

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 6

BENEFIT, EMPLOYMENT AND SUPPORT SERVICES DIVISION

CHAPTER 800

REQUIREMENTS FOR LISTING OF EXEMPT CENTER-BASED
PROVIDERS

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Historical Note: Chapter 17-800 is based substantially upon chapter 17-798.3, Child Care Services [Eff **AUG 06 2021**]

SUBCHAPTER 1

LISTING PROCEDURE

§17-800-1 Purpose. The purpose of this chapter is to establish the requirements for exempt center-

based child care providers to be listed with the department so that child care payments may be authorized to families receiving child care payments under chapters 17-798.3 and 17-799. [Eff **AUG 06 2021**]
] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-2 Definitions. As used in this chapter:

"After-school care" means child care provided after the end of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary schools.

"Applicant" means an organization that is exempt from licensure or registration by the department under §346-152, Hawaii Revised Statutes (HRS) and is applying to be listed with the department.

"Background check" means a review of a person's background information pursuant to chapter 17-801.

"Before-school care" means a child care provided before the start of the regular school day during the academic year for eligible children kindergarten age and above who are enrolled in public or private elementary schools.

"Caregiver" means any individual who is responsible for the physical well-being, health, safety, supervision, and guidance of children in child care.

"Caretaker" means an adult or an emancipated minor, who resides with and is responsible for the care of a child, and who is a birth, hanai, foster, or adoptive parent, guardian, permanent custodian, step-parent, or relative who is related to the child by blood, marriage, or adoption, or a person authorized by the caretaker through a power of attorney valid for a period not to exceed twelve months. The caretaker designation may remain even when the caretaker is temporarily absent from the home as long as the caretaker continues to maintain responsibility for the care, education, and financial support of the child.

This includes a foster parent who may not be providing financial support to the child but may be receiving support for the child from a private or public agency. This also includes teen parents who are birth parents to the child but cannot apply for child care payments themselves and must have an adult apply on their behalf.

"Child" means any person who has not reached the age of eighteen years, excluding emancipated minors.

"Child care" means those situations in which a person or child care facility has agreed to assume the responsibility for the child's supervision, development, safety, and protection apart from the parent, guardian, or caretaker for any part of a twenty-four-hour day.

"Child care facility" means the same as under section 346-151, Hawaii Revised Statutes (HRS).

"Compliance" means conformity in fulfilling the requirements of this chapter.

"Department" means the department of human services or its designee.

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

"Exempt center-based provider" means a facility providing legally-exempt child care, in accordance with section 346-152, HRS. It also includes all staff employed at a child care facility, any volunteers who provide care for children for ten hours or more per week, substitutes, and any other individuals who have unsupervised access to children in exempt center-based care.

"Facility" means the premises of the address on the application to be listed with the department, or that are a part of a place in which child care is provided, including enclosed areas, lanais, and outdoor areas.

"First aid kit" means materials and equipment, in one location in a suitable container, that is used for meeting medical emergencies. A first aid kit shall be of a type approved by the American Red Cross, American Medical Society, or the department of health.

"Group size" means the number of children assigned to specific staff who occupy an individual classroom or defined physical space within a larger area.

"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.

"Infant" means a child newborn up to and including twelve months old.

"Legally-exempt care" or "exempt care" means child care which is exempt from licensure or registration by the department under §346-152, HRS.

"Physician" means an individual licensed by the state for the practice of medicine.

"Provider" means any individual eighteen years and older, caregiver, facility, agency, or organization, including exempt center-based providers, and their adult employees, including volunteers who provide care for ten hours or more per week, substitutes, or any other individual who provides direct care, supervision, and guidance to children apart from and in the absence of the child's parent, guardian, or caretaker for part of a twenty-four-hour day. Providers are regulated by the department to provide child care or are legally exempt from child care licensure or registration by the department under section 346-152, HRS.

"Recalled" means any type of remedial action taken by a business for a corrective action plan agreed upon by the United States consumer product safety commission to address unsafe or potentially unsafe products to protect consumers, including the return of a product to the manufacturer or retailer for a cash refund or a replacement product, the repair of a product, and/or public notice of the hazard.

"Regularly" means the typical or normal pattern of the 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

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of care and safety for the protection of children in child care.

