

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 35, No. 49, December 11, 2009 issue of the Florida Administrative Weekly.

The proposed rules were renumbered as follows:

- 65G-4.0021 renumbered 65G-4.0026
- 65G-4.0022 renumbered 65G-4.0027
- 65G-4.0023 renumbered 65G-4.0028
- 65G-4.0024 renumbered 65G-4.0029
- 65G-4.0025 renumbered 65G-4.00291

Section IV
Emergency Rules

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

Notices for the Board of Trustees of the Internal Improvement Trust Fund between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notices for the Department of Environmental Protection between December 28, 2001 and June 30, 2006, go to <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Family Safety and Preservation Program

RULE NO.: RULE TITLE:
65CER10-1 Substitute Care of Children

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Currently, Chapter 65C-13, Florida Administrative Code, does not have measurement standards for food holding temperatures, vermin control, water supply, garbage and rubbish disposal or sewage. Due to the lack of standards to define satisfactory in the above-mentioned areas, Department of Health will immediately cease to inspect these areas in family foster homes. The intent of this emergency rule revision is to create the necessary verbiage that will appropriately reflect standards for the inspection of these vital areas and ensure the continued safety and well-being of the children served by Department of Children and Families. This emergency rule revision will allow the Department of Health to create a form, specifically for the inspection of family foster homes; the inspection form will include all areas of health and safety previously mentioned in this statement.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: Chapter 65C-13, Florida Administrative Code is the most efficient means of

providing guidance to protect the health, safety, and welfare of children found to be dependent as defined by Chapter 39, F.S., and who have been placed in licensed out-of-home care.

SUMMARY: The new rule provides standards for the measurement of food holding temperatures, vermin control, water supply, sewage, and garbage.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Stacey Cleveland, Family Safety Program Office, 1317 Winewood Boulevard, Building 1, Room 301T, Tallahassee, Florida 32399. Phone: (850)921-8833 Email: Stacey_Cleveland@dcf.state.fl.us

THE FULL TEXT OF THE EMERGENCY RULE IS:

65CER10-01 (65C-13.030) Substitute Care of Children Standards for Licensed Out-of-Home Caregivers.

- (1) General Requirements.
 - (a) Generally, there should be no more than five children in a licensed home, including the family's own children.
 - (b) There shall be no more than two children under the age of two years in a home, including the licensed out-of-home caregiver's children.
 - (c) Therapeutic foster homes are limited to the placement of two children.
 - (d) Serving as a licensed out-of-home caregiver is a privilege and public trust. Applicants do not have an inherent right to a license as an out-of-home caregiver.
 - (e) Each licensed out-of-home caregiver applicant shall sign a Bilateral Service Agreement as defined in subsection 65C-30.001(11), F.A.C. The agreement shall be reviewed, and discussed with a licensing counselor prior to initial licensure and again at each re-licensure. The document must be signed by a representative from the supervising agency and the potential or licensed out-of-home caregiver.
- (2) Utilization of Foster Home.
 - (a) Placement of a child in a home licensed by the Agency for Persons with Disabilities shall be approved by the Agency for Persons with Disabilities prior to placement. A home licensed by the Agency for Persons with Disabilities may be utilized for placement of children eligible for both programs without obtaining a separate license if the child is receiving Supplemental Security Income (SSI).
 - (b) Licensed Out-of-Home Caregivers Wishing To Offer Child Care.
 - 1. Licensed out-of-home caregivers that have contracted with a lead agency are authorized by Section 409.1671(5)(b), F.S., to provide child care as a Licensed Family Day Care Home, as defined in Section 402.302(7), F.S., if they choose to do so and meet the requirements for licensing. A dually licensed foster home cannot provide care for more than five children, including biological, foster, and adopted children. Therapeutic or Medical Foster Homes can not be dually licensed.

2. All licensing standards and requirements for family foster homes and family day care homes shall be met and maintained.

