person as provided in Hawaii Revised Statutes chapter 707 shall result in immediate disqualification.

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(A) The offenses include, but are not limited to:
- (i) murder in the first and second degree;
- (ii) manslaughter;
- (iii) negligent homicide in the first and second degree;
- (iv) negligent injury in the first degree;
- (v) assault in the first degree;
- (vi) reckless endangering in the first degree;
- (vii) terroristic threatening in the first degree;
- (viii) kidnapping;
- (ix) unlawful imprisonment in the first degree;
- (x) custodial interference in the first degree;
- (xi) sexual assault in the first, second, and third degree;
- (xii) incest;
- (xiii) promoting child abuse in the first and second degree;
- (xiv) extortion in the first and second degree;
- (xv) extortion when a firearm, explosive, or any dangerous weapon is immediately available and is physically used as part of the threat.

(B) In the case of second degree assault convictions, immediate disqualification shall occur for only those convictions within the last five years from the date of the most recent criminal history record check.

(2) Felony conviction of an offense against property rights as provided in Hawaii Revised Statutes chapter 708 shall result in immediate disqualification when the crime leading to the conviction involved use of a weapon, threatened harm, or violence to achieve the crime, and the conviction was

within the last five years from the date of the most recent criminal history record check. These offenses include, but are not limited to:

(A) burglary in the first degree;
(B) criminal property damage in the first degeee; and
(C) robbery in the first and second degree.

(3) Conviction of an offense against the family as provided in Hawaii Revised Statutes chapter 709 shall result in immediate disqualification when the conviction was within the last five years from the date of the most recent criminal history record check. These offenses include, but are not limited to:

(A) concealing the corpse of an infant;
(B) abandonment of a child;
(C) endangering the welfare of a minor;
(D) compensation by an adult of juveniles for crimes;
(E) endangering the welfare of an incompetent person; and
(F) abuse of a family or household member.

(4) Conviction of an offense against public health and morals as provided in Hawaii Revised Statutes chapter 712, shall result in immediate disqualification when the conviction was within the last five years from the date of the most recent criminal history record check. These offenses include, but are not limited to:

(A) promoting prostitution in the first, second, and third degree;
(B) loitering for the purpose of engaging in or advancing prostitution;
(C) displaying indecent matter;
(D) promoting pornography;
(E) promoting pornography for minors;
(F) open lewdness;
(G) promoting a dangerous drug in the first, second, and third degree;
(H) promoting a harmful drug in the first, second, third, and fourth degree;

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(I) promoting a detrimental drug in the first, second, and third degree;
(J) commercial promotion of marijuana in the first and second degree;
(K) promoting a controlled substance in, on, or near schools or school vehicles;
(L) promoting intoxicating compounds; and
(M) promoting intoxicating liquor to a minor.

(5) Confirmation by the department that the applicant or the employee was the perpetrator of abuse or neglect shall result in immediate disqualification.

(6) Confirmation by the department that the applicant or the employee was the perpetrator of threatened harm shall result in immediate disqualification for a five-year period starting from the date that the child abuse case record was closed. An applicant may request, at the discretion of the licensing social worker, that the case be presented to a panel constituted by the department which shall make a final decision of whether the confirmed threatened harm warrants immediate disqualification or an exception should be granted.

(7) For any other situations that have not been listed in this section, the department may disqualify an applicant or employee after assessing whether the caregiver poses a risk to the health, safety, or well-being of the children in care. When making an assessment, the criteria to be used shall include, but not be limited to, the following:
(A) The nature of the incident;
(B) When the incident occurred;
(C) Patterns of behavior which are considered reckless or negligent and resulted in or could have resulted in injury to the person and/or others; and
(D) Evidence of rehabilitation.

(h) When the applicant or licensee does not terminate the employment of the employee when requested under this section, the applicant or licensee shall

notify the department no later than seven working days of receipt of the request. Such notification shall be in writing and shall state the reason(s) for the decision.

(i) Refusal to terminate the employment of an employee, when requested under this section, shall be grounds for revocation or suspension of a license.

(j) Rules prescribed in this chapter are minimum standards. The department shall issue a license under the following conditions:

(1) A regular license shall be issued if the result of the department's evaluation indicates compliance with the applicable rules as established by the department; or

(2) A provisional license shall be issued if the result of the department's evaluation indicates that all of the applicable rules cannot be met immediately but shall be met within six months or less, and the deviations are minor deficiencies.