"School age" means the chronological age of a child who is eligible to enroll in grades kindergarten through sixth in public or private schools.

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

"State fiscal year" means a period beginning July 1 and ending June 30.

"Substitute" means a person who serves as a replacement caregiver for no more than ten consecutive working days in the same position when another caregiver is absent on an emergency or unplanned basis.

"Supervision" means to be within sight and hearing distance of the children to ensure the safety and protection of the children.

"Toddler" means a child over twelve months old up to and including twenty-four months old.

"Volunteer" means a person offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the caregivers. [Eff AUG 06 2021] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-151 and 346-152.5)

§17-800-3 Scope. (a) An exempt center-based provider shall be on a listing with the department if the exempt center-based provider cares for a child whose family is authorized to receive child care payments under chapters 17-798.3 or 17-799.

(b) Child care payments shall be for child care at an exempt center that include, but are not limited to:

- (1) Supervision to assure the child's safety, comfort, and health;
- (2) Personal care as appropriate to the child's age and developmental maturity;
- (3) Activities appropriate to the child's age,

- developmental stage, and degree of physical or mental ability;
- (4) Health and nutritional services; and
 - (5) Provision of child care by providers as defined in sections 17-798.3-2 and 17-799-2.
- (c) Child care payments shall not be allowed for educational services including, but not limited to:
- (1) Services provided to a child enrolled in or eligible for public education in kindergarten to twelfth grade during the regular school day, unless the child is out of school due to illness;
 - (2) Services for which a child receives academic credit toward graduation;
 - (3) Any instructional services that supplant or duplicate the academic program of any public or private school that is established for the purpose of compliance with the school attendance law of Hawaii; or
 - (4) Services that provide specialized training or skill development to children, as indicated in §346-152(a)(4), HRS. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5)

§17-800-4 Application, inspection, and authorization for listing with the department. (a)

A completed application to be on a listing with the department shall be submitted by an exempt center-based provider and shall include the following:

- (1) A signed department application form;
- (2) A written statement of operation policies;
- (3) Results of the background checks as described in section 17-801-4, and as indicated in subparagraphs (A) and (B) below:

(A) Applicants, employees, substitutes, volunteers, and new employees shall provide consents and complete

background checks pursuant to section 17-801-4.

- (B) The department shall conduct the background checks in accordance with chapter 17-801 on all applicants and their employees, substitutes, volunteers, and new employees.

(b) The date of application to be on a listing with the department shall be the date a completed application as described in subsection (a) is received by the department.

(c) Notification of the disposition of the completed application to be on a listing with the department shall be issued no later than ninety days from the date the completed application, as defined in subsection (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 authorized and the provider shall be placed on the department's listing of exempt center-based providers.

(e) An application that is not completed as defined in subsection (a) within nine months from when the application form was received by the department shall be considered expired, and a new application must be submitted.

(f) A provider shall be authorized for listing with the department if the provider is in compliance with this chapter.

(g) A provider shall be included in the department's listing unless removed from the department's listing pursuant to section 17-800-5 for up to one year at a time for new applicants and those providers on the listing for less than four consecutive years, and for two years for all other providers.

(h) A provider shall submit a subsequent application to be on the department's listing prior to the expiration of the existing listing period, and the application is subject to the department's authorization. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5)

§17-800-5 Denial or removal from department's listing, and hearings. (a) The conditions for denial or removal from the department's listing and the action taken by the department shall be as follows:

- (1) The department shall deny or remove a provider from the department's listing if an applicant or listed exempt center-based provider does not comply with the applicable statutes and rules of the department under this chapter;
- (2) The department may deny or remove a provider from the authorized listing if an applicant or listed exempt center-based provider does not cooperate with the department by providing access to its facilities, records, and staff members.

(b) The department shall give notice when the listing application is denied, or the exempt center-based provider is removed from the department's listing. The notice shall:

- (1) Be written and sent by certified or registered mail addressed to the location shown on the listing application;
- (2) Contain a statement of the reason(s) for the proposed action and shall inform the exempt center-based provider 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.

(c) Upon receiving a timely written appeal, the director of the department shall give notice of and an opportunity for an administrative appeal 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 to be placed on the department's listing shall be denied or the exempt center-based provider shall be removed from the department's listing.