3. Licensed out-of-home caregivers shall limit their operation as a Family Day Care Home as follows:

a. Hours of operation shall only occur between 6:00 a.m. and 7:00 p.m.;

b. Based on the premise that the foster care maintenance assistance is for the care of a foster child for a twenty-four hour period and includes the provision of daily supervision for the foster child, the out-of-home caregiver shall not be paid both the foster care board rate and child care subsidy for the same child;

c. A foster home providing child care under this section shall be inspected a minimum of twice per year, once by daycare licensing staff and once by the supervising agency's licensing specialist. The inspection is to assess the impact of the child care operation on the fostering experience;

d. Where foster homes are also licensed as a Family Day Care Home, the department shall make every effort to coordinate inspections with a licensing counselor from the child-care licensing program; and

e. Complaint investigations shall be conducted in conjunction with a representative from child care licensing.

(3) Emergency Shelter Family Foster Homes.

(a) Emergency shelter care providers shall have the ability to receive and supervise children twenty-four hours per day.

(b) Emergency shelter care providers shall maintain a shelter log for the child that documents the child's name, date of birth, and prescribed medications; the name of the child's services worker; and the dates the child entered and exited provider's care.

(c) A family foster home may designate a certain number of beds for the purpose of shelter care as well as foster care.

(d) Emergency shelter parents shall familiarize each child with the evacuation plan.

(4) Personal Standards.

(a) A licensed out-of-home caregiver shall be a stable, responsible, and mature individual who is at least twenty-one years of age.

(b) At least one licensed out-of-home caregiver in the home shall be able to read, write and speak English and be able to effectively communicate with both any children placed in the home and with the supervising agency.

(c) A licensed of-of-home caregiver shall not operate the home as an adult boarding or rooming home or an adult daycare facility.

(d) The licensed out-of-home caregiver shall obtain written approval from the supervising agency prior to conducting any childcare or business in the home.

(e) A licensed out-of-home caregiver shall have a stable income sufficient to make timely payment for current shelter, food, utility costs, and other debts without relying on board payments unless the licensed out-of-home caregiver enters into an agreement with a lead agency to provide specialized care. Applicants shall have a source of income independent of child support or alimony.

(f) Childcare. Childcare for children in the custody of the department shall be with a licensed or registered child care provider. The cost of child care shall be assumed by the licensed out-of-home caregiver to the extent that subsidized child care is unavailable.

(g) Health History. A licensed out-of-home caregiver and any household members shall provide written statements from a physician regarding their general health, and whether they have any specific illness, disability, alcohol or other drug dependence, infectious diseases and other relevant health conditions that could threaten the safety of children in the home upon request by the department or supervising agency.

(h) Screening. Screening of licensed out-of-home caregivers and other household members shall meet the screening requirements set forth in Rule 65C-13.023, F.A.C.

(5) Physical Environment.

(a) The home shall be inspected by a representative of the environmental health office of the local public health department and receive a satisfactory inspection result for water supply, food holding temperature, plumbing, vermin and vector control, sewage, and garbage and rubbish disposal, prior to initial licensing and annually prior to re-licensing.

1. Water Supply. When water is accessible to those in care, the water temperature shall not exceed 120 degrees Fahrenheit to avoid scalding. Adequate hot water shall be provided at a minimum of 100 degrees Fahrenheit.

a. Routine Testing. Licensed out-of-home caregivers not served by a municipal water supply shall test the water and submit bacteriological water test results to the local county health department.

(I) Before license approval.

(II) At least every 12 months.

(III) Upon relocation.

(IV) Before having the well placed in service after construction, repair, or modification, or

(V) After an emergency situation, such as a flood, that may introduce contaminants to the system.

b. Test results must be negative for bacteriological contamination.

c. Positive test results require the facility to use potable water from a source approved by law for the purpose of drinking, cooking, and oral contact, until test results are negative. In addition, wells that test positive shall be disinfected, flushed, and tested for bacterial contamination.

d. Laboratory test results must be submitted to the local county health department, in writing, by the testing laboratory.

e. Testing can be obtained through the local county health department or a certified independent laboratory.

2. Food Holding Temperature. Food storage equipment shall be provided to keep all potentially hazardous foods at safe temperatures, 41 degrees Fahrenheit or below or 140 degrees Fahrenheit or above. Refrigeration units used for the storage of potentially hazardous foods shall be provided with a numerically scaled indicating thermometer accurate to plus or minus 3 degrees Fahrenheit. The thermometer shall be located in the warmest or coldest part of the units as may be applicable and of such type and so situated that the temperature can be easily and readily observed by the licensed out-of-home caregiver and any inspector.