(k) The length of the licensing period shall be as follows:

(1) Regular licenses shall be valid for one year for new applicants and those providers licensed for less than four years, and for two years for all other providers unless subsequently suspended or revoked. When a regular license is issued after a provisional license, the expiration date of the regular license shall be one year or two years from the issuance date of the last provisional license;

(2) Provisional licenses may be issued for up to six months; and

(3) Licenses shall be renewed only upon application and upon the department's approval.

(l) Each license shall clearly state the kind of program the licensee is permitted to operate, the address of the licensee, and the number and types of children who can be cared for at the facility.

(m) Implementation of two year licenses shall be accomplished by dividing a unit's caseload so that one-half of the cases fall on the even year and one-half of

the cases fall on the odd years. To accomplish this, licenses one-year in length may be issued, if necessary, to achieve an even caseload between the two years. This decision shall be within the discretion of the department. [Eff 2/9/89; am and comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §§346-154, 346-156, 346-163, 346-165; 42 U.S.C. §§2002, 2005, 5751, 9833; 50 Fed. Reg. 2089)

§17-896-3.01 Fines. (a) The operation of a child care facility without a license is a violation and shall be punishable by a fine not to exceed the maximum amount allowable under the law.

(b) The following offenses may be punishable by a fine, not to exceed the maximum amount allowable under the law, and may also be subject to the denial, suspension or revocation of a license:

(1) Caring for more children than allowed by the facility's license;
(2) Violation of the staff-child ratio;
(3) Improperly certifying staff credentials;
(4) Failure to comply with timely request for criminal history records check;
(5) Allowing conditions to exist which constitute an imminent danger to the health, welfare, or safety of the children; or
(6) Injuries to children due to staff negligence.

(Eff DEC 19 2002) (Auth: HRS §346-156)

§17-896-4 Denial, suspension, revocation of license, and hearings. (a) The conditions for denial, suspension, or revocation of a license and the action to be taken by the department shall be as follows:

(1) The department shall deny, suspend, or revoke a regular or provisional license if an applicant or licensee does not comply with the rules of the department respecting child care facilities;
(2) An applicant or licensee whose license is about to be denied, suspended, or revoked shall be given written notice by certified or

registered mail addressed to the location shown on the license application;

(3) The notice shall contain a statement of the reason(s) for the proposed action and shall inform the applicant or licensee of the right to appeal the decision to the director of the department in writing, no later than ten working days after the mailing of the notice of the proposed action;

(4) Upon receiving a timely written appeal, the director of the department shall give notice of and an opportunity for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the application or license shall be denied, suspended, or revoked; and

(5) If no timely written appeal is made, processing of the application shall end or the license shall be suspended or revoked as of the termination of the ten day period.

(b) The immediate suspension of the license shall be ordered if conditions exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include: the existence of a health hazard on the premises, unsafe facility conditions that cannot be immediately abated, or refusal to terminate an employee as specified in section 17-896-3. The department shall take the following actions:

(1) Provide the licensee written notice of the order by personal service or by certified or registered mail addressed to the location shown on the license;

(2) Provide a statement of the reason(s) for the suspension in the notice and inform the licensee of the right to petition the department to reconsider the order no later than ten working days after mailing of the notice; and

(3) Declare that all operations shall cease as of the date of receipt of the notice, give the licensee reasonable notice upon receiving a

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written petition, and provide an opportunity for a prompt hearing before a hearing officer with respect to the order of suspension of the license. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision of the department as to whether the order of suspension shall be affirmed or reversed.

(c) At any hearing provided for by this section, the applicant or licensee may be represented by counsel and shall have the right to call, examine, and cross-examine witnesses. Evidence may be received, even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to the last known addresses as may be shown in the application, on the license, or otherwise.

(d) Filing of a request for fair hearing does not permit the applicant to continue to care for children under this chapter.

(e) If an applicant has their regular or provisional license revoked, they shall be unable to apply for another license for:

(1) A ninety-day period from the date that the license was revoked if the revocation was their first offense; and

(2) Up to six months from the date that the license was revoked if the revocation was their second offense. [Eff 2/9/89; am and comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-164; 42 U.S.C. §§2002, 2005, 9833)

SUBCHAPTER 2

ADMINISTRATION REQUIREMENTS

§17-896-5 Age of children in care. A before and after school child care facility may provide care to children aged four years and eight months and older who

are enrolled in public or private elementary schools. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §§346-14, 346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-6 Statement of operation policies. (a) A before and after school child care facility shall have written operation policies, which shall be available to the department, caregiver staff, and parents or guardians of children for whom care is, or may be, available.