(d) If no timely written appeal is made, processing of the application shall end or the exempt

center-based provider shall be removed from the department's listing as of the termination of the ten working day period.

(e) The exempt center-based provider shall be immediately removed from being on the department's listing pending the completion of an investigation of a complaint allegation that the exempt center-based provider may pose a risk to the children in care, for conditions that include but are not limited to the following:

- (1) Fails to terminate the employee, substitute, volunteer, or new employee who has a child abuse or neglect, adult abuse, criminal, or background check history and is determined to be not suitable to provide care in accordance with chapter 17-801;
- (2) Fails to exclude the employee, substitute, volunteer, or new employee who is the subject of an ongoing or pending criminal, child welfare, or department investigation in accordance with chapter 17-801;
- (3) Does not provide or require an employee, substitute, volunteer, or new employee to consent to conduct background checks in accordance with chapter 17-801;
- (4) Does not complete or require an employee, substitute, volunteer, or new employee to complete the health and safety trainings specified in section 17-800-10(b)(4); or
- (5) Allows conditions to exist which constitute an imminent danger to the health, welfare, or safety of the children. These risks include but are not limited to 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 17-801-6.

(f) Upon immediate removal from the department's listing pursuant to subsection (e), the department shall:

- (1) Provide the exempt center-based provider written notice of the determination by personal service or by certified or registered mail addressed to the provider's last known address;
- (2) Provide a statement of the reasons for the removal from the department's listing in the notice and inform the exempt center-based provider of the right to petition the department to reconsider the determination within ten working days after mailing of the notice;
- (3) Give the exempt center-based provider reasonable notice upon receiving a written petition; and
- (4) Provide an opportunity for a prompt administrative appeal before a hearing officer with respect to the order of removal from the department's listing. 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 removal shall be affirmed or reversed.

(g) Filing of a request for an administrative appeal does not permit the applicant or listed provider to continue to be on the department's listing of exempt center-based providers authorized to care for a child whose family is authorized to receive child care payments under chapters 17-798.3 and 17-799.

(h) An applicant who was removed from the listing pursuant to this section, shall be unable to apply to be on the department's listing for:

- (1) A ninety-day period from the date that the exempt center-based provider was removed from the department's listing if the removal was their first offense; and
- (2) One year from the date that the exempt center-based provider was removed from the department's listing if the removal was their second offense.

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(i) Child care payments to the family shall not continue during the exempt center-based provider's appeal process. The family may select another authorized provider in accordance with chapters 17-798.3 or 17-799. [Eff ~~10-1-2021~~ ^{AUG 06 2021}] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5)

§§17-800-6 to 17-800-9 (Reserved)

SUBCHAPTER 2

GENERAL REQUIREMENTS

§17-800-10 General eligibility requirements.

(a) An exempt center-based provider who meets the requirements of this chapter and is on the department's listing may be authorized as a provider for a child whose family unit receives child care payments pursuant to chapters 17-798.3 or 17-799.

(b) In order to be on the department's listing, an exempt center-based provider shall meet the following requirements:

- (1) Afford caretakers unlimited access to their children, including written records concerning their children, during normal hours of provider operation and whenever children are in the care of the provider;
- (2) Operate as an exempt center-based provider in accordance with section 346-152, HRS;
- (3) Complete background checks for all persons required in accordance with chapter 17-801;
- (4) Ensure that each caregiver, within forty-five days of hire, satisfactorily completes and provides written evidence to the department to show completion of trainings

as required by the department which includes but is not limited to:

- (A) An initial training in health and safety standards that is approved by the department prior to caring for an eligible child under chapters 17-798.3 or 17-799;
 - (B) Safe sleep training that is approved by the department prior to caring for an eligible child who is less than one year of age, until no children in care are less than one year of age, and on an annual basis; and
 - (C) A minimum of eight hours of training within one year of completion of the initial training as described in subparagraph (A), and completed annually thereafter, as prescribed by the department, in at least two of the following approved topic areas:
 - (i) Physical care of the young child;
 - (ii) Care of the sick child;
 - (iii) Child nutrition;
 - (iv) Child growth and development;
 - (v) Children with special needs;
 - (vi) Learning activities and play;
 - (vii) Family engagement;
 - (viii) Managing challenging behaviors;
 - (ix) Prevention of child maltreatment and abuse;
 - (x) First aid and child cardiopulmonary resuscitation;
 - (xi) Physical environment;
 - (xii) Health and safety;
 - (xiii) Child care business or program management; or
 - (xiv) Community resources; and
 - (xv) Training under section 17-800-10(b)(4)(B), when applicable;
- (5) Submit to initial, annual, and on-going monitoring inspections where care is being provided, to ensure compliance with the

requirements of subchapters 3 and 4 as follows:

- (A) The department shall assess the qualifications of exempt center-based providers, the staff members, employees, volunteers, and substitutes and inspect the premises.
 - (B) All exempt center-based providers listed with the department shall cooperate with the department by providing access to the premises, records, and staff.
 - (C) Failure to comply with reasonable requests may constitute grounds for removal from the department's listing and for the department to determine that the exempt center-based provider is not authorized to care for an eligible child pursuant to chapters 17-798.3 or 17-799;
- (6) Agree to report to the department, within one working day of occurrence, the death of a child or staff, or any serious injury received at the exempt center-based provider facility that resulted in a child's hospitalization;
 - (7) Report to the department within ten calendar days of occurrence, any of the following:
 - (A) Change in contact telephone number;
 - (B) Change in the address where the child care is being conducted; or
 - (C) Change in the staff, employees, substitutes, or volunteers who provide care to children;
 - (8) Agree to notify all parents of children in care when there are deficiencies as determined by the department for requirements under subchapters 3 or 4;
 - (9) Have procedures for reporting any suspected child abuse or neglect in accordance with section 350-1.1, HRS;

- (10) Have a written policies and procedures for suspension and expulsion of children which includes the following:
 - (A) The conditions under which a child may be suspended or expelled, if applicable;
 - (B) Sufficient timeframe before suspension or expulsion to enable parents to make alternative child care arrangements or to take the necessary action to allow the child to remain enrolled, except as specified in subparagraph (C);
 - (C) Conditions that may warrant immediate expulsion such as imminent danger to the health, welfare, or safety of the children or staff;
 - (D) Parents and guardians are provided written notification of any concerns that could lead to the child's expulsion;
 - (E) When expulsion occurs, the provider shall maintain a record of the conditions, parental notification, and action taken; and
 - (F) Other policies which may be required by the department;
- (11) Make available written policies for review by parents or guardians at the time of enrollment of a child; and
- (12) Notify parents or guardians and the department of any changes in the child care services it provides as follows:
 - (A) Written notification of changes in the services offered shall be provided to the department and to parents or guardians of children enrolled in the facility; and
 - (B) Notification of any changes in service shall be made no later than thirty days before the date of the change and all changes shall be included in the facility's operating policies.

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(c) All exempt center-based providers shall report any suspected child abuse or neglect in accordance with section 350-1.1, HRS.

(d) If the department receives information that the exempt center-based provider that is on the department's list is in violation of subchapters 3 or 4, or that the provider is conducting child care in violation of section 346-152, HRS, the department will conduct an investigation, including an inspection of the child care facility. The exempt center-based provider shall immediately be removed from the department's listing in accordance with section 17-800-5(e) until the department has completed its investigation and determined the exempt center-based provider is in compliance with section 346-152, HRS, or subchapters 3 or 4, or any legal disposition is completed and the department has placed the exempt center-based provider on the department's listing. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§§17-800-11 to 17-800-19 (Reserved)

Subchapter 3

HEALTH REQUIREMENTS

§17-800-20 Drinking water provisions. The provider shall make available suitable drinking water to all children in care. [Eff **AUG 06 2021**] Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-21 Handwashing. (a) The provider and children shall wash hands using water and soap:

- (1) Before and after eating or drinking;
- (2) Before and after preparing food or beverages;
- (3) Before and after diapering;
- (4) After using the toilet or helping a child in toileting;
- (5) After handling any bodily fluids or items containing bodily fluids;
- (6) After handling pets or animals; and
- (7) After outdoor play.

