

DEPARTMENT OF HUMAN SERVICES

Amendments to Chapter 17-891.1 and 17-895  
Hawaii Administrative Rules

November 29, 2016

1. Section 17-891.1-1, Hawaii Administrative Rules, is amended to read as follows:

"§17-891.1-1 Definitions. For the purpose of this chapter:

"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 nine months and older who are enrolled in public or private elementary schools.

"Applicant" means the person who applied for registration of their family child care home and includes this person's spouse.

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

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

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

"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 the responsibility for the child's supervision, development, safety, and protection apart from the parent or guardian for any part of a twenty-four hour day.

"Child care center (CCC)" or "group child care center (GCCC)" means a place maintained by any

individual, organization, or agency for the purpose of providing child care. The term child care center shall include child care nurseries, nursery school groups, preschools, child play groups, parent cooperatives, drop in child care centers, group child care homes, or other similar units operating under any name.

"Child care facility" means any home, center, or facility, at which care is provided, as defined in HRS §346-151.

"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 891.1. "Council for early childhood 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.

"Demonstration project" means any place providing child care which is operating with special approval of the department for exemptions to specific registration rules.

"Drop in care" means child care where children are permitted to arrive and leave at irregular, non-scheduled times during the facility's operating hours.

"Drop in child care center" means a facility which accepts children for drop in care.

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

"Employee" means any household member residing in the single private home, regardless whether the household member participates in providing child care.

"Facility" means all the physical parts belonging to, or which are a part of, a place in which child care is provided including enclosed areas, lanais, and outdoor areas.

"Family child care home (FCCH)" or "family child care (FCC)" means child care in any private home

maintained by an individual which provides care to three and no more than six children at any given time during any part of a twenty-four hour day, and where the relationship of child and family child care provider is not by blood, marriage, or adoption.

"Group child care home (GCCH)" means child care provided by any individual in 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.

"First aid kit" means the 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.

"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, emotionally disturbed, orthopedically, or otherwise chronically handicapped.

"Health care practitioner" means a physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.), a physician assistant (PA), or an advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States, or a nurse practitioner (NP) licensed by the state of Hawaii.

"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 children who are newborn up to age one (through the twelfth month).

"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 group child care center or group child care home.

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

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

"New hire" means a person seeking to be a family child care home provider for the first time in the state of Hawaii, either as an applicant or prospective employee of a family child care home.

"Night care" means child care provided to children who stay at night or overnight at a group child care center, group child care home, or family child care home. Care shall not be provided for twenty-four consecutive hours.

"Panic hardware" means a standard device on doors which permit quick and safe exits upon emergencies (e.g. push bars and plates).

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

"Provider"--see caregiver.

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

"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.

"Rehire" means an applicant or prospective employee of a family child care home who is seeking to operate or be employed in a family child care home following termination of employment of more than six months and who has been out of state during this break in employment.

"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).

"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 when another caregiver is absent.

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

"Temporary permit"--see provisional license.

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

"Volunteer" means a person offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the caregivers." [Eff 6/18/87; am and comp 12/10/88; am and comp 12/19/02; am ] (Auth: HRS §346-172) (Imp: HRS §§346-151, 346-172)

2. Section 17-891.1-15, Hawaii Administrative Rules, is amended as follows:

"§17-891.1-15 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 stored in an orderly way, shall be safe and kept in good repair, not be recalled, and shall be accessible to children. The materials 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) Provision for individual storage of children's clothing and personal belongings shall be available.

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

(i) For children less than one year of age, child care facilities shall follow subchapter 10 Safe Sleep of this chapter. For children ages one year and older, [T]the following sleeping equipment shall be available:

- (1) Individual bed, crib, cot, mat, or rug for each child who rests; and
- (2) A clean sheet or cover to be used on the bed, crib, cot, mat, or rug for each child." [Eff 6/18/87; comp 12/10/88; comp 12/19/02; am ] (Auth: HRS §346-172) (Imp: HRS §346-172; 42 U.S.C. §§2002, 2005, 9833)

3. Section 17-891.1-41 and 17-891.1-42, Hawaii Administrative Rules, are added to read as follows:

"§17-891.1-41 Program requirements. (a) A child care facility shall have a written operation policy regarding safe sleep.

(b) All employees and volunteers of the child care facility caring for children less than one year of age shall review the child care facility's written operation policy regarding safe sleep and complete training in safe sleep practices that is approved by the department, upon hire and on an annual basis, and the child care facility shall maintain a record of policy reviews and trainings completed.