(b) The policies shall be reviewed with each caregiver in the facility and with parents or guardians at the time of enrollment of a child.

(c) Policies shall cover the following areas:

(1) Ages of children accepted;

(2) Maximum number of children permitted by license;

(3) Specific hours of day, night, holiday, and vacation operation;

(4) Whether meals or snacks are served;

(5) Type of child care services to be offered;

(6) Provisions which may be made for special needs of individual children;

(7) Admission requirements and enrollment procedures;

(8) Fees and the plan for payment, including fees for different types of services and refund policy;

(9) Policy and plan for emergency medical care;

(10) Insurance coverage - each facility shall inform parents or guardians in writing of its policy relating to liability insurance; should a facility, which has liability insurance at the time of a child's enrollment, subsequently cancel or terminate its liability insurance, it shall provide written notice to each parent or guardian of a child in its facility, no later than seven working days of the cancellation or termination of its liability insurance coverage.

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(11) Rules concerning personal belongings brought to the facility;
(12) Transportation arrangements;
(13) Parental permission for trips and related activities outside the facility;
(14) Disclosure of information on the child, or parents or guardians of the child;
(15) Fund raising campaigns - children and staff shall not be exploited in activities which would be detrimental to the children or the program;
(16) Admission or non-admission of sick, moderately sick, or handicapped children;
(17) Brief written description of the facility's program goals; and
(18) Other policies which may be required by the department. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; §§2002, 2005, 9833)

§17-896-7 Information on owner or operator. (a) The name, address, and telephone number of the facility shall be supplied to the department.

(b) The name, business address, and business telephone number of the persons bearing the responsibility for the facility shall be supplied to the department.

(c) The name, business address, and business telephone number of the persons having specific authority and responsibility for overall administration and the services offered shall be supplied to the department.

(d) The name and address of the owner or sponsoring agency (privately owned, church or agency owned, etc.) shall be supplied to the department. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-8 Change in services. A facility shall notify parents or guardians and the department of any changes in the child care services it provides as follows:

(1) Written notification of changes in the services offered by the facility shall be provided to the department and to parents or guardians of children enrolled in the facility; and

(2) Notification of any changes in service shall be made no later than thirty days after the date of the change and shall be included in the facility's operating policies. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-9 Information and records on each child. (a) Admission procedures shall require that sufficient information and instruction from the parents or guardians be furnished to enable the caregiver to make decisions or act on behalf of the child.

(b) Prior to admission of a child to a facility, the provider shall obtain in writing from the child's parents or guardians the following information:

(1) The child's full legal name, birth date, current address, and preferred names;

(2) The child's likes, dislikes, allergies and other personal information which may impact on the child's over-all behavior;

(3) The name and address of the parents or guardians who are legally responsible for the child;

(4) Telephone numbers or instructions as to how the parents or guardians may be reached during the hours the child is in the child care facility;

(5) The name, address, and telephone number of persons who shall assume responsibility for the child if for some reason the parents or guardians cannot be reached immediately in an emergency;

(6) The name, address, and telephone number of persons authorized to take the child from the facility.

(c) The information shall be available on facility forms and shall be updated as necessary. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005, 9833)

§17-896-10 Disclosure of information on the child. Information pertaining to an individual child or parents or guardians of the child shall not be disclosed to persons other than the facility staff unless the parents or guardians of the child grant written permission for the disclosure or an emergency arises. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005, 9833)

§17-896-11 Information and records on facility. Written information and records on the facility shall be maintained and made available to the department. The facility shall maintain current records and information including:

(1) Roster of enrolled children;
(2) Daily attendance records by names of children;
(3) Daily menu for facilities which provide meals or snacks;
(4) Daily schedule of activities; and
(5) A list of staff members including each staff member's training, position or title, experience, and health records. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS. §346-162) (Imp: HRS §346-166; 42 U.S.C. §§2002, 2005, 9833)

§17-896-12 Transportation provisions. When transportation is provided by a facility, children shall be protected by adequate supervision and safety precautions as follows:

(1) For transportation to and from the program the vehicle and driver shall satisfy all relevant Motor Carrier Safety Rules and traffic laws of the state;

(2) During any field trip or excursion operated or planned by the facility, the staff-child ratios as required in section 17-896-17 shall apply;
(3) Children shall be instructed in safe transportation conduct; and
(4) Each passenger shall be properly seat belted as required by law. [Eff. 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

SUBCHAPTER 3

PROGRAM REQUIREMENTS

§17-896-13 Program provisions. The program conducted in the facility shall provide for staff supervision at all times and an environment and experiences which are aimed at promoting the individual child's physical, emotional, and social well-being and growth. This shall be done in the following ways:
(1) At least twenty-five percent of the program time shall be spent in gross motor activities, such as running, climbing and other vigorous activities, to promote physical development.
(2) To promote emotional development the program shall provide that:
(A) There are opportunities for individual self-expression;
(B) Each child is recognized as an individual;
(C) The child is afforded constructive guidance and the setting of clear-cut limits which foster the child's ability to be self-disciplined;
(D) Each child's personal privacy is respected;
(E) Providers shall not use:
(i) physical punishment, or
(ii) methods of influencing behavior which are frightening, humiliating,

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damaging, or injurious to the child's health or self-esteem;

(F) Providers respect each child's cultural, ethnic, and family background, as well as the child's primary language or dialect; and

(G) Provision shall be made for a place for each child's personal belongings.

(3) Programs to promote social development shall provide that:

(A) Children are guided in developing and working out ways of getting along with each other;

(B) Providers interact with the children in ways which emphasize and foster attitudes of mutual respect between adults and children; and

(C) Providers behave in ways which help the children develop attitudes of respect for all other persons as individuals and develop an appreciation of cultural and ethnic diversity.

(4) The activities and experiences provided by the program are appropriate to the developmental level of the children;

(5) The program provides a balance of active and quiet activities; and

(6) The program shall provide for the self-direction of the children by:

(A) Affording children opportunities to choose activities according to personal desires and interests and to move from one activity to another;

(B) Encouraging children to do things independently; and

(C) Providing children opportunities to be involved in decision making about group and individual activities. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-14 Communication with parents. Caregivers shall exchange information with parents or guardians about the children and relay concerns about the health, development, or behavior of the child to the parents or guardians promptly and directly. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-15 Program materials and equipment. (a) The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be appropriate to the ages of the children in care.

(b) The quantity of materials and equipment shall be sufficient to:

(1) Avoid excessive competition between the children and to avoid long waits for use of the materials and equipment; and

(2) Provide for a variety of experiences and appeal to the individual interests of the children.

(c) Protected areas where equipment and materials will be used with minimal interference or interruption shall be provided.

(d) Materials shall be kept clean, in good repair, and shall be accessible to children. The materials shall be stored in an orderly way and shall be arranged to allow children to select, remove, and replace the materials either independently or with assistance.

(e) Grass, soft media, or other protective measures shall be used under swings, slides, jungle gyms, and other similar outdoor play equipment.

(f) Equipment for both indoor and outdoor play shall allow children to use small and large muscles for imaginative play and creative activities.

(g) Storage space for play materials and equipment used by the children shall be available.

(h) There shall be a mat or cot available for any child who needs to rest. [Eff 2/9/89; comp] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

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SUBCHAPTER 4

STAFFING REQUIREMENTS

§17-896-16 Staff training, experience, and personal qualifications. (a) Each caregiver shall be qualified through training, experience, and personal qualities for the age group with which the person works.

(b) Applicants and employees shall be of reputable and responsible character and shall not have a criminal history record, employment history, or child abuse/neglect history which poses a risk to children in care as specified in section 17-896-3.

(c) Directors, program leaders, assistant program leaders, and aides employed in a licensed facility on the date that chapter 17-896 becomes effective shall be deemed to have adequate minimum qualifications for the type of staff position occupied and to maintain this status when shifting employment to another facility licensed under this chapter.

(d) The age requirements for staff shall be as follows:

(1) All staff positions other than child care aide, volunteer, clerical, or maintenance personnel shall be at least eighteen years old; and

(2) A child care aide shall be at least sixteen years old to be counted in the staff-child ratio and at least thirteen years old to be hired as an aide.