(b) Paper towels or separate cloth towels for each child shall be used after hand washing. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-22 Toilet and handwashing facilities. Children shall have access to toilet and hand-washing facilities that are clean and stocked with toilet paper and supplies required under section 17-800-21(b). [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-23 Handling of diapers or training underpants. The provider shall handle disposable and cloth diapers and cloth training underpants in the following manner:

- (1) Use a clean non-porous surface for changing diapers;
- (2) Use a space set aside for diapering that is separate from eating and food preparation areas;
- (3) Discard soiled disposable diapers in a covered container. The covered container shall be kept away from eating, food

storage, and food preparation areas and out of the children's reach;

- (4) Place soiled cloth diapers and cloth training underpants, without emptying or rinsing the contents, in a plastic bag and kept away from eating, food storage, and food preparation areas and out of the children's reach; and
- (5) Give soiled cloth diapers or cloth training underpants to the child's parent or guardian. [Eff AUG 06 2021] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-24 Food preparation and protection. If the provider offers meals and snacks, the provider shall:

- (1) Designate areas for eating or drinking;
- (2) Clean food preparation areas before and after meals and snacks; and
- (3) Store food in a safe and sanitary manner. [Eff AUG 06 2021] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-25 Evidence of child's health. (a) The provider shall obtain from the parent or guardian of each child, by the child's first day entering child care, information about the health needs for each child, including any allergies, evidence of compliance with examinations, immunizations, and tuberculosis clearance, in accordance with chapters 11-157 and 11-164.2, and maintain copies of the information and evidence.

(b) The provider shall not be required to obtain the evidence of immunizations described in subsection

(a) if the provider has the following:

- (1) A written statement from the parent or guardian objecting to immunization of the child on the basis of their religion; or
- (2) A written statement signed by the child's physician indicating that the child's medical condition contraindicates immunization.

(c) The provider shall allow a grace period of three months from the child's first day in care to obtain the evidence described in subsection (a) for the following:

- (1) Children experiencing homelessness; and
- (2) Children in foster care;

provided that the parents or guardians submit evidence to the provider in writing that documents the tuberculosis screening as required pursuant to chapter 11-164.2 and the health needs for the child, including any allergies, at the time the child is placed in care. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-26 Children who become ill. The provider shall ensure a clean and safe resting space to isolate children who are ill while in care; provided that for an ill child less than one year of age the resting space shall be in accordance with section 17-800-44. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-27 Administration of medication. (a) When medication prescribed by a health care professional is administered by the provider or provider's staff:

- (1) The child's parent or guardian shall submit to the provider written permission from the

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- child's parent or guardian to administer medication;
- (2) The medication shall be kept in the original container bearing the prescription label that shows a current date, the health care professional's directions for use, and the child's name; and
 - (3) The medication shall be kept out of the reach of the children and shall be returned to parent or guardian when no longer in use.
- (b) When over-the-counter medication is administered by the provider or provider's staff:
- (1) The child's parent or guardian shall submit to the provider written permission to administer medication; and
 - (2) The child's parent, guardian, or health care provider shall submit to the provider written directions for the administration of the medication. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5; 45 C.F.R. Part98)

§17-800-28 Provider's health standards. The exempt center-based provider shall:

- (1) Be free of communicable diseases, including tuberculosis; and
- (2) Be free of physical or psychological conditions which may impair or limit the provider's ability to provide child care. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-29 Personal health habits of provider and staff. The exempt center-based provider shall ensure:

- (1) No smoking is allowed on the premises, including electronic smoking devices, during child care hours of operation, and nicotine products shall be stored out of the reach of children.
- (2) No alcoholic beverages shall be consumed prior to or during child care hours of operation or kept at the facility during child care hours.
- (3) Any medications that impair or limit the provider's or provider's staff ability to provide child care shall not be consumed prior to or during child care hours of operation. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: HRS §§346-14 and 346-152.5;45 C.F.R. Part 98)

§§17-800-30 to 17-800-39 (Reserved)

Subchapter 4

SAFETY REQUIREMENTS

§17-800-40 Supervision. The provider or the provider's staff must be physically on-site and supervising the children in care at all times. Supervision means to be within sight and hearing distance to ensure the safety and protection of the children in care and to respond to an emergency. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

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§17-800-41 Managing children's behavior. (a) The provider shall ensure an environment that promotes a child's well-being.

(b) The provider and the provider's staff shall not use verbal, psychological, and physical punishment as a means of disciplining or managing children's behavior, including but not limited to, spanking, pinching, slapping, or shaking.

