TITLE 391 - CHILDREN'S SERVICES LICENSING

CHAPTER 2 - FAMILY CHILD CARE HOME II

2-001 SCOPE AND AUTHORITY: These regulations will become operative three months after their effective date. These regulations govern the licensing of family child care homes by the Department of Health and Human Services. Statutory authority for these regulations is in:

1. The Child Care Licensing Act (Neb. Rev. Stat. §§ 71-1908 to 71-1923);
2. The Child Protection Act (Neb. Rev. Stat. §§ 28-710 to 28-727);
3. The Clean Indoor Air Act (Neb. Rev. Stat. §§ 71-5716 to 71-5734);
4. The Quality Child Care Act (Neb. Rev. Stat. §§ 43-2601 to 43-2625);
5. The Sex Offender Registration Act (Neb. Rev. Stat. §§ 29-4001 to 29-4014); and
6. Neb. Rev. Stat. §§ 4-108 to 4-114.

The Child Care Licensing Act requires the Department to develop regulations establishing standards for the physical well-being, safety, and protection of children in programs licensed under the Act. The purposes of the Act are to provide statewide licensure standards for persons providing child care programs and to provide the Department with authority to coordinate the enforcement of standards on licensees. The standards ensure that programs are providing proper care for and treatment of the children served, and that the care and treatment are consistent with the children's physical well-being, safety, and protection.

The Child Protection Act authorizes the Department to use information in the state child abuse/neglect central register for purposes of licensing providers of child care programs, and the Clean Indoor Air Act addresses smoking in licensed child care programs.

The Quality Child Care Act requires the Department to develop regulations for mandatory training requirements for child care providers designed to meet the health, safety, and developmental needs of children and tailored to the needs of licensed providers. The Act states that the Legislature's intent is to encourage high-quality, affordable, and accessible child care services that are educationally and age-appropriate.

The Sex Offender Registration Act authorizes the disclosure of information to providers who serve children for the purpose of conducting confidential background checks for employment.

Neb. Rev. Stat. §§ 4-108 to 4-114 provide that no state agency or political subdivision of the State of Nebraska may provide public benefits to a person who is not lawfully present in the United States. A child care license is considered a public benefit.

2-001.01 These regulations apply to Family Child Care Home II's, which are licensed to provide a child care program for at least four, but not more than 12 children. An FCCH-II may be located in the licensee's residence or another location.

2-001.02 The following are exempt from mandatory licensure, but may be voluntarily licensed:

1. Any person who provides child care:

a. On an irregular, informal basis and with no established pattern of occurrence;
b. Without cost to the parents and who receives no form of compensation;
c. To three or fewer children at any one time, except by a person whose license has been suspended or revoked;

2. Recreation camps as defined in Neb. Rev. Stat. § 71-3101, a recreation facility, center, or program operated by a political or governmental subdivision pursuant to the authority provided in Neb. Rev. Stat. § 13-304;
3. Classes or services provided by a religious organization other than child care or a preschool or nursery school;
4. A preschool program conducted in a school approved under Neb. Rev. Stat. § 79-318;
5. Programs operated or contracted by a public school district and subject to the rules and regulations of the State Department of Education under Neb. Rev. Stat. § 79-1104;
6. Services provided only to school-age children during the summer and other extended breaks in the school year;
7. Care provided only to children 13 years of age or older;
8. Care provided for less than two hours per week on average;
9. Foster care as defined in Neb. Rev. Stat. § 71-1901;
10. Care provided by grandparents to only their grandchildren;
11. Care provided on federal military installations;
12. Care provided on Indian reservations by Native Americans; or
13. Care provided by non-Native Americans on Indian reservations when tribal authorities have assumed the jurisdiction for regulating the care.

2-002 DEFINITIONS

Adequate and appropriate supervision means:

1. Knowing the whereabouts and being within sight or sound of all children at all times;
2. Being alert, attentive, and responsive to the needs of all children; and
3. Protecting or removing children from harm.

Ages of children:

1. Infant means a child age 6 weeks to 18 months;
2. Toddler means a child age 18 months to 3 years;
3. Preschool-age means a child age 3 or older who has not attended kindergarten; and
4. School-age means a child who attends kindergarten or above.

Child care means the care and supervision of children in lieu of parental care and supervision and includes programs. (See definition of program.)

Department means the Nebraska Department of Health and Human Services.

Designee means an individual given responsibility to act on another's behalf.

Early Childhood Training Center means the entity authorized in Neb. Rev. Stat. § 79-1102 and established within the Nebraska Department of Education. Its purpose is to train individuals who provide education and development activities for infants and young children and their parents.

Family means individuals who are not household members and have one or more children enrolled in the child care program.

Family Child Care Home I means a child care program in the licensee's place of residence which is licensed to serve at least four but not more than eight children, except that a licensee may be approved to serve up to two additional school-age children during non-school hours if no more than two of the other children in care are under 18 months of age.

Family Child Care Home II means a child care program in the licensee's residence or another location which is licensed to serve at least four but not more than 12 children.

Fence means a continuous barrier, including a wall, that is at least 36 inches in height, flush with the ground, and without any gaps that would allow a child to exit the fenced area.

Health authority means the local health department, which by law has the authority and duty for communicable disease control in the counties under its jurisdiction.

Household member means any individual residing in or regularly present in the child care home, including children and youth for whom 24-hour care is provided.

Licensed health care professional means an individual for whom administration of medication is included in the scope of practice.

Licensee means the owner of the child care program and the individual, partnership, limited liability company, or corporation to whom the license is issued and who is responsible for compliance with all regulations.

Locked storage means a container or closet used to store poisonous materials, medications, and weapons that is secured by lock and key, combination lock, or magnetic lock approved by the Department.

NAC means the Nebraska Administrative Code, the compiled regulations of all state agencies maintained by the Secretary of State. Properly adopted regulations have the force and effect of law. These regulations are 391 NAC

2. Within this chapter, references to other parts of the same chapter do not show “391 NAC”; they are shown simply as 2-003.01, for example. References to different regulations show the full citation; for example, 179 NAC 2-002.

Overnight care means care provided for children between the hours of 9:00 p.m. and 6:00 a.m.

Own children means biological, adoptive, and foster children, stepchildren, and grandchildren.

Parent means a natural parent, adoptive parent, step parent, guardian, or other legally responsible custodian.

Physical hold means applying minimal physical force by placing the arms around a child to restrict the child’s movement.

Premises means the home, including areas of the home not used for child care/preschool, all attached and all outbuildings, and all areas included within the lot boundaries.

Primary provider means the licensee or a staff member designated by the licensee who is responsible for the daily operation of the child care program.

Program means the provision of services in lieu of parental supervision:

1. For children under 13 years of age;
2. For compensation, either directly or indirectly; and
3. On the average of less than 12 hours per day, but more than two hours per week.

Program includes any employer-sponsored child care, family child care home, child care center, school-age child care program, school-age services under Neb. Rev. Stat. § 79-1104, or preschool or nursery school.

Proper hand washing means washing and scrubbing the hands for at least 20 seconds with soap and warm running water, rinsing well under running water, and drying with a paper towel, air dryer, or clean towel.

Restraint means the use of manual restraints (direct application of physical force) or mechanical restraints (straps, belts, towels, blankets, tape) or other means to subdue a child or otherwise limit a child’s freedom of movement. Restraint does not refer to physical holds or braces or other devices used to assist, obtain, and maintain normal body function.

Room means an area with four walls flush from the floor to the ceiling and at least one passageway or doorway. A partition is considered a wall if the partition is at least four feet high and is flush to the floor and to the other walls.

Special needs means a child has a requirement for extra care because of an acute or chronic physical or mental condition. Acute special needs include temporary conditions that require special medical attention and isolation from other children (e.g., recovery from surgery, etc). Chronic special needs include

long-standing medical or behavioral problems that require medical, behavioral, or other services at all times (e.g., medically fragile, attention deficit, etc). To be considered a child with a special need, the child must have one or more of the following conditions which is not related to chronological age:

1. Emotional impairment: including behavioral impairment, requiring special equipment or assistance;
2. Developmental age level lower than chronological age and requires assistance via special supervision;
3. Movement impairment: requires assistance or is unable to move;
4. Sensory impairment: requires special environmental modifications or assistance;
5. Speech impairment: requires special equipment or assistance;
6. Hygiene: requires assistance or special equipment;
7. Feeding: requires special equipment or assistance;
8. Toileting: requires assistance or special equipment;
9. Medical conditions: requires respiratory aids or special procedures;
10. Therapy required: physical, occupational, speech, or respiratory;
11. Medications: requires assistance or special procedures.