(e) The director shall have the following qualifications:

(1) A bachelor's degree from an accredited college or university and twelve months of experience in working with children; or

(2) Child development associate (CDA) certification and twelve months of experience in working with children; or

(3) Two years of college education and twenty-four months of experience in working with children; and

(4) In all cases, at least six months of experience shall be with children of the appropriate age for the before/after school program being directed.

(f) The director may teach and may be counted in the staff-child ratio as follows:

(1) In a facility with an enrollment of less than fifty children, the director may teach and may be counted in the staff-child ratio; and

(2) In a facility with an enrollment of fifty or more children the director may teach but shall not be included in the staff-child ratio.

(A) Exception may be made and the director may be included in the staff-child ratio in cases of emergency or in special situations. In any case this inclusion in the staff-child ratio may not exceed ten hours per week.

(B) Exception may be made and the director may be included in the staff-child ratio during the first hour and the last hour of the regular operational day.

(C) Exception may be made and the director of a facility with an enrollment of fifty or more children may teach and be counted in the staff-child ratio when the attendance at the facility is less than fifty children.

(g) A program leader shall meet one of the qualifications:

(1) Two years of college education and six months experience in working with school-age children; or

(2) Child development associate (CDA) and six months experience in working with school-age children; or

(3) Completion of high school and nine months of experience in working with school-age children; and

(4) In all cases undergo an orientation training provided by the facility.

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(h) An assistant program leader shall be at least 18 years old, shall always be under the direction of a program leader, and shall undergo orientation training provided by the facility.

(i) An aide shall be at least thirteen years old, shall always be under the direction of a program leader or an assistant program leader, and shall undergo orientation training provided by the facility. Aides shall be at least sixteen years old to be counted in the staff-child ratio.

(j) Volunteers shall:

(1) Participate in an orientation training provided by the facility; and

(2) Meet the requirements of regular staff members to be counted in the staff-child ratio.

(k) Temporary hires shall meet qualifications of positions for which hired.

(l) Substitutes for director, assistant program leader, and aide shall meet the qualifications of the position for which hired.

(m) Substitutes for program leaders shall be at least eighteen years of age and shall have participated in an orientation training program of the facility, and the daily activities assigned to the substitute shall be closely supervised by the facility's director.

(n) Substitutes may be granted an extension to serve in the same position for more than ten consecutive days upon consultation with and approval of the department.

(o) Directors of facilities shall make available to all staff and volunteers information regarding workshops, seminars, training sessions or other courses that are available from any source, public or private, in order to encourage staff growth and development. [Eff 2/9/89; am and comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §§346-154, 346-162; 42 U.S.C. §§2002, 2005, 5751, 9833; 50 Fed. Reg 2089)

§17-896-17 Staff-child ratio. (a) Every facility shall have a director.

(b) The staff-child ratio shall be in writing and shall be made available to the department.

(c) The staff-child ratio shall not exceed twenty children per staff and shall be met and maintained by the facility at all times.

(d) Distribution of staff may include a team comprised of director, as allowed under section 17-896-16(f), program leader, assistant program leaders, and child care aides. Aides shall not constitute more than one-third of the required staff-child ratio.

(e) The staff members shall be on site and shall be assigned to a group of children to be included in the staff-child ratio.

(f) Custodians and cooks shall not be counted in the staff-child ratio when performing regular duties.

(g) When acting as the driver of the facility vehicle for transportation to or from the program or on excursions, the program leader, assistant program leader, or aide shall count toward the staff-child ratio for those children in the vehicle.

SUBCHAPTER 5

HEALTH STANDARDS FOR CHILDREN

§17-896-18 Health consultation provisions. All programs shall have on file written evidence that an arrangement has been made with a health care professional to provide consultation and this arrangement is satisfactory with the parents of the children. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-19 Evidence of child's health. (a) The child's enrollment in school shall be evidence of the child's good health.

(b) The facility shall have in writing information about a child's specific health condition which requires special attention by the program staff. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-20 Emergency care provisions. (a) Every facility shall have in writing:

(1) The name, address, and telephone number of a physician or health resource that shall be called in case of emergency; or

(2) The name of the nearest hospital or clinic where such care may be provided; and

(3) Permission of the parent or guardian to call the stated physician or health resource, or the hospital or clinic, if the parent or guardian cannot be reached in case of a health emergency.