(c) The provider and the provider's staff shall not cause physical harm or neglect to any child.

[Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-42 Group sizes and provider-child ratios. (a) An exempt center-based provider shall maintain a maximum group size of:

- (1) 40 children for school-age children attending kindergarten and above in a public or private elementary school;
- (2) 32 children for four-year old children;
- (3) 24 children for three-year old children;
- (4) 16 children for two-year old children;

provided that exceptions shall be made for special events, such as but not limited to assemblies, performances, meal and snack time, and outdoor play area, and the staff-child ratios pursuant to subsection (b) shall be maintained during any such situations.

(b) An exempt center-based provider shall maintain the following minimum staff-child ratio for the ages of the children in care:

- (1) 1:20 for school-age children attending kindergarten and above in a public or private elementary school;
- (2) 1:16 for four-year old children;
- (3) 1:12 for three-year old children; and
- (4) 1:8 for two-year old children.

[Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-43 Disaster plan for emergencies. The provider shall have the following:

- (1) Verification of fire inspection completed annually by the county fire prevention bureau and no deficiencies that remain uncorrected;
- (2) An unexpired ABC multi-purpose type fire extinguisher in the child care area, kept out of the reach of children when children in care are not school-age;
- (3) An emergency exit plan which is posted in the child care area and practiced regularly with the children;
- (4) Emergency evacuation exits which are kept clear of obstructions;
- (5) A written disaster plan to cover emergencies, including fire, flood, natural disaster, evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions; and
- (6) Mandatory emergency preparedness training for staff, employees, and volunteers. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5; 45 C.F.R. Part 98)

§17-800-44 Sleeping areas for children in care.

- (a) For a child less than one year of age, the provider shall ensure the following:
- (1) Areas where children sleep are kept ventilated and at a safe temperature;
 - (2) That each child has a separate crib or playpen;
 - (3) That cribs or playpens used for care have not been recalled by the United States consumer product safety commission; provided

that a recalled item may be used if repaired in accordance with the manufacturer's standards, and the provider maintains a record of the repair;

- (4) Not allowing for any other sleeping arrangement, including bed-sharing;
 - (5) Placing the child on his or her back to sleep, unless written instructions for an alternative sleep position are on file from one of the following:
 - (A) A physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.);
 - (B) A physician assistant (PA);
 - (C) An advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States; or
 - (D) A nurse practitioner (NP) licensed by the State of Hawaii.
 - (6) Moving the child to a crib or playpen for the remainder of the nap when the child falls asleep in a location or in equipment other than a crib or playpen;
 - (7) Monitoring and periodically checking on a sleeping child;
 - (8) The crib or playpen has a clean, tightly-fitted sheet; and
 - (9) The crib or playpen does not have any bedding or toys placed in with a child.
- (b) For a child one year of age and older, the provider shall ensure the following:
- (1) Areas where children sleep are kept ventilated and at a safe temperature; and
 - (2) Individual napping arrangements, where each child shall have his or her own mat, rug, cot, bed, or blanket. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-45 Environmental hazards. (a) The premises in which child care is carried out, including both indoor and outdoor space, shall be lighted and ventilated at a safe temperature and shall not have environmental hazards.

(b) Accessible electrical outlets shall be covered with child-resistant outlet covers when children in care are not school-age.

(c) Electrical cords shall not cross pathways, and long cords shall be wrapped and secured.

(d) Hazardous substances, including cleaning solutions and medication, are inaccessible to children and in a closed container clearly labeled. Cleaning materials shall be stored in a secured area away from food preparation areas during food preparation times.

(e) The provider shall establish and follow procedures for handling, storing, and disposing of bio-contaminants, to use in all situations to prevent the transmission of blood-borne germs that may be spread through blood and body fluids.

(f) All entrances and exits shall be secured or monitored for school-age children.

(g) Children's access to traffic and other outdoor hazards shall be blocked or controlled for school-age children.

(h) Stove tops and controls shall not be accessible to children when children are not school-age, or are supervised when used by children that are school-age.

(i) Hot water taps shall be inaccessible without supervision by the provider or provider's staff.

(j) Sharp objects, household items, and tools shall be kept in a safe location and out of children's reach or are supervised when used safely.