3. Vector Control.

a. Effective control measures shall be utilized to minimize the presence of rodents, flies, cockroaches, and other vectors and vermin on the premises.

b. The creation, maintenance, or causing of any condition capable of causing vectors and vermin will not be permitted. The home shall be effectively maintained rodent-proof and rodent free. All outside openings shall be effectively sealed or screened with 16 mesh screening or equivalent, to prevent entry of insects, rodents, or other vectors and vermin.

4. Sewage. Any home not on a municipal sewage system and having an onsite sewage treatment and disposal system or septic tank, shall meet applicable standards in Chapter 64E-6 of the Florida Administrative Code.

5. Garbage and Rubbish Disposal. All garbage, trash, and rubbish from the kitchen area shall be collected daily and placed in garbage receptacles. Garbage or trash containing diapers or any odor-causing agent shall also be collected daily and placed in garbage receptacles. Garbage or trash consisting only of paper items must be collected weekly and placed in garbage receptacles. Garbage shall be removed from garbage receptacles frequently enough to prevent a sanitary nuisance, as defined in Chapter 386, F.S. Wet garbage shall be collected and stored in impermeable, leak proof, fly tight containers pending disposal. All containers, storage areas and, surrounding premises shall be kept clean and free of vectors and vermin.

(b) Family foster homes located in counties designated by the Department of Community Affairs Florida Radon Protection Map Categories as "intermediate" or "Elevated Radon Potential" areas shall be tested to determine the level of indoor radon as required in Section 404.056, F.S. Radon levels shall be at a level which does not affect the safety and well-being of children in the homes. Re-testing of licensed family foster homes for radon gas shall take place as required in Section 404.056, F.S.

(c) Outdoor Area.

1. The exterior of the home and premises shall be free from objects, materials, and conditions which constitute a danger to children. All garbage and trash shall be covered and removed regularly. There shall not be large, potentially dangerous items stored in the safe outdoor play area such as old refrigerators, stacks of lumber and unregistered vehicles or boats.

2. The home shall have a safe outdoor play area on the property or within reasonable walking distance. All outdoor play equipment shall be kept in good repair. If the home is located on a busy street, there shall be a safety plan for supervision.

(d) Water Safety and Supervision.

1. Children shall be supervised visually at all times when they are in close proximity to any body of water. Access to swimming pools and bodies of water shall be restricted when supervision is not available, and children shall never be left to swim alone.

2. Children who are placed in family foster homes which are adjacent to any body of water or that have swimming pools shall be instructed in water safety as appropriate for their age.

3. Wading pools shall be set up and maintained according to the manufacturer's instructions. Wading pools shall be emptied and stored when not in use and shall be filled with clean water before each use.

(e) Swimming Pools.

1. Swimming pools shall have a barrier on all sides at least four feet high. The barrier shall consist of a house plus a fence on the remaining three sides or a four-sided fence.

2. All access through the barrier shall have one of the following safety features: alarm, key lock, self-locking doors, bolt lock, or other lock that is not accessible to children.

3. When the swimming pool is not in use all entry points shall be locked.

4. Above ground pools with steps or ladders shall have them secured, locked, or removed when the pool is not in use.

5. If the pool cannot be emptied after each use, the pool shall have a working pump and filtering system.

6. Hot tubs and spas shall be required to have a safety cover that is locked when not in use.

7. Swimming pools shall be equipped with one of the following life saving devices: ring buoy; rescue tube; flotation device with a rope; or a shepherd's hook of sufficient length to cover the area.

(f) Interior Environment.

1. The home shall have sufficient space and furnishings and be accessible to all members of the family.

2. Each child shall be provided with adequate storage space for personal belongings and a designated space for hanging clothes in or near the bedroom occupied by the child.