Diseases such as measles, chicken pox, flu, etc., are not considered special needs.

Staff means an individual who has been hired or approved by the licensee to work or substitute in the child care home and who counts in the staff-to-child ratio.

Substitute means an individual age 16 or older who provides care in the absence of the primary provider or secondary provider.

Swimming pool means any artificial basin of water modified, improved, constructed, or installed for the purpose of swimming, wading, diving, recreation, or instruction. Swimming pool includes, but is not limited to, a pool on the child care premises, a pool serving a community, a subdivision, an apartment complex, a condominium, a club, a camp, a school, an institution, a park, a manufactured home park, a hotel, a motel, a recreational area, or a water park. Swimming pool includes a spa, hot tub, whirlpool, or similar device which is designed for recreational use and not to be drained, cleaned and refilled after each individual use.

USCIS means United States Citizenship and Immigration Services.

USDA means United States Department of Agriculture.

Volunteer means an individual who assists in the care of children, who does not count in the staff-to-child ratio, and is not left alone with children other than his/her own at the child care home.

Wading pool means a portable, above-ground basin filled with 12 or fewer inches of water and designed for the purpose of wading.

2-003 LICENSING REQUIREMENTS AND PROCEDURES: Any person intending to establish, operate, or maintain a Family Child Care Home II must first obtain a license from the Department. An applicant must show that the child care program meets all licensing requirements contained in these regulations, 391 NAC 2.

2-003.01 Provisional License: Provisional licenses are issued to all newly licensed Family Child Care Home II programs. Provisional licenses are effective for one year.

2-003.01A Application Requirements: An applicant for a provisional Family Child Care Home II license must submit:

1. A complete, accurate, written and signed application and disclosure of ownership on a form provided by the Department, which contains all information required and authorized by the Child Care Licensing Act;
2. For the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114, an attestation that s/he is a U.S. citizen or a qualified alien lawfully present in the U.S. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;
3. Consent for central registry checks and authorization for release of information for the applicant, all staff and volunteers age 13 or older, and all household members age 13 or older if the Family Child Care Home is a private residence;
4. Documentation of criminal history record checks for the applicant, all staff and volunteers age 19 or older, and all household members age 19 or older if the Family Child Care Home is a private residence (see 2-006.02A);
5. A Report of Law Enforcement Contact for the applicant, all staff and volunteers age 19 or older, and all household members age 19 or older (see 2-006.02C);
6. A Health Information Report for the applicant on a form provided by the Department (see 2-006.02F);
7. Documentation of completed CPR/First Aid training (see 2-006.04F);
8. Documentation of completed pre-service orientation training by the Department;
9. A sketch, diagram, or blueprint of the facility showing the dimensions, arrangement of rooms to be used by the children, and outdoor play area;
10. Copies of zoning approval from the relevant jurisdiction; and
11. The $25 licensing fee (see 2-004.07).

2-003.01B Denial of Provisional License: See 2-008 for grounds on which the Department may deny a provisional license.

2-003.01C Extension of Provisional License: The Department may extend a provisional license once for a period no longer than six months. The Department’s decision regarding extension of a provisional license may

not be appealed. A provisional license may be extended if the Department determines:

1. The provisional licensee is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;
2. The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and
3. The licensee has a written plan of correction that has been approved by the Department which is to be completed within the extension period.

2-003.01D Expiration of Provisional License: The Department will send a notice of expiration to the licensee no later than 90 days before the date of expiration.

1. If a provisional licensee does not submit a complete application for an operating license on or before the expiration date, the provisional license expires.
2. If the former licensee submits a complete application and is in compliance with all regulations within 90 days after expiration, the Department will issue an operating license effective when issued.
3. If the former licensee submits an application more than 90 days after expiration, the Department will process the application as a provisional license application.

2-003.02 Operating Licenses: Operating licenses are standard, non-expiring licenses that are issued to Family Child Care Home II programs that have been in operation for more than one year and are in full compliance with all regulations. Licensees must have completed one full year with a provisional license with satisfactory compliance with all regulations before qualifying for an operating license.

2-003.02A Application Requirements: An applicant for a Family Child Care Home II operating license must submit:

1. A complete, accurate, written and signed application and disclosure of ownership on a form provided by the Department, which contains all information required and authorized by the Child Care Licensing Act;
2. For the purpose of complying with Neb. Rev. Stat. §§ 4-108 to 4-114, an attestation that s/he is a U.S. citizen or a qualified alien lawfully present in the U.S. The applicant must provide his/her immigration status and alien number, and agree to provide a copy of his/her USCIS documentation upon request;
3. A Report of Law Enforcement Contact for the applicant, all staff and volunteers age 19 or older, and all household members age 19 or older (see 2-006.02C);
4. Documentation of annual training hours completed during the provisional year; and
5. The $25 licensing fee (see 2-004.07).

2-003.02B Denial of Operating License: See 2-008 for grounds on which the Department may deny an operating license.

2-003.03 Change of Ownership: Child care licenses are not transferable or assignable. A change of ownership terminates the license. The new owner must apply for a license.

2-003.03A Change of ownership includes the sale or transfer of the ownership or control of a child care program to a person other than the current licensee. Change of ownership does not include a change of name or location of the child care program.

2-003.03B Requirements of New Owner: If there is a change of ownership and the child care program remains on the same premises, the new owner must apply for a provisional license as required in 2-003.01A, except that:

1. Criminal history record checks, Reports of Law Enforcement Contact, and Health Information Reports are required only for new employees who have not already submitted or completed these documents; and
2. A sketch, diagram, or blueprint of the facility is required only when the new owner changes the use of the facility.

2-003.03C Mergers: If there is a change of ownership based on the merger of a parent and subsidiary company, affiliated businesses, or governmental units, and the child care program remains on the same premises, the new owner must submit:

1. A Full Disclosure of Ownership Statement on a form provided by the Department; and
2. An application for a child care license.

2-003.03D Denial of License: See 2-008 for grounds on which the Department may deny a license.

2-003.04 Temporary and Voluntary Cease of Operation: A licensee may request to voluntarily cease operation of the child care program for a period of up to one year. The licensee must:

1. Have attained an operating license;
2. Intend to re-open the child care program at the same location;
3. Not serve any children during the period of ceased operation;
4. Not be the subject of an investigation of alleged non-compliance with regulations, or outstanding non-compliance; and
5. Pay license fees during the period as specified in 2-004.07.

2-003.04A If the licensee is the subject of any negative or disciplinary action, the period of ceased operation does not count toward the period of negative or disciplinary action.

2-003.04B No routine fire safety, sanitation, or Department inspections will be conducted during the period of ceased operation.

2-003.04C The period of ceased operation may be extended beyond the one-year limit if the licensee shows a reasonable cause.

2-003.04D Reinstatement: A Family Child Care Home II licensee may request reinstatement after a period of ceased operation by submitting an application at least 30 days before the scheduled re-opening date. The Department will review the application and decide if additional information, an on-site inspection, or a fire safety inspection is needed to determine compliance with regulations.

2-003.05 Negative Actions: The Department may initiate a negative action when a licensee is not in compliance with regulation but the violation does not rise to the level of a disciplinary action. (Disciplinary actions are described in 2-008.) Negative actions are voluntary and are not appealable. The Department may conduct unannounced monitoring inspections of licensees under negative action. If a licensee does not agree to the terms of the negative action, the Department may initiate a disciplinary action. The two types of negative action are a Licensing Agreement and Corrective Action Status, described as follows.

2-003.05A Licensing Agreement: The Department may request a written licensing agreement if:

1. The licensee is unable to comply with all licensure requirements and standards or has a history of noncompliance; and
2. The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff.