(k) All guns and weapons, including but not limited to, hunting knives and archery equipment, and related accessories shall be locked up, and ammunition shall be secured and locked in a separate place and inaccessible to children during all hours of operation; provided that archery equipment may be safely utilized for school-age children under direct supervision by staff trained to use such equipment.

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(l) Pets, animals, and fowl shall be maintained in a safe and sanitary manner at all times, and the provider shall obtain written permission from the parents that the children are allowed to have contact with pets, animals, and fowl.

(m) Indoor and outdoor structures and furnishings that have hazardous sharp edges, rust and splinters shall not be accessible to children.

(n) Swimming or wading pools that are part of the facility, equipment, or program, shall observe the following safety practices:

- (1) A certified lifeguard, who may be the provider, 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 paragraph(1). Children shall be personally attended by a responsible adult at all times and the wading pools shall be emptied immediately after each use; and
- (3) Legible safety rules for the use of all types of pools, except for wading pools, shall be posted in a conspicuous location and read and reviewed at regular intervals by each provider responsible for the care of the children. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-46 Emergency care provisions. (a) The provider shall have the following:

- (1) Information on each child's emergency contact numbers for each parent or guardian;
- (2) Written permission to allow the child to receive emergency care;
- (3) An operating telephone that is available and is easily accessible to the provider;

- (4) A plan for accessing a telephone when not in the usual location where care is being provided;
- (5) First aid and child cardio-pulmonary resuscitation (CPR) for exempt center-based providers shall ensure the following while children are present at the facility:
 - (A) There shall be at least one adult caregiver with a current certificate in first aid when children are present at the facility;
 - (B) The current first aid certificate must be provided by the American Red Cross, American Heart Association, or any organization whose first aid certification standards are equivalent to the American Red Cross or American Heart Association standards and approved by the department;
 - (C) A current first aid certificate means a certificate that has not expired;
 - (D) There shall be at least one adult caregiver with a current certificate in child CPR when children are present at the facility;
 - (E) 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 and approved by the department;
 - (F) A current certificate means a certificate that has not expired.
- (6) A first aid kit that is adequately stocked, readily available, and accessible; and
- (7) A first aid kit, emergency contact phone numbers, and medical treatment release forms when going on trips.

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(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. [Eff **AUG 06 2021**] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-47 Transportation provisions. When transportation is provided by the provider, children shall be protected by adequate supervision and safety precautions as follows:

- (1) The provider has written permission from the parent or guardian that each child is allowed to be transported by school bus or other means of transportation such as a personal vehicle;
- (2) During any field trip or excursion operated or planned by the facility, the group sizes and provider-child ratios as required in section 17-800-42 shall apply;
- (3) Children shall be instructed in safe transportation conduct;
- (4) Car seats and safety restraints shall be used as required by applicable laws;
- (5) Children shall be secured in the back seat of the vehicle;
- (6) Children shall not be left alone in vehicles, even with the air conditioning on or windows rolled down; and
- (7) The provider shall take a head count or attendance record check before and after transportation is provided. [Eff] (Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)

§17-800-48 Background checks for exempt center-based providers. (a) All exempt center-based providers, and current or prospective staff, including substitutes and volunteers counted in the group sizes and provider-child ratio required under section 17-800-42, shall be subject to and in compliance with chapter 17-801, prior to the exempt center-based provider being listed with the department and annually thereafter in accordance with chapter 17-801, to ensure that all exempt center-based providers, employees, and volunteers that have unsupervised access to children are suitable to provide child care, are of reputable and responsible character, and do not pose a risk to children in care.

(b) The department shall deny listing with the department and not authorize child care payment assistance to the family if the exempt center-based provider determined by the department to be not suitable to provide child care pursuant to chapter 17-801.

(c) The department shall immediately remove from the department's listing the exempt center-based provider and not authorize child care payment assistance to the family, in accordance with section 17-800-5(e), if the exempt center-based provider refuses to terminate employment of a current or prospective staff who is determined by the department to be not suitable to provide child care or exclude from the premises a current or prospective staff who is the subject of an on-going or pending criminal, child welfare, or department investigation in accordance with chapter 17-801. [Eff **AUG 06 2021**]
(Auth: HRS §§346-14 and 346-152.5) (Imp: §§346-14 and 346-152.5;45 C.F.R. Part 98)