3. Bath and toilet facilities shall be clean and in good working order with a door for privacy.

4. The door of each bathroom shall have a lock that may be opened from the outside in an emergency.

5. The home shall be clean and free of hazards to the health and physical well-being of the family.

~~6. The home shall have a continuous supply of clean drinking water tested and approved by the local health department if the source of water is not from a municipal water supply. If the water is not approved, the licensed out-of-home caregiver shall agree to use bottled water for cooking and drinking until a satisfactory water report is obtained.~~

~~7. The home shall have an adequate supply of hot water. Hot water accessible to children shall not exceed 120 degrees Fahrenheit.~~

~~6.8.~~ Each foster home shall have a working telephone in the home and accessible at all times. Emergency telephone numbers shall be posted by the telephone. Licensed out-of-home caregivers shall immediately notify the supervising agency if their telephone number changes.

~~7.9.~~ All toys and equipment shall be in safe condition and kept clean and sanitary.

~~8.10.~~ All rooms used by children shall be at a comfortable temperature. Rooms shall be dry and well ventilated.

~~9.11.~~ All doors and windows used for ventilation shall be screened.

~~10.12.~~ Rooms used by children shall be clean and well lit for activities such as homework, board games, and other educational or recreational opportunities.

~~11.13.~~ When children are present, rooms shall be free of tobacco smoke.

(g) Sleeping Arrangements.

1. Bedrooms shall have adequate space for the number of children sleeping in the room. A minimum of forty square feet per child is required. Homes that are licensed prior to the promulgation of this rule shall be exempt from this requirement.

2. An adult shall be within hearing distance and accessible to the rooms where children under six years of age are sleeping.

3. Each child shall be provided with a clean, comfortable, permanent bed and mattress of his or her own. The bed shall be of sufficient size to comfortably accommodate the child.

4. Infants shall have their own crib, which shall be maintained in good and safe condition and have a clean and comfortable mattress that fits snugly in the crib frame. Cribs shall not be placed close to windows with curtains or cords in which the child might become entangled.

5. Bunk beds shall be safe and sturdy. Bunk beds shall be equipped with safety rails on the upper tier for a child under the age of ten or for any child whose physical, mental, or emotional condition indicates the need for such protection. Beds shall not be bunked higher than two tiers.

6. A licensed out-of-home caregiver shall provide each foster child with clean linens. A foster child shall not be required to sleep on linens soiled by urine or excrement. Waterproof mattress covers should be provided for all beds and cribs of children experiencing enuresis or encopresis. Plastic garbage bags must not be used as mattress covers.

7. Children of any age shall not sleep on a living room sofa, cot, or foldaway bed except in extenuating circumstances.

8. The entry to the foster child's bedroom shall not be located to require the foster child to pass through another bedroom or bathroom in order to enter his or her bedroom.

9. Children may never share a bed with an adult, regardless of age.

10. Children may not share a bed.

11. Children over 36 months of age may not share a bedroom with a child of the opposite sex.

12. Children over the age of twelve months shall not share a bedroom with an adult. The only exception to this would be if one of the children sharing a bedroom reaches his or her eighteenth birthday and the out-of-home caregiver and the supervising agency approve this sleeping arrangement. This exception applies only to the circumstances described above and not to any new placements in the home.

13. Infants twelve months of age or younger may share a bedroom with an adult provided the infant sleeps in his or her own crib.

14. Children over the age of twelve months may share a bedroom with an adult when it is deemed medically necessary. A doctor's note shall be placed in the licensing file of the department and the supervising agency.

(h) Foster Home Safety.

1. The licensed out-of-home caregiver shall make every effort to identify and immediately correct any hazard to the safety of foster children while in the home or while being transported.

2. All poisonous chemicals shall be in a locked location. Hooks, child safety latches, and other baby proof devices do not qualify as locked storage for poisonous chemicals. Cleaning materials shall be made inaccessible to children.

3. Each foster family home shall have a first aid kit available and accessible to all caregivers.

4. All medications shall be stored in a location that is locked and inaccessible to children. Hooks, child safety latches and other baby proof devices do not qualify as locked storage for medications.