2-003.05A1 The licensing agreement must:

1. Identify the length of time the Department has determined the agreement will be in effect;
2. Identify violations of regulations;
3. Identify conditions the licensee has agreed to in order to correct any identified issue and to maintain compliance with licensing standards;
4. Be signed by the licensee; and
5. Be witnessed by a notary public, Department staff, or non-relative of the licensee.

2-003.05B Corrective Action Status: The Department may place a provisional or operating child care license on corrective action status for up to six months if:

1. The licensee is unable to comply with all licensure requirements and standards or has a history of noncompliance;
2. The effect of noncompliance with any rule or regulation does not

present an unreasonable risk to the health, safety, or well-being of children or staff; and
3. The licensee has a written plan of correction that has been approved by the Department.

2-003.05B1 The written plan of correction must:

1. Identify the issue(s) of concern;
2. Identify who is responsible for corrections and maintenance of compliance;
3. Include timelines; and
4. Specify the information to be provided to the Department.

2-003.05B2 The Department may discipline the license if the written plan of correction is not approved.

2-003.06 Voluntary Surrender of a License: A licensee may voluntarily surrender a license issued under the Child Care Licensing Act at any time, except that the Department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the Department has initiated disciplinary action against the licensee. If the Department accepts the surrender, the licensee must return the license to the Department within one week of the surrender.

2-003.06A Reapplication for an Operating License Less Than One Year After Voluntary Surrender: An individual who voluntarily surrendered a FCCH II operating license less than one year before the date of reapplication may reapply for an operating license. The individual must meet the requirements of 2-003.02A.

2-003.06B Reapplication One Year or More After Voluntary Surrender: An individual who voluntary surrendered a FCCH II provisional or operating license one year or more before the date of reapplication must reapply for a provisional license. The individual must meet the requirements of 2-003.01A.

2-003.07 Permanent Closure: When a program is to be permanently closed, the licensee must return the license to the Department within one week of closing.

2-004 GENERAL REQUIREMENTS

2-004.01 License Not Transferable: A Family Child Care Home II license is not transferable or assignable and is only valid at the address printed on the license.

2-004.02 Posting of License and Availability of License Record Information: The license, including any applicable status or amendment, must be displayed in a prominent place so that it is clearly visible to parents and others. License record information and inspection reports must be made available for public inspection upon request.

2-004.03 Change in Premises: When there is a change in premises:

1. Ninety days before the scheduled date of occupancy of the new premises, the licensee must submit an application for the same type of license (provisional or operating) currently held, except that:

a. The following items must be submitted before the license will be issued:

(1) A sketch, diagram, or blueprint of the facility showing the dimensions and arrangement of each room to be used by children and the outdoor play area;
(2) A fire inspection approval issued by the State Fire Marshal or delegated authority;
(3) Copies of zoning approval from the relevant jurisdiction;
(4) Planned occupancy date; and

b. Remaining items must be submitted only if there are changes since the previous application;

2. The Department will conduct an inspection(s) of the proposed location to determine compliance with these regulations before use or occupancy by the applicant; and
3. The new premises cannot be used for a child care program until a license has been issued by the Department. The license for the initial premises will become null and void when a license for the new premises is issued.

2-004.04 Alternative Compliance: The Department may grant alternative compliance with a regulation under the following conditions.

2-004.04A Written Request: A request for alternative compliance must be submitted to the Department in writing and must include:

1. The regulation for which alternative compliance is being requested;
2. The reason(s) for the alternative compliance request;
3. A description of how the alternative will meet the intent of the regulation; and
4. How the alternative will offer equal protection for all children.

2-004.04B Review and Approval: The Department may request additional information from the applicant or licensee in order to reach a decision to approve or deny the alternative compliance request. To be considered for approval, the proposed alternative must:

1. Be consistent with the overall intent and purposes of licensing; and
2. Protect the rights, health, safety, and well-being of all children in care.

2-004.04C Terms of Alternative Compliance: Alternative compliance may be granted:

1. For a period of time that ends when the conditions of the approval no longer exists; and
2. To permit the applicant or licensee time to come into compliance.

2-004.04D Requirements Not Qualifying for Alternative Compliance: Alternative compliance will not be granted for the requirements on:

1. Capacity/Ratio;
2. Transportation;
3. Supervision;
4. Fire safety;
5. Criminal history and background checks;
6. Licensee and staff; and
7. Any regulation for which a discipline has been initiated or completed.

2-004.04E Notification of Department Decision: When the Department receives an alternative compliance request and has obtained all information needed to process the request, the Department will notify the applicant or licensee in writing of its decision to approve or deny the request. The notification will be made within 30 days of the Department's receipt of all appropriate information.

2-004.05 Notification of Changes: An applicant or licensee must notify the Department:

2-004.05A An Amendment to Application must be submitted at least 90 working days before the planned effective date for a change:

1. In location (see 2-004.03); and
2. In building or building usage.

2-004.05B An Amendment to Application must be submitted at least five working days before the planned effective date for a change:

1. In the days of the week care is provided;
2. In the hours of the day care is provided;
3. In the age of children for whom the child care home provides care; and
4. In household members age 13 or older, if the child care home is located in a private residence.

2-004.05C An Amendment to Application must be submitted within two working days of a change:

1. In the name of the licensee; or
2. In household members age 12 or younger, if the child care home

is located in a private residence.

2-004.06 Information Available to Public: The Department will release the following information to the public upon request:

1. Application;
2. Name of licensee;
3. Name of program;
4. Program address;
5. Program telephone number;
6. Alternative compliances;
7. Type of license;
8. Relevant license information (for example, licensed capacity, hours and days of care, ages of children served, license effective dates);
9. Copies of inspection reports;
10. Fire safety inspection reports and correspondence;
11. Sanitation inspection reports and correspondence;
12. Licensing agreements;
13. Provisional license extension notices;
14. Corrective action status notices;
15. Discipline notices;
16. Corrective action plans;
17. Written transcripts of administrative hearings;
18. Emergency orders; and
19. All final orders.

2-004.06A The Department will not release the following information to the public:

1. Names, addresses and telephone numbers of complainants;
2. Names, addresses and telephone numbers of enrolled children and their parents/guardians;
3. Social Security or Federal Tax Identification numbers;
4. Health Information Reports and any physical or behavioral health information on the licensee and staff;
5. Reports of Law Enforcement Contact by the licensee, staff, and household members;
6. Law enforcement reports;
7. Child welfare reports or records, including the state child abuse/neglect central register under Neb. Rev. Stat. § 28-718;
8. Adult protective services (APS) reports or records, including the APS central registry under Neb. Rev. Stat. § 28-376;
9. Nebraska State Patrol Sex Offender Registry information not available to the public under the Sex Offender Registration Act; or
10. Internal Department correspondence, notes, and investigation reports.

2-004.07 Fees

1. Initial and annual licensure fees for a Family Child Care Home II are $25.
2. Initial and annual licensure fees are nonrefundable, except:

a. If the Department denies an application for a license or an applicant withdraws their application, and the Department has not completed an inspection before the denial or withdrawal, the Department will return the license fee to the applicant.

3. Fees will be accepted in the form of a check or money order. Cash will not be accepted.

2-005 INSPECTIONS AND COMPLAINT INVESTIGATIONS: To determine compliance with licensing regulations, the Department will inspect Family Child Care Home II programs as provided under the Child Care Licensing Act.

2-005.01 Initial Licensure Inspection: The Department will:

1. Schedule the date and time of the inspection visit with the applicant and/or the applicant's designee;
2. Conduct an on-site inspection to determine compliance with licensing regulations within 30 days of receipt of a completed application for a provisional license; and
3. Provide a preliminary copy of the compliance report to the applicant and/or the applicant's designee.

2-005.02 Provisional-to-Operating License Inspection: The Department will:

1. Conduct an unannounced on-site inspection to determine compliance with these regulations;
2. Conduct the inspection within 30 days of receipt of a completed application for an operating license;
3. Provide a preliminary copy of the compliance report to the applicant and/or designee at the conclusion of the inspection; and
4. Document any violations of these regulations determined at the inspection.