(b) An adult shall accompany a child to the source of emergency care. The adult shall stay with the child until the parent or parent's designee assumes responsibility for the child's care. The selection of the adult shall not compromise the supervision of the other children in the program.

(c) Physical arrangements for children who become ill after arrival at the facility shall be available for the care of the child until parents or guardians can be notified to provide alternative arrangements. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162)) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-21 First aid and child cardio-pulmonary resuscitation (CPR). (a) The first aid requirement shall be as follows:

(1) There shall be at least one adult caregiver with a current certificate in first aid when children are present at the facility or at an off site group activity, such as during field trips and excursions.

(2) A current certificate means a certificate that has not expired.

(3) A first aid kit shall be available at the facility at all times.

(b) The child CPR requirement shall be as follows:

(1) There shall be at least one adult caregiver with a current certificate in child CPR when children are present.

(2) The child CPR course must be provided by the american red cross, american heart association, or any organization whose child CPR certification standards are equivalent to the american red cross or american heart association standards.

(3) A current certificate means a certificate that has not expired.

[Eff 2/9/89; am and comp DEC 19 2007] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-22 Admission of ill children. (a) When health policies of the facility allow ill children to be admitted or to remain in the child care facility, medical consultation shall be available regarding special care and medication. When medication prescribed by a physician is administered at the facility:

(1) The medication shall be kept in the original container bearing the prescription label, which shows a current date, the physician's directions for use, and the child's name;

(2) Medication shall be stored:

(A) In a refrigerator, if refrigeration is required; medication shall be separated from food by being enclosed in a covered container; or

(B) In a cool, dry, dark, secured enclosure, if refrigeration is not required.

(3) Medication shall be kept out of reach of children and shall be returned to parents or guardians when no longer in use; and

(4) There shall be an authorization signed by the parent or guardian for the staff to administer medication.

(b) Both the provider and the parents or guardians shall be familiar with the policies of the facility relevant to ill children.

(c) Provisions shall be made to allow the facility's medical consultant and the child's regular

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source of health care to communicate in order to preserve continuity and consistency of care. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-23 Admission of children with handicaps. (a) When children with handicaps are admitted to the program, the facility shall provide for the special needs of each child.

(b) The handicapped child shall be admitted only after consultation with the child's source of health care and the program's health consultant. The consultation shall include written recommendations to cover the child's special needs or to define the child's participation in the program.

(c) If the child's health care source considers it advisable, the staff of the program shall receive training related to the nature of the child's disability and the child's potential for growth and development before the child is admitted to the facility.

(d) Where the nature of the child's handicap or the number of handicapped children in the program necessitates added care, staff and equipment shall be available to cover these requirements. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-24 Daily nutritional needs. (a) To the extent possible, information provided by parents or guardians concerning the child's eating habits or special needs shall be considered, and children shall be encouraged, but shall not be required, to eat the food offered by the facility.

(b) The program shall have access to nutritional information provided by a qualified nutritionist, dietitian, or other community resources approved by the state department of health. The department of human services shall provide the facility with a list of qualified nutrition consultants.

(c) Children in after school programs for two to four hours shall be offered a nutritious snack which

may be brought from home or provided by the facility.

(1) In a facility providing snack, the snack shall consist of at least one of the following: fruit, vegetable, milk or its calcium equivalent, an enriched grain product, meat, or a meat alternate.

(2) If a beverage is served in addition to items allowed in section 17-896-24(c)(1), it can be water or fruit or vegetable juice; if fruit or vegetable juice, it shall be one hundred percent juice.

(d) In a facility providing breakfast, the breakfast shall consist of milk, fruit, or one hundred percent fruit juice, and an enriched grain product.

(e) In a facility providing full day care, parents may provide the nutritional requirements for that period of time. The facility shall provide a guide to parents or guardians on nutritional snacks and brown bag lunches.

(f) In a facility providing meal service, the minimum components and food amounts required by the United States Department of Agriculture (USDA) child care food program shall be met. The facility shall offer and provide the following combination of meals and snacks for children in care:

(1) Two to four hours - - - - one snack;

(2) Four to eight hours - - - one snack or breakfast and lunch or supper;

(3) Eight hours or more - - - one snack or breakfast and lunch or supper and one additional snack unless the eight hours or more extend into the evening hours when the child may be asleep);

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(4) When two snacks are required as in section 17-896-24(f)(3) above, at least one of those snacks shall include the provision and offering of milk or its calcium equivalent.