(c) The child care facility shall report to the department, within one working day of occurrence, the death of a child, employee, or household member, and any illness or injury received at the child care facility that results in a child's hospitalization; and

(d) The child care facility shall ensure the following for sleeping children less than one year of age:

- (1) Children shall be placed on their backs to sleep or in accordance with the written instructions on file at the child care facility from a health care practitioner for alternate sleep positioning;
- (2) Sleeping children are physically monitored and periodically checked; and
- (3) A child who falls asleep in a location or equipment other than a crib or playpen shall be moved to a crib or playpen for the remainder of the nap." [Eff ]  
(Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

"§17-891.1-42 Sleep environment. (a) A child care facility shall use cribs and playpens that 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 child care facility maintains a record of the repair.

(b) Soft bedding, bumper pads, and other objects shall not be placed in the crib or playpen.

(c) A clean, tightly fitted crib sheet shall be

used to cover the crib or playpen for children less than one year of age.

(d) Sleeping areas shall be kept ventilated and at a safe temperature.

(e) Bed-sharing is not allowed.

(f) The child care facility shall not use recalled items for children, such as cribs, playpens, and other equipment unless the item has been repaired in accordance with the manufacturer's standards and the child care facility maintains a record of the repair."  
[Eff ] (Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

4. Section 17-895-1, Hawaii Administrative Rules, is amended to read as follows:

"§17-895-1 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.

"Approved child development or early childhood training courses" means child development or early childhood courses taken from accredited institutions of higher learning and other agencies or organizations authorized by the department which are automatically accepted. Other courses, workshops, or seminars may be approved by the department provided the agency or organization is recognized by the department as having child care expertise, has submitted a description of the course, workshop, or seminar which fully describes the subject matter covered, the total hours of training and name of the qualified trainer (see "qualified trainer").

"Caregiver" means any person who works with the guidance of the lead caregiver and director to carry out the program of the center.

"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 for any part of a twenty-four hour day.

"Child care aide," "aide," or "child care assistant" means any person who helps the lead caregiver or caregiver with all aspects of the planned program.

"Child care center (CCC)" or "group child care center (GCCC)" means a place, other than a private home, maintained by any 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, preschools, child play groups, parent cooperatives, drop-in child care centers, group child care homes, or other similar units operating under any name.

"Child care facility" [~~see child care center and family child care home~~] means any home, center, or facility, at which care is provided, as defined in HRS §346-151.

"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 895.

"Council for early childhood 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.

"Demonstration project" means any place providing child care which is operating with special approval of the department for exemptions to specific licensing or registration rules.

"Director," "principal," "lead caregiver," or "operator" means the person at the facility having responsibility for the administration of a child care center and its program.

"Drop-in care" means child care where children are

permitted to arrive and leave at irregular, non-scheduled times during the facility's operating hours.

"Drop-in child care center" means a center which accepts children for drop-in care.

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

"Family child care home (FCCH)" means any private home maintained by an individual which provides child care to three and no more than six children at the same time during any part of a twenty-four hour day and where the relationship of child and family child care home provider is not by blood, marriage, or adoption.

"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 child 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, emotionally disturbed, orthopedically or otherwise chronically handicapped.

"Health care practitioner" means a physician who is licensed to practice medicine or osteopathic medicine (M.D. or O.D.), a physician assistant (PA), or an advanced practice registered nurse (APRN) licensed to practice in any of the states or territories of the United States, or a nurse practitioner (NP) licensed by the state of Hawaii.

"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 who is six weeks to twelve months of age.

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

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

"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.

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

"New hire" means a person seeking to be a child care provider for the first time in the state of Hawaii, either as an applicant or prospective employee of a child care facility.

"Night care" means child care provided to children who stay at night or overnight at a group child care center, group child care home, or family child care home. Care shall not be provided for twenty-four consecutive hours.

"Panic hardware" means a standard device on doors which permits quick and safe exits upon emergencies (e.g. push bars and plates).

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

"Primary caregiver" means the individual in the infant and toddler child care center to whom the care of a specific child and family is assigned. Primary care is defined as direct care, verbal and physical interactions, primary responses to infant's or toddler's physical and emotional needs while in the center, and continued interaction with parents regarding the infant's or toddler's experiences.

"Provider" means any person whose duties include direct care, supervision, and guidance of children in

child care.

"Provisional license" or "temporary permit" means a temporary license issued at the discretion of the department for a maximum period of three months to any 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.

"Qualified trainer" means a person who has twelve credits in early childhood or child development or related fields such as human development, psychology, social work, or nursing and a combined total of three years of experience in training adults who work with children or has six credits in early childhood or child development or related fields such as human development, psychology, social work, or nursing, and a combined total of five years of experience in training adults who work with children.

"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 center, group child care home, or family child care home, or a practice or schedule that is routine and uniform and is not subject to unexplained or irrational variations.