2-005.03 Annual License Inspection: The Department will conduct an unannounced inspection each year to assess compliance with licensing regulations.

2-005.04 Follow-Up Inspection: The Department may conduct a follow-up inspection to determine if the licensee has corrected all violations and to determine full compliance with regulations following any type of inspection. If conducted, the follow-up inspection will:

1. Occur no later than 60 days after the original inspection, or sooner if the licensee requests or if the violation needs to be corrected immediately; and
2. Be unannounced unless the program is closed.

2-005.05 Monitoring Inspection: The Department may conduct unannounced monitoring inspections to determine compliance with regulations and the conditions of any negative action or discipline.

2-005.06 Inspection Results

1. The Department will provide a copy of the compliance report to the child care program within ten working days after completion of an inspection.
2. When the Department finds that the applicant or licensee has complied substantially, but has failed to comply fully with all regulations, the applicant or licensee may request an alternative compliance (see 2-004.04).
3. When the Department finds that the applicant or licensee has complied substantially but has failed to comply fully with all regulations and the failure(s) would not pose an imminent danger of death or serious harm, the Department may:

    a. Allow the applicant or licensee a period of time to correct all the violations; or
    b. Initiate negative action or discipline if the applicant or licensee fails to correct all violations within the time frame given by the Department or has a history of violating the same or similar regulations at previous inspections.

4. When the Department finds that the applicant or licensee has failed to meet the regulations, the Department may initiate negative action or discipline or require the applicant or licensee to make all corrections at the time of inspection. If compliance cannot be achieved immediately, the Department may allow a reasonable period of time after the inspection was conducted to make corrections.

2-005.07 Complaint Investigations: The Department will investigate any licensed child care center after receiving an allegation of violation of licensing regulations.

1. The Department will accept complaints from anyone who witnessed a violation or a parent/guardian of a child who witnessed a violation;
2. The Department will accept complaints via telephone, letter, fax, electronically, or in person;
3. The identity of a complainant is not public information.
4. Only if found to be credible by the Department can such an allegation or complaint result in any negative action or discipline.

2-005.08 Complaint of Allegedly Improper Unlicensed Care: The Department will investigate any complaint of a person allegedly providing child care without an appropriate license. The Department will accept complaints from anyone via telephone, letter, fax, or electronically. The identity of a complainant is not public information. The Department may request enforcement by the Attorney General or the appropriate County Attorney if a person continues to provide a child care program without a license.

2-005.09 Inspection by Other Entities

2-005.09A Fire Inspection: The Department will make a fire inspection referral when:

1. An application is received for an initial Family Child Care Home II license;
2. There is a change in address;
3. The licensee is using areas of the home that were not approved for the care of children;
4. There is a change in hours to include overnight care;
5. There is a complaint specific to fire safety issues; or
6. Department staff observe conditions that may endanger the health or safety of children in care.

2-005.09B Sanitation Inspection: The Department will make a sanitation inspection referral when:

1. There is a complaint specific to sanitation issues; or
2. Department staff observe conditions that may endanger the health or safety of children in care.

2-006 STANDARDS OF OPERATION AND CARE: To provide adequate protection to children in care and to comply with state law, a Family Child Care Home II must meet the following standards.

2-006.01 Licensee Qualifications and Requirements: The Family Child Care Home II licensee must:

1. Be at least 19 years of age;
2. Be of good moral character;
3. Be a U.S. citizen or qualified alien lawfully present in the U.S.;
4. Be responsible for the day-to-day operation of the child care program;

5. Read, understand, and be familiar with these regulations;
6. Make license record information and inspection reports available for public inspection upon request;
7. Be in compliance with all regulations whenever any children are in care;
8. Assess his/her own ability and the ability of all staff to provide care for children with special needs while meeting the needs of other children enrolled;
9. Not engage in any other employment that interferes with the care of children;
10. During the hours of operation, not be under the influence or allow any staff, volunteer, or household member to be under the influence of alcohol, controlled substances that have not been lawfully prescribed, or any other type of substance that would affect their ability to care for children;
11. Allow parents access to their children at all times that children are in care; Denial of immediate and unrestricted access to the licensed premises by parents may be basis for disciplinary action against the license;

12. Allow access to the premises by an agent or employee of the Department for the purpose of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department;
13. Allow announced and unannounced inspections by state or local inspectors, investigators, or law enforcement officers for the purpose of investigation necessary to carry out their duties;
14. Not knowingly allow any individual to be on the premises if s/he has been convicted of, admitted to, or there is substantial evidence of, crimes involving intentional bodily harm, crimes against children, crimes involving the illegal use of controlled substances, or crimes involving moral turpitude;
15. Not knowingly allow any individual who is a registered sex offender on the premises, except that a parent who is a registered sex offender may be allowed on the premises only to pick up and drop off his/her child;
16. Not engage in or have a history of behavior injurious to or which may endanger the health or morals of children; and
17. Immediately file a report with the Child Abuse-Neglect Hotline (1-800-652-1999) and/or appropriate local law enforcement agency when s/he has reason to believe child abuse, neglect, or sexual abuse may be occurring in the family child care home, in the child's home, or elsewhere.

2-006.02 Background Checks, Health Information, and Employment Limitations

2-006.02A Criminal History Record Check: The applicant/licensee must complete a pre-employment criminal history record check through a governmental law enforcement agency on him/herself, each staff member and volunteer age 19 or older, and each household member age 19 or older if the child care home is a private residence. Documentation must be kept and available for review by the Department.

The check must be conducted through the Nebraska State Patrol or through one or more local law enforcement agencies, as appropriate to the individual's residence(s). If an individual has lived in Nebraska less than 12 months, the applicant/licensee must obtain documentation of a criminal history record check from the previous state(s) of residence.

2-006.02A1 Permanent Child Care Disqualification:

An individual is permanently disqualified from holding a child care license or working as a staff member or volunteer in a Family Child Care Home II if s/he has a criminal history that includes conviction of any unlawful act endangering the health or safety of another individual. Such convictions include crimes against a child or vulnerable adult, crimes involving intentional bodily harm, crimes involving the sale, distribution or procurement of a controlled substance, or crimes involving moral turpitude on the part of the individual. These crimes include, but are not limited to:

1. Aggravated or armed robbery;
2. Assault, first or second degree;
3. Child abandonment;
4. Child abuse;
5. Child molestation or debauching a minor;
6. Child neglect;
7. Commercial sexual exploitation of a minor;
8. Domestic violence;
9. Exploitation of a minor involving drug offenses or conviction of drug offenses that involved a minor;
10. Felony controlled substances offenses, other than possession;

11. Felony violation of custody;
12. Incest;
13. Kidnapping;
14. Murder, first or second degree;
15. Sexual abuse of a minor;
16. Sexual assault;
17. Sexual exploitation of a minor, including child pornography; or
18. Voluntary manslaughter.

2-006.02A2 Twenty-Year Disqualification: An individual is disqualified from holding a child care license or working as a staff member or a volunteer in a Family Child Care Home II if s/he has a criminal history that includes conviction in the last 20 years of:

1. Arson;
2. Criminal non-support;
3. Felony possession of controlled substance offences;
4. Felony theft; or
5. Robbery.

The 20-year disqualification begins the date the conviction became final. Any time the individual is incarcerated, either in jail or a state or federal correctional facility, is not included in the calculation of the 20-year period of disqualification. If the individual has more than one conviction, the 20-year disqualification begins the date the most recent conviction became final.

3-006.02A3 Five-Year Disqualification: An individual is disqualified from holding a child care license or working as a staff member or a volunteer in a Family Child Care Home II if s/he has a criminal history that includes conviction in the last five years of:

1. Burglary;
2. Driving under the influence: two or more convictions;
3. Felony bad check writing;
4. Misdemeanor controlled substances offenses;

5. Misdemeanor contributing to the delinquency of a child; or
6. Misdemeanor theft.

The five-year disqualification begins the date the conviction became final. Any time the individual is incarcerated, either in jail or a state or federal correctional facility, is not included in the calculation of the five-year period of disqualification. If the individual has more than one conviction, the five-year disqualification begins the date the conviction became final.