5. Alcoholic beverages shall be stored in a location out of reach to children.

6. Dangerous weapons shall be secured in a location inaccessible to children. Storage of guns shall comply with the requirements in Section 790.174, F.S. Weapons and ammunition shall be locked and stored separately and in a place inaccessible to children.

7. Animals requiring vaccinations shall be current in all vaccinations. All animals shall be well cared for and maintained. The foster family home shall have a secure method to restrict children's access to potentially dangerous animals.

(i) Fire Safety.

1. The home shall be safe from fire hazards. All combustible items shall be stored away from sources of heat. Exits, stairways and hallways shall be free of obstacles that would hamper an emergency evacuation. The home shall have at least two exits. All doors with locks shall be capable of being opened from the inside.

2. All equipment such as heating and cooling units, washers, dryers, refrigeration systems, stoves, and hoods shall be properly installed, vented and maintained.

3. Each bedroom shall have two means of exit in case of emergency. Bedrooms above ground level must have a means of escape that will allow for safe exit. If the home is equipped with burglar bars, the caregiver shall demonstrate that the burglar bars can be released to allow exit. A key placed near a window does not qualify as an approved emergency release method. Age appropriate training on opening of the burglar bars shall be provided to each child upon placement.

4. The licensed out-of-home caregiver shall have an evacuation plan posted in a conspicuous place in the home. The plan shall specifically provide for the safe exit of children who are incapable of understanding the plan or participating in drills. This plan should be shared with all children as appropriate to their age and level of understanding upon placement in the home.

5. Fire drills shall be conducted a minimum of two times a year. The licensed out-of-home caregiver shall maintain a log of fire drills conducted, including the date, beginning and ending time, specific location, and participants' names.

6. Each floor in the home shall have a fully charged, unexpired 2A10BC fire extinguisher. One of the fire extinguishers shall be adjacent to the kitchen. There shall also be at least one operating smoke alarm on each floor. There shall be a smoke alarm in each bedroom area.

7. The home shall not be heated by un-vented gas fired space heaters or oil heaters unless they are equipped with an oxygen depletion sensor and the home has a carbon monoxide alarm. All gas-fired devices shall be equipped with an automatic pilot gas shut-off control. All electrical wiring shall meet required building codes.

8. All fireplaces, space heaters, steam radiators, and hot surfaces shall be shielded against accidental contact. Access by children under six years of age shall be restricted by a barrier.

9. Extension cords shall not extend from one room to another with the exception of situations involving emergency loss of power due to a natural or manmade disaster. Multiple electric outlet adapters shall not be used for more than two extensions at one time.

10. Volatile materials shall not be stored where water heaters are located or near other sources of heat. Attic space shall not be used for the storage of volatile materials.

(j) Transportation Safety.

1. The licensed out-of-home caregiver shall have transportation available twenty-four hours a day. All vehicles used to transport children shall be in safe condition, in compliance with applicable motor vehicle laws of the state, and equipped with seat belts and approved car seats for children as required under Section 316.613(1)(a), F.S. Vehicles shall be smoke-free when foster children are being transported. The licensed out-of-home caregiver shall have the ability to safely transport the number of children in his or her care.

2. The licensed out-of-home caregiver shall have all vehicles insured. The licensed out-of-home caregiver shall not allow foster children to be transported by any person not possessing a valid driver's license or auto insurance.

3. The licensed out-of-home caregiver shall not have driving violations less than five years old on file with the Department of Motor Vehicles, which relate to driving under the influence of alcohol or drugs. A copy of the licensed out-of-home caregiver's driving record shall be provided to the licensing authority at the time of initial licensure and at each re-licensure.

4. The licensed out-of-home caregiver shall not transport foster children in vehicles such as truck beds, motorcycles, or any other high-risk method of transportation. The licensed out-of-home caregiver shall not transport children on his or her lap.

(k) Disaster Plans.

1. Each licensed out-of-home caregiver shall make a written plan for evacuation in the event of a natural or man made disaster. The plan shall be kept up to date.

2. The plan shall include where the family intends to go and information as to how the family may be reached and must be shared with the supervising agency.

Rulemaking Specific Authority 409.175 FS. Law Implemented 409.175 FS. History—New 4-6-08, Amended 2-16-10.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: February 16, 2010