(g) Local ethnic foods may be added or substituted for quantity; for allowable food reimbursement, facilities shall consult with the USDA.

(h) Children shall not be offered foods to which they are allergic or, for religious reasons, cannot consume. Provision shall be made to secure such information from the parent or guardian, and the parent or guardian of the child shall arrange for nutritious substitute foods.

(i) Food shall not be used as a punishment or reward.

(j) The facility's food service shall be reviewed biennially by a qualified nutrition consultant engaged by the center or provided by an appropriate community resource.

(k) For facilities providing snacks only, the food service review may be completed by persons other than a qualified nutrition consultant, who are approved by the state department of health. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-25 Drinking water provisions. There shall be drinking fountains or another device or system whereby drinking water shall be readily accessible to all children. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346- 162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-26 Integration of mental health concepts. Mental health aspects of child development shall be integrated into the program as follows:

(1) At least one parent, guardian, foster parent, or social worker shall be interviewed prior to a child's admission to the facility. The interview shall be conducted to secure pertinent information on the child's over-all

behavior and to acquaint the parent or guardian with the facility's policies.

(2) The program director shall be aware of mental health, consultant, and clinical services for children for the early identification of social, emotional, intellectual, and behavioral problems of children; and

(3) The facility shall refer parents or guardians to sources of professional consultation in mental health upon the parents' or guardians' request or upon the recommendation of the facility's staff. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

SUBCHAPTER 6

HEALTH STANDARDS FOR STAFF

§17-896-27 Staff's health standards. Evidence that staff is free from health problems which would have a harmful effect on the children or would interfere with effective functioning shall be maintained at the facility as follows:

(1) The results of employment physical examinations of each person employed in the facility and each volunteer who serves ten or more hours per week shall be on file at the facility;

(2) Written evidence that each staff or volunteer is free from communicable tuberculosis as a result of a negative tuberculin skin test or a satisfactory chest x-ray taken within twelve months before beginning child care shall be on file at the facility. The tests shall be repeated in compliance with chapter 11-164, Hawaii Administrative Rules, of the state department of health;

(3) Each caregiver with an identified health problem shall provide the facility with a written statement from a physician that the

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caregiver is able to care for school age children; and

(4) The facility shall have provisions for substitution of staff who are too ill to function effectively or who present a serious health hazard to others in the facility. [Eff 2/9/89; am and comp] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-28 Personal health habits of staff. The personal health habits of all caregivers shall not interfere with the protection of the health of the children as follows:

(1) The facility shall have:

(A) Health policies developed specifically for the facility which set out aspects of personal health care; or

(B) Written guidelines covering appropriate aspects of personal health care that have been developed through a community health agency which are made known to the caregiver; or

(C) In-service training for the child care staff designed and presented by a health-trained individual which includes personal health care;

(2) If smoking is permitted on the premises, an individual shall not smoke in the presence of children; and

(3) Alcoholic beverages shall not be consumed or maintained at the facility during the hours of operation. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

SUBCHAPTER 7

ENVIRONMENTAL HEALTH STANDARDS

§17-896-29 Disaster plan for emergencies. Each facility shall have a written disaster plan to cover emergencies such as fire, flood, or natural disaster which shall be:

(1) Approved by the fire inspector, the health consultant, or the red cross;
(2) Practiced at regular intervals; and
(3) Posted in a prominent place in the facility.

[Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-30 Accidental injury precautions. The facility shall ensure that the risk of accidental injury on the premises is minimized by having accident prevention practices and policies in writing. The practices and policies shall be reviewed annually and the staff shall become familiar with the policies and practices. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-31 Environmental hazards. The indoor and outdoor premises of the facility shall be free of environmental hazards, shall be clean and comfortable, and shall provide for adequate space to meet the needs of the children as follows:

(1) The facility shall be protected against rodents and insects;
(2) The outdoor space shall be fenced, shall have natural barriers, or shall have other protective conditions to deter children from getting into unsafe areas;
(3) There shall be no open drainage ditches, wells, or holes into which children may fall;
(4) Drainage shall be adequate to prevent stagnant pools of water from accumulating;

(5) Garbage and trash shall be stored in covered containers out of reach of the children and shall be removed frequently enough to avoid creating a health hazard or nuisance;