2-006.02A4 An applicant, licensee, staff member, volunteer, or household member, must not have had his/her rights as a parent terminated by a Court because of a finding of abuse or neglect of a child or inability to care for a child.

2-006.02A5 Department Determination: An individual may hold a child care license or work as a staff member or a volunteer in a Family Child Care Home II with a pending complaint or indictment or conviction of other crimes if the Department determines the individual has the present character and fitness to work with children. In making this determination the Department may consider the following factors:

1. The age of the individual at the time of the conduct;
2. The recency of the conduct;
3. The seriousness of the conduct;
4. The factors underlying the conduct;
5. The cumulative effect of the conduct;
6. The evidence of rehabilitation;
7. The individual's positive social contributions since the conduct;
8. The individual's honesty in providing information; and
9. The materiality of any omissions or misrepresentations.

The Department may deny or take action against a license if an individual is found to have a criminal history that includes conviction or substantial evidence of committing or permitting, or aiding or abetting another to commit any unlawful act endangering the health or safety of another individual or a history of convictions or behavior that shows an inability or unwillingness to comply with laws or regulations. This applies to the applicant/licensee, household members who reside at the place where the child care program will be/is provided, volunteers, and employees of the applicant/licensee.

2-006.02B Registry Checks:

The applicant/licensee, staff, volunteers, and household members if the home is a private residence, must not be listed as a perpetrator of abuse or neglect on Nebraska's:

1. Child abuse/neglect central register, if the individual is age 13 or older;
2. Adult protective services (APS) central registry, if the individual is age 18 or older; or
3. State Patrol sex offender registry. The individual must provide enough information for an accurate check of the registries and must authorize the release of registry information. The Department will conduct the child and adult registry checks and provide the results to the applicant/licensee.

The applicant/licensee must conduct the State Patrol sex offender registry check. All registry checks must be completed before the individual assumes responsibility for the care and supervision of children.

Any individual who is listed as a perpetrator on any of the registries must not be on the child care premises during the hours of operation, except that a parent listed as a perpetrator may be allowed on the premises only to pick up and drop off his/her child.

2-006.02C Reports of Law Enforcement Contact: The applicant/licensee must complete a Report of Law Enforcement Contact for him/herself and must obtain a completed report for each staff member and volunteer age 19 or older and household member age 19 or older if the home is a private residence. The report must:

1. Be updated, signed and dated annually;
2. Be updated any time one of these individuals is arrested, issued a citation other than a minor traffic violation, or charged with or convicted of any felony, misdemeanor, or infraction;
3. List all previous and pending criminal charges and arrests, both felony and misdemeanor, regardless of prosecution;
4. List any record of felony and/or misdemeanor charges and arrests related to crimes against children;
5. List any record of felony and/or misdemeanor convictions;
6. List any current or past parole or probation status, including diversion or court supervision; and
7. List details, dates, county and state of the contact, arrest, charge, conviction, and disposition, if any.

2-006.02D Notification of Law Enforcement Contact: As soon as the licensee becomes aware of the occurrence, the licensee must notify the Department of any arrest, misdemeanor ticket other than a traffic violation, pending criminal charges, and any felony/misdemeanor convictions of him/herself, staff, volunteers, or household members. Failure to notify the Department of law enforcement contacts as described may result in disciplinary action.

2-006.02E Investigations and Repeat Registry Checks

1. Any time the licensee has reason to believe that a staff member or volunteer is being or has been investigated for abuse, neglect, or sexual abuse of a child or vulnerable adult, the licensee must submit the name of that individual to the Department for a check with the child abuse/neglect or adult protective services registry.
2. Any individual who is under investigation for abuse, neglect, or sexual abuse of a child or vulnerable adult must not be left alone with children until the investigation is completed and the findings are determined.

2-006.02F Health Information Report: The applicant must submit a completed and signed Health Information Report on a form provided by the Department for him/herself as part of the initial application. All staff who are responsible for the care and supervision of children more than 20 hours per week must complete the report within 30 days of hiring. The Health Information Report must be completed annually.

The Health Information Report must include an assessment by a health professional of the individual and any health conditions that could negatively affect his/her ability to care for children. If the information indicates that the individual has, or has had, a health condition that could negatively affect his/her ability to care for children, the Department may request additional information.

2-006.03 Primary Provider, Staff, Volunteer, and Household Member Qualifications and Requirements

2-006.03A Primary Provider: The licensee may serve as the primary provider. When serving as the primary provider, the licensee or the individual who is the primary provider must:

1. Be at least 19 years of age;
2. Be of good moral character;
3. Not engage in or have a history of behavior injurious to or which may endanger the health or morals of children;
4. Be on the child care premises a sufficient number of hours to permit adequate attention to the management of the Family Child Care Home II; and
6. Read, understand, and be familiar with these regulations.

2-006.03B Staff: Staff, including substitutes, must:

1. Be at least 16 years of age;
2. Be of good moral character; and
3. Not engage in or have a history of behavior injurious to or which may endanger the health or morals of children.

2-006.03C Volunteers: All volunteers must:

1. Be of good moral character;
2. Not engage in or have a history of behavior injurious to or which

may endanger the health or morals of children; and
3. Never be left alone with children other than their own.

2-006.03D Household Members: If the child care home is a private residence, the licensee must:

1. Obtain a completed Report of Law Enforcement Contact on household members age 19 or older;
2. Obtain documentation of a criminal history record check on household members age 19 or older; and
3. Not allow any household member who engages in behavior injurious to or which may endanger the health or morals of children to provide care or be on the premises.

2-006.04 Training: Training must be completed as follows. Documentation of the completion of all training must be available on the premises for the Department to review. Acceptable documentation includes certificates issued by trainers and documentation of independent study.

2-006.04A Pre-Service Training: Before a provisional license will be issued, the applicant must complete the following:

1. Two-hour orientation training provided by the Department;
2. Cardiopulmonary Resuscitation (CPR) training; and
3. First Aid training.

2-006.04B Safety Training:

The primary provider must complete training developed by the Early Childhood Training Center on Sudden Infant Death Syndrome (SIDS), safe sleep, shaken baby syndrome, and child abuse/neglect and reporting. Any proposed equivalent training must be approved by the Department.

1. In programs licensed on or after the operative date of these regulations, the primary provider must complete the training within three years of the date of provisional licensure and every five years thereafter.
2. In programs licensed before the operative date of these regulations, the primary provider must complete the training within three years of that operative date and every five years thereafter.
3. This training counts toward the annual training requirement.

2-006.04C Business Management Training: The primary provider must complete a business training module for family child care homes developed by the Early Childhood Training Center (ECTC). Any proposed equivalent training must be approved by the Department.

1. In programs licensed on or after the operative date of these regulations, the primary provider must complete the training within five years of the date of provisional licensure.
2. In programs licensed before the operative date of these

regulations, the primary provider must complete the training within five years of that operative date.
3. This training counts toward the annual training requirement.

2-006.04D Nebraska's Early Learning Guidelines Training: The primary provider must complete training in the seven domains of Nebraska's Early Childhood Learning Guidelines developed by the ECTC. Any proposed equivalent training must be approved by the Department. The domains are: Approaches to Learning, Creative Arts, Health and Physical Development, Language and Literacy Development, Mathematics, Science, and Social and Emotional Development.

1. In programs licensed on or after the operative date of these regulations, the primary provider must complete training in one domain within four years of the date of provisional licensure and one domain annually thereafter.
2. In programs licensed before the operative date of these regulations, the primary provider must complete training in one domain within four years of that operative date and one domain annually thereafter.
3. This training counts toward the annual training requirement.

2-006.04E Annual Training: The primary provider and each staff member, not including substitutes or volunteers, must obtain 12 clock hours of training annually. Staff who work 20 hours or less each week must complete six hours of training annually.

2-006.04E1 Training must include but is not limited to the following topics:

1. Safe environments;
2. Healthy environments;
3. Learning environments;
4. Physical development;
5. Cognitive learning;
6. Communication;
7. Creative learning;
8. Self esteem;
9. Social development;
10. Guidance;
11. Family relationships;
12. Program management; and
13. Professionalism.