"Re-hire" means an applicant or prospective employee of a child care facility who is seeking to operate or be employed in a child care facility following termination of employment of more than six months and who has been out of state during this break in employment.

"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

care.

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

"Staff member" means administrative, child care, clerical, and maintenance personnel who are employed by the child care facility.

"State advisory committee on child care services" 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 no more than ten consecutive working days in the same position when the regular staff person is absent on an emergency or unplanned basis.

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

"Temporary hire" means a person who serves as a replacement when the regular staff person is absent on a planned basis.

"Temporary permit" - see provisional license.

"Toddler" means a child who is twelve to thirty-six months of age.

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

"Volunteer" means a person offering services to a child care facility without remuneration, except for reimbursable personal expenses allowed by the facility." [Eff 11/07/91; am and comp 12/19/02; am ] (Auth: HRS §346-162) (Imp: HRS §§346-151, 346-162)

5. Section 17-895-14, Hawaii Administrative Rules, is amended to read as follows:

"§17-895-14 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 developmentally appropriate to the infants and toddlers in care.

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

- (1) Avoid excessive competition among the children and 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 infants and toddlers.

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

(d) Materials and equipment shall be safe and kept clean and in good repair, not be recalled, stored in an orderly way, and arranged to allow children to select, remove, and replace the materials and equipment either independently or with assistance, as appropriate to their age and development.

(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) The following shall be available:

[(1) Individual provisions for safe, undisturbed sleep such as, crib, cot, or mat;

(2) Clean bedding for each infant and toddler;]

[(3)] (1) High chairs, safety seats, or size-appropriate low seating for individual feeding;

[(4)] (2) Adequate padding for safe floor play;

[(5)] (3) Rocking or comfortable chair for infant and toddler feeding and comforting; and

[(6)] (4) Individual storage spaces for children's clothing and personal belongings." [Eff 11/7/91; am and comp 12/19/02; am

] (Auth: HRS §346-162) (Imp: HRS §346-162; 42 U.S.C. §§2002, 2005)

6. Section 17-895-45 and 17-895-46, Hawaii Administrative Rules are added to read as follows:

"§17-895-45 Program requirements. (a) A child

care facility shall have a written operation policy regarding safe sleep.

(b) All employees and volunteers of the child care facility caring for children less than one year of age shall review the child care facility's written operation policy regarding safe sleep and complete training in safe sleep practices that is approved by the department, upon hire and on an annual basis, and the child care facility shall maintain a record of policy reviews and trainings completed.

(c) The child care facility shall report to the department, within one working day of occurrence, the death of a child or employee, and any illness or injury received at the child care facility that results in a child's hospitalization; and

(d) The child care facility shall ensure the following for sleeping children less than one year of age:

- (1) Children shall be placed on their backs to sleep or in accordance with the written instructions on file at the child care facility from a health care practitioner for alternate sleep positioning;
- (2) Sleeping children are physically monitored and periodically checked; and
- (3) A child who falls asleep in a location or equipment other than a crib or playpen shall be moved to a crib or playpen for the remainder of the nap." [Eff ]  
(Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

"§17-895-46 Sleep environment. (a) A child care facility shall use cribs and playpens that 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 child care facility maintains a record of the repair.

(b) Soft bedding, bumper pads, and other objects shall not be placed in the crib or playpen for children less than one year of age.

(c) A clean, tightly fitted crib sheet shall be

used to cover the crib or playpen for children less than one year of age.

(d) Sleeping areas shall be kept ventilated and at a safe temperature.

(e) Bed-sharing is not allowed.

(f) The child care facility shall not use recalled items for children, such as cribs, playpens, and other equipment unless the item has been repaired in accordance with the manufacturer's standards and the child care facility maintains a record of the repair.

(g) For children ages one year and older, the following sleeping equipment shall be available:

(1) Individual bed, crib, cot, mat, or rug for each child who rests; and

(2) A clean sheet or cover to be used on the bed, crib, cot, mat, or rug for each child."

[Eff \_\_\_\_\_] (Auth: HRS §346-152.7) (Imp: HRS §346-152.7; 42 U.S.C. §§2002, 2005, 9833)

7. Material, except source notes, to be repealed is bracketed. New material is underscored.

8. Additions to update source notes to reflect these amendments and compilation are not underscored.

9. These amendments to chapter 17-891.1 and 17-895 Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirement of section 91-4.1, Hawaii Revised Statutes, which were adopted on August 2, 1982 and filed with the Office of the Lieutenant Governor.

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PANKAJ BHANOT  
Director of Human Services

APPROVED AS TO FORM:

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Deputy Attorney General