(6) Open fireplaces shall not be used. Floor heaters and all heating elements, including hot water pipes, shall be insulated or installed in a manner which makes the pipes inaccessible to children;

(7) Furniture, equipment, and toys shall be sturdily constructed, without sharp edges, and shall present minimal hazards to children;

(8) Lead based paint shall not be used on surfaces accessible to children;

(9) Poisonous plants shall be out of reach of children on the premises;

(10) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times; and

(11) If a lodging house, boarding house, or any other business conflicts with the regular operation of the child care facility, the lodging house, boarding house, or other business shall not be conducted at the facility. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-32 Water supply. The water supply shall be from a source approved by the health authority. The plumbing shall be installed and maintained in a manner approved by local plumbing codes. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-33 Toilet and lavatory facilities. Toilet and lavatory facilities shall be of a type determined by the availability of water under pressure. Approved facilities, water or non-water carriage, shall

be provided for disposal of sewage and other liquid wastes. The following conditions shall apply:

(1) Where a public sewer is available, all plumbing fixtures and building sewers shall be connected thereto;

(2) Where a public sewer is not available, a private sewage disposal system of an approved type shall be installed and connected to all plumbing fixtures;

(3) Where water sewage disposal means are not available or feasible, sewage and other liquid wastes shall be disposed in a manner approved by the health authority;

(4) Indoor toilets shall be located in rooms separate from those used for cooking, sleeping, or eating; and

(5) Lavatories shall be provided in quantities commensurate with toilet facilities. If hot water is available, water temperature shall not exceed 100 degrees fahrenheit, 38 degrees celsius, at outlets accessible to children.

[Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-34 Food preparation. (a) Facilities which serve meals, or meals and snacks, shall meet all of the requirements of the Department of Health, Chapter 11-12, Food Establishment Sanitation rules.

(b) Facilities serving only snacks, which are not "potentially hazardous food," as defined in section 17-896-1 and which require minimal use of utensils, shall be exempt from the requirements of sections 17-896-34(a). These facilities shall have access to a sink with running water. Lavatories in toilet rooms shall not be used for preparation or cleaning of snacks.

[Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§ 2002, 2005, 9833)

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§17-896-35 Cleaning of premises. (a) All necessary cleaning equipment shall be available on the premises and a plan for regular cleaning shall be established to protect the health of the children and provider.

(b) Toys, table tops, furniture, and other similar equipment used by children shall be washed when the toys or equipment become gummy, sticky, or dirty. Plain soap and water shall be an adequate cleansing agent. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

§17-896-36 Swimming activities and wading pools. (a) When swimming or wading pools are part of the facility, equipment, or program, the swimming pools shall be constructed, maintained, and operated in accordance with building and health rules.

(b) When swimming or wading activities are included in the program, the following safety practices shall be observed:

(1) A certified lifeguard, who may be the caregiver, shall be on duty at all times when swimming pools are in use;

(2) Wading pools less than twenty-four inches at the deepest part shall be exempt from the requirements of Section 17-896-36 (b)(1). However, children shall be personally attended by a responsible adult at all times;

(3) Wading pools exempt under Section 17-896-36 (b)(1) shall be emptied immediately after each use; and

(4) Legible safety rules for the use of all types of pools shall be posted in a conspicuous location and read and reviewed at regular intervals by the caregiver responsible for the care of children. [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005, 9833)

SUBCHAPTER 8

PHYSICAL FACILITY STANDARDS

§17-896-37 Building codes and space requirements. (a) Programs using the facilities of an approved or licensed public or private school or a city, county, or state facility shall be deemed to have satisfied the department's requirements relating to zoning, building, electrical, and plumbing codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.

(b) Programs not using the facilities of an approved or licensed public or private school or a city, county, or state facility shall be inspected for compliance with the zoning, building, electrical and plumbing codes of the county or political subdivision in which the facility is located and to state rules as may be applicable to the facility.

(c) All buildings, building appurtenances, outdoor space, equipment, and all other parts of the facility shall be kept repaired, safe, and sanitary at all times.

(d) The indoor area required for each child is fifteen square feet. Lanai area which has both a roof and finished flooring may be counted for not more than fifty percent of the required indoor area." [Eff 2/9/89; comp DEC 19 2002] (Auth: HRS §346-20) (Imp: HRS §346-20; 42 U.S.C. §§2002, 2005, 9833)