Audio, video, and reading material specific to one or more of these training topics will count toward the annual training requirement only if an Independent Learning Summary is completed on a form provided by the Department. The actual length of audio and video material will be counted, and 50 pages of text will be considered equal to one clock hour of training. Two hours of CPR and one hour of first aid will be counted toward the annual training requirement in the year each is taken.

2-006.04E2 Each clock hour spent participating in any of the following types of activities counts toward the annual training requirement:

1. Workshops and conferences;
2. College courses;
3. Non-credit course work; and
4. Adult education courses.

2-006.04F Cardiopulmonary Resuscitation (CPR) and First Aid Training

1. CPR training must be obtained from an entity that has been approved by the Nebraska Board of Emergency Medical Services. The Department will provide the program with information about approved CPR courses.
2. The primary provider must maintain current CPR and First Aid training as long as the home is licensed.
3. The CPR card and documentation of First Aid training must be available upon request.

2-006.05 Employee Records Requirements: The licensee must ensure the following records are maintained, updated as needed, and made available to the Department upon request.

2-006.05A Primary Provider and Staff: Records for the primary provider and for all staff, except substitutes and volunteers, must include:

1. Name;
2. Address and telephone number;
3. Social Security number;
4. Date of hire/termination;
5. A completed Report of Law Enforcement Contact;
6. Documentation of a criminal history record check;
7. A completed Health Information Report; and
8. Documentation of Nebraska registry checks with no adverse findings;
9. Documentation of training; and
10. Documentation that the individual has read and understands these regulations.

2-006.05B Substitutes and Volunteers: Records for each substitute and volunteer must include:

1. Name;
2. Address and telephone number;
3. Social Security Number;
4. Start date;
5. A completed Report of Law Enforcement Contact;
6. Documentation of a criminal history record check;
7. Documentation of Nebraska registry checks with no adverse findings; and
8. For volunteers only, a written schedule that includes the hours

and days of the week the individual serves as a volunteer.

2-006.06 Child's Record: A Child's Record must be completed before the child's enrollment. The record must be kept current and available for review upon request by the Department. A Child's Record form may be used or a form may be created and must contain the following information for each child:

1. Name of child;
2. Birthdate of child;
3. Enrollment date;
4. Date care ceased, if applicable;
5. Parent or guardian's home address and telephone number;
6. Parent or guardian's employment address and telephone number;
7. Individual(s) to whom the child may be released by the caregiver;
8. Individual(s) who will take responsibility for the child in an emergency when the parent or guardian cannot be reached;
9. Consent to contact a physician in an emergency;
10. Current health status of the child; and
11. List of child's allergies and intolerance to food, insect bites, or stings, or other factors that result in a medical reaction, and clear instructions in the event of an exposure to the factor.

2-006.07 Parent Information Brochure: At the time of enrollment, the licensee must give the parent(s) of each enrolled child a Parent Information Brochure provided by the Department. The licensee must keep receipts signed and dated by the parent and make them available for review by the Department.

2-006.08 Licensed Capacity and Staff-to-Child Ratio

2-006.08A Licensed Capacity: The number of children in care at any one time must not exceed the licensed capacity. Licensed capacity will be determined by the Department based on available space and the capacity authorized by the State Fire Marshal or delegated authority. Whichever number is smaller will be the licensed capacity of the child care home.

The maximum licensed capacity for a Family Child Care Home II is 12 children. In determining whether the licensed capacity has been exceeded, any adults receiving care and supervision and all children at the program are counted, except:

1. Children who have left the child care home for an activity and will not be returning that day;
2. Children enrolled in the program and in attendance at school; and

3. Own children over age eight unless the licensee is receiving compensation directly or indirectly for own children over age eight.

2-006.08B Staff-to-Child Ratio: The appropriate staff-to-child ratio must be met at all times, as follows.

1. Infants only. If the program provides care to infants only, the following ratios apply:

Number of Infants in Care	Number of Staff Required
4	1
5-8	2
9-12	3

2. Mixed ages. If the program provides care to children of mixed ages, the following ratios apply:

Number of Children in Care	Number of Staff Required
1-10	1
11-12	2

a. Programs serving children of mixed ages may provide care for up to three infants if no more than two of the infants are under 12 months of age.
b. Programs serving ten children with one staff are limited to two infants and the ninth and tenth children must be school-age.

3. School-age only: If the program provides care to school-age children only, the following ratio applies:

Number of Children in Care	Number of Staff Required
1-12	1

2-006.09 Communicable Diseases: The Department will provide the program with information about communicable diseases to assist the program in carrying out its responsibilities.

2-006.09A Notification to Parents: The licensee must notify parents of all enrolled children of any case of any reportable communicable disease on the same day the licensee is informed of or observes the illness, unless otherwise directed by the health authority. The health authority is the local health department for the area. Proper notification includes:

1. Notification to parents of children in attendance;
2. Notification to parents of enrolled children who are not in attendance on that day; and
3. Posting notice of the outbreak in a conspicuous place.

2-006.09B Confidentiality: Names of ill children must not be released to anyone except health authorities, unless parents have given their permission.

2-006.09C Health Authority: The licensee must follow all directives given to the licensee by the health authority in the event of a communicable

disease outbreak.

2-006.10 Children Excluded Due to Illness: The licensee must have a written policy that identifies the circumstances under which children would be excluded from child care due to illness. To assist in writing the policy, the Department will provide the licensee with materials that include recommendations on:

1. Exclusion based on specific conditions such as fever, diarrhea, vomiting, etc.; and
2. Exclusion based on specific contagious and infectious diseases such as chickenpox, measles, mumps, etc. The licensee must enforce the program's exclusion policy and make it available to the Department and to the parents of enrolled children.

2-006.11 Immunizations: Within 30 days of a child's enrollment, the licensee must obtain a copy of the child's immunization record. Immunization records must be available for review upon request by the Department and updated each time the child receives additional immunizations. Each child's immunization record must include:

1. Documentation of age-appropriate immunization;
2. Certification by a physician, advanced practice registered nurse, or physician assistant that immunization is not appropriate for a stated medical reason; or
3. A written statement that the parent or guardian does not wish to have the child immunized and the reasons for that decision.

2-006.11A Immunization Report: The licensee must comply with all state statutes and regulations (Neb. Rev. Stat. §§ 71-1913.01 to 71-1913.03 and 173 NAC 4) regarding immunization status of all enrolled children. This includes annual reporting to the Department as specified in 173 NAC 4. The Department will provide materials to assist the program in carrying out its responsibilities.

2-006.12 Supervision of Children: Adequate and appropriate supervision must be provided to children at all times children are in attendance, including during outdoor play. Ultimate responsibility for supervision rests with the licensee.

2-006.12A Supervision in the Absence of the Primary Provider:

Any designated substitute has the same responsibility for providing adequate and appropriate supervision as the primary provider. All parents, except in emergency situations, must be notified in advance of the use of a substitute supervisor.

2-006.12B Permission for Off-Premises Supervision: The licensee must ensure that parents are informed and give written permission when children will be outside the premises of theome and supervised by staff. Written permission must be available to the Department on request.

2-006.12C Permission for Child to Leave Premises: If a child participates in activities that are not provided by the licensee and are outside the child care premises, the licensee must btain written permission from the parent. The written permission must be available to the Department upon request and must indicate the following:

1. The parent gives permission for his/her child(ren) to leave the child care premises; and
2. The parent understands the licensee is not responsible for supervision while his/her child participates in activities outside the child care premises or outside the supervision of the licensee.

2-006.12D Supervision During Outdoor Play: All children must be supervised during outdoor play.

2-006.12D1 Fenced Play Area: Children under the age of two must be accompanied and supervised while in a fenced play area. Children two and over may play in a fenced area unaccompanied, but must be supervised at all times.

2-006.12D2 Unfenced Play Area: Children under the age of four must be accompanied and supervised while in a play area that does not require a fence. Children four or older may be unaccompanied, but must be supervised at all times when playing in an unfenced play area.

2-006.13 Discipline: When parents are not present, the responsibility for the discipline of children in care lies only with the primary provider or the designated substitute. 2-006.13A Prohibited Forms of Discipline: The following actions are prohibited as a form of discipline:

1. Spanking;
2. Slapping;
3. Punching;
4. Pinching;
5. Shaking;
6. Striking with any object;
7. Use of soap, hot sauce or other unpleasant food or non-food items;
8. Isolating a child in a locked or closed room or closet;
9. Handling roughly;
10. Biting;
11. Denial of food;
12. Forced napping;
13. Subjecting a child to derogatory remarks about the child or the child’s family;
14. Abusive or profane language directed at children;
15. Yelling or screaming at children;
16. Threats of physical punishment; or
17. Mechanical restraints.

2-006.13B Child Behavior That Cannot Be Disciplined: Children must not be disciplined for the following:

1. Toileting accidents;
2. Refusal to take medication; or
3. Refusal to eat.

2-006.13C Use of Time Out: Separation from the group, if used, must be brief and appropriate for the child's age. The time out period must:

1. Take place in a safe, lighted, and well-ventilated area;
2. Occur within hearing distance of staff; and
3. Not exceed more than one minute for each year of the child's age. If the time a child spends in time out is extended, it must be carried out as indicated by a behavioral management plan developed and monitored by a licensed or certified professional qualified to identify the special needs of a child, as having a physical, emotional, or social developmental delay or impairment.

2-006.13D Use of Physical Hold: The primary provider and staff may restrict a child's movement by the use of a physical hold. A physical hold may be used only:

1. When the child is hurting him/herself, others, or property;
2. When the hold does not prevent the child from breathing or speaking; and
3. Until the child is calm and able to demonstrate reasonable control of his/her behavior.

2-006.13D1 Notification and Documentation: The licensee must notify the child's parents within 24 hours of the physical hold when a physical hold is used on their child. Written documentation of each use of a physical hold must be available for review by the parents of the child involved in the physical hold and the Department. The documentation must include:

1. Child's name;
2. Date of the incident;
3. Description of the incident; and
4. Names of the staff involved.

2-006.13E Use of Restraints: The use of restraints is prohibited except under the following conditions:

1. All staff who participate in restraining a child must have received prior training in de-escalation and the use of restraints.
2. The training curriculum must be accepted by the Department.
3. The training must be taught by a certified trainer.
4. Written documentation of each use of restraint must be available for review by the parents of the child involved in the restraint and the Department. The documentation must include:

a. Child's name;
b. Date of the incident;
c. Description of the incident; and
d. Names of the staff involved.

2-006.14 Prohibited Language, Materials, and Actions: Children of any age must not be exposed to:

1. Profanity;
2. Sexually explicit material;
3. Acts of violence towards a person or animal; or
4. Acts of racism.

2-006.15 Child Development Program: The licensee must provide an age-appropriate program designed to promote the cognitive, social, emotional and physical development of children in care. Information about the program must be given to parents and the Department upon request. The program must include:

1. Indoor play;
2. Outdoor play;
3. Napping and rest periods;
4. Opportunities for individual and group play times;
5. Opportunities for children to read and explore books;
6. Daily reading with children of age-appropriate literature; and
7. Fostering language and social development by talking and interacting with children and modeling appropriate language and behavior.

2-006.15A Toys, Equipment, and Materials: The licensee must provide a sufficient number of age-appropriate toys, equipment, and materials for all children in care. Children below the age of three must not have access to toys and objects that could create a choking hazard unless directly supervised by the primary provider or staff.

2-006.15B Beds, Cribs, and Sleeping Surfaces: Appropriate sleeping surfaces must be available for each child in care.

1. Acceptable sleeping surfaces for children over 12 months of age are:

a. Beds;
b. Cots;
c. Cribs;
d. Playpens;
e. Sofas;
f. Washable sleeping bags; and
g. Waterproof mats.

2. The only acceptable sleeping surfaces for children age 12 months and under are cribs and playpens. When used, cribs and playpens must meet the following standards:

a. Cribs and playpens must be federally approved;
b. Cribs must be equipped with a tight-fitting waterproof mattress covered by a fitted sheet. The mattress pad for a playpen must be specifically designed for playpen use and covered by a fitted sheet;
c. Cribs and playpens must contain no soft objects, bumper pads, toys, or loose bedding. If a blanket is used, it must be secured or tucked under the crib mattress or the pad of the playpen and reach no higher than the infant's chest; and
d. Cribs and playpens must be clean, in good repair, and not have any surface covered by lead-based paint.

3. The following must not be used as sleeping surfaces:

a. The top level of a bunk bed for children age 5 and under;
b. Stackable cribs;
c. Waterbeds for children age 3 and under; and
d. Cots, cushions, futons, mats, or pillows for infants 12 months and under.

2-006.16 Infant/Toddler Care: If care is provided to infants and/or toddlers, the primary provider and staff must:

1. Investigate the cries of infants immediately;
2. Hold, talk to, and engage in play activities with each child every day;
3. Hold infants under six months of age or those not yet able to hold their own bottles. Bottles must not be propped and must be removed from sleeping infants;
4. Only use high chairs that are equipped with three-point safety straps;

5. Obtain and keep on file a signed and dated statement by the parent(s) that describes the formula and feeding schedule for each infant in care; and
6. Place infants on their backs to sleep unless there is a medical reason for a child to sleep in a different position. A written note from the infant's physician, nurse practitioner, or physician assistant indicating that the infant must sleep in a different position must be obtained, kept on file, and available for review by the Department.

2-006.16A Diapering and Toileting

1. The licensee must ensure that diapering procedures are established and followed by the primary provider and staff. The procedures must require that:

a. Wet and/or soiled diapers are changed immediately;
b. Diapers are checked on a frequent and regular basis;
c. Individual washcloths or disposable towelettes are used;
d. Wet and soiled diapers are properly stored and disposed;
e. Diaper-changing surfaces are cleaned after each use by sanitizing the surface or changing the diaper pad or disposable

sheeting; and
f. Proper hand washing is done after each diaper change.

2. The licensee must ensure that toilet training is conducted in a manner agreed upon by the primary provider and the parent. The licensee must also ensure that:

a. Potty chairs are not used or stored in eating or play areas; and
b. Proper hand washing by the provider and the child is done each time a child is helped with toileting.

2-006.17 Overnight Care: If overnight care is provided, the licensee must ensure that:

1. If requested by the parent, the child is given a shower, tub, or sponge bath in a manner agreed upon between the parent and the licensee; and

2. The following fire safety standards for overnight care are met:

a. The primary provider/staff remain awake until all children are asleep;
b. The primary provider/staff sleep on the same level of the home/facility as the children;
c. Smoke detection is provided in the sleeping rooms of the primary provider/staff and children;
d. A portable fire extinguisher with a minimum safety rating of 2A10BC is located in the primary provider/staff sleeping room;
e. The primary provider/staff is/are familiar with the operation of the extinguisher; and
f. The extinguisher is properly maintained according to State Fire Code Regulations, 153 NAC 1.

2-006.18 Wading and Swimming Activities: Children must be accompanied, kept safe, and adequately supervised during wading and swimming activities while in care.

2-006.18A Prohibited Water Sources: Children must not be allowed to use the following water sources for swimming or wading activities:

1. Natural bodies of water;
2. Hot tubs, spas, or saunas;
3. Livestock tanks; and
4. Decorative ponds.

2-006.18B Wading: If the licensee allows children to participate in wading or other water play activities:

1. Children must be accompanied and directly supervised; and
2. The licensee must ensure that the wading pool is drained and sanitized daily and is inaccessible to children when not in use.

2-006.18C Permission for Non-Licensee-Supervised Activities Off the Premises: If the licensee does not allow children to participate in swimming activities while in care, but a parent requests that their child leave the premises to go to a pool, the licensee must obtain a written and signed statement from the parent that is kept on file on the premises and available to the Department upon request. The statement must indicate that the child is allowed to leave care and must acknowledge that the licensee is not responsible for supervision.

2-006.18D Permission for Licensee-Supervised Activities Off the Premises: If the licensee allows children in care to participate in swimming activities under the supervision of the licensee but off the premises, the licensee must obtain a written, signed, and dated statement from the parent that is updated annually. The statement must be available to the Department upon request, and must indicate the following:

1. The parent gives permission for their child(ren) to leave the child care premises for swimming/wading;
2. The location of the pool where the child is allowed to swim; and
3. Whether the child is allowed to swim in water over his/her head.

2-006.18E Licensure of Swimming Pools: The licensee must ensure that swimming pools off the center's premises where children are taken are licensed by the Department.

2-006.18F Water Safety: When the depth of a pool's water is over four feet, the licensee must ensure that someone who has satisfactorily completed a swimming water safety course is on duty at all times children in care are at the pool.

2-006.18G Pool on the Premises Not Used by Children in Care: If an above-ground or in-ground swimming pool is on the premises and children in care are not allowed to use it, the licensee must meet the following requirements:

1. The pool must be enclosed with a fence that is at least four feet high and flush with the ground;
2. Above-ground pools must have non-climbable side walls;
3. When a pool is covered, the cover used must be the manufacturer's recommended cover;
4. Equipment needed to rescue a child or adult must be readily accessible; and
5. Children must be accompanied and directly supervised if the pool is located in the outdoor play area.

2-006.18H Pool on the Premises Used by Children in Care: If the children in care are allowed to use a pool on the premises, the licensee must meet the requirements in 2-006.18G and:

1. Have a permit issued by the Department;
2. If the depth of the water is over four feet, an individual who has satisfactorily completed a swimming water safety course must be on duty at all times children are at the pool; and
3. Maintain the following staff-to-child ratios:

	Number of Children	Number of Staff Required
Infants	1	1
Toddlers	2	1
Preschoolers	4	1
School-age	6	1

2-006.19 Transportation: When transportation is provided for children in care, the licensee must ensure the following conditions are met:

1. No child must ever be left alone in the vehicle;
2. Smoking is prohibited in the vehicle when children are being transported;
3. All doors on the vehicle must be locked when the vehicle is in motion;

4. Any individual who transports children must possess a current and valid driver's license for the type of vehicle used to transport children, as verified by the Department of Motor Vehicles;
5. The vehicle used to transport children must be properly registered and must contain a first aid kit and parent contact information for each child being transported;
6. The number of children transported must not exceed the seating capacity of the vehicle as indicated by the manufacturer;
7. All children transported must be properly secured in an appropriate restraint system as required by Neb. Rev. Stat. §§ 60-6,267 and 60-6,268;
8. All car seats must be federally approved and must be the correct type for the child's age and developmental level;
9. Written permission from parents for the program to transport children must be obtained, kept on file, and made available to the Department;
10. Children must not be transported to any location without the prior knowledge of the parent(s), except in a medical or other emergency; and
11. Children must not be transported to avoid violations of capacity or staff-to-child ratio.

2-006.20 Medications

2-006.20A Giving or Applying Medication: If the primary provider or staff gives or applies medication, s/he must do so in accordance with the "Five Rights" as set out in the Medication Aide Act. The Five Rights are:

1. The right drug;
2. The right recipient;
3. In the right dose;

4. By the right route; and
5. At the right time.

2-006.20B Competence to Give or Apply Medication: Parents or any licensed health care professional are responsible for determining if the primary provider or staff are competent to give or apply medication. Any licensed health care professional, as directed by the prescribing health professional, is competent to give or apply medication under any circumstances as long as it is within the scope of practice of that health care professional.

2-006.20C Confidentiality: Any primary provider or staff who gives or applies medication must not disclose information about a child's medication or physical or mental health condition unless such information is needed to protect the health of other children or staff. The use of a posted medication sign-in sheet does not violate confidentiality if the parent has been advised in writing that the parent has the option of using a private method of informing center staff of the child's medication needs.

2-006.20D Written Permission and Instructions: The primary provider or staff must give or apply prescription and non-prescription medication only with prior written permission and written instructions from a parent. The licensee must ensure that he primary provider and staff comply with the instructions provided by the parent or inform the parent that medications will not be given or applied.

1. Any error in the giving or applying of medication must be reported to the parent.
2. The dosage must not exceed that which is printed on the label.
3. Expired medication must not be given or applied to a child and must be returned to the parent or destroyed.

2-006.20E Unusual Circumstances: The licensee must obtain a written statement from the licensed health care professional who prescribed the medication allowing the primary provider or staff to give the medication when:

1. Any prescription medication is given or applied as needed (PRN); or
2. By a route other than oral, topical, inhalant, or instillation.

The written statement must describe the route and what symptoms need to exist in order for the medication to be given or applied.

2-006.20F Hand Washing: All caregivers must properly wash their hands before giving or applying any medication. If handling any bodily fluids is involved, caregivers must properly wash their hands after giving or applying medication.

2-006.20G Storage: All medications must be kept in proper storage. This includes:

1. All prescription and nonprescription medications must be kept in locked storage at all times children are in care;
2. Separate locked storage must be provided for medications requiring refrigeration;
3. All medications must be kept in the original container, stored according to instructions, clearly labeled for the named child, and returned to the parent when no longer needed; and
4. Over-the-counter, non-toxic topical ointment such as lip balm, petroleum jelly, sun block and diaper ointment must be kept out of the reach of children.

2-006.20H Record-Keeping: The licensee must maintain a record of the time and amount of medication given or applied.

2-006.21 Food Service: Meals and snacks that are appropriate to the needs of the children in care must be served to all children in attendance. Weekly menus must be given to parents upon request. Meals and snacks must:

1. Be appropriate to the age and development of the child;
2. Address children's allergies and food intolerance; and
3. Meet established USDA requirements regarding food groups and serving sizes.

Meals and snacks provided by the parents must be supplemented if USDA guidelines are not met. If the child's meals are not to be supplemented due to dietary concerns, a statement from a physician must be obtained and available indicating it is acceptable for the child to be served a meal that does not meet USDA guidelines.

2-006.21A The licensee must offer at least the following number of meals and snacks, based on how long children are present:

2½ to 4 hours	One snack
4 to 8 hours	One snack and one meal
8 to 10 hours	Two snacks and one meal
10 or more hours	Two snacks and two meals

2-006.22 Food Safety: The licensee must ensure that food is stored, prepared, protected, served, and disposed in a safe and sanitary manner, as follows:

1. All perishable foods must be stored in a covered container in an operating refrigerator at a maximum temperature of 40 degrees;
2. Individuals handling food must properly wash their hands before and after handling food;
3. All prepared formula or breast milk must be refrigerated and clearly labeled with the child's name, date received, date expressed and date frozen, if applicable.

a. Unused prepared formula must be discarded as indicated by the label.
b. Unfrozen breast milk must be discarded after 48 hours.
c. Frozen breast milk must be kept in a freezer for no more than three months;

4. Formula provided by the licensee must be made from commercially prepared products;
5. Children must only be served pasteurized grade A milk and milk products. Dry milk and milk products must be made from pasteurized milk and milk products;
6. All fresh or raw fruits and vegetables must be thoroughly washed with water before use;
7. Home-canned foods must not be served to children in care;
8. All food preparation areas must be easily cleanable and in good repair;
9. Any deep freezer that cannot be opened from the inside must be locked or stored in a locked room;
10. All utensils, equipment, and food storage areas must be kept clean and in good repair; and
11. All dishes and utensils must be properly washed, rinsed, sanitized, and air dried.

2-006.23 Emergency Preparedness

2-006.23A Telephone: A working telephone must be available on the premises at all times. Emergency telephone numbers, including fire, rescue, police (or 911), and Poison Control, must be prominently posted.

2-006.23B Fire and Tornado Drills: Fire and tornado drills must be practiced with the children and staff. Written documentation of drills, including dates conducted, must be kept and available for review by the Department.

1. Fire drills must be completed a minimum of once per month.
2. Tornado drills must be completed a minimum of four times per year during the months of March through September.

2-006.23C Fire and Tornado Safety Diagrams: Fire and tornado safety diagrams must:

1. Show the layout of the licensed child care area(s);
2. Be prominently posted and visible;
3. Include how the evacuation of children with special needs will be conducted;
4. Include fire evacuation routes; and
5. Include tornado safety locations.

2-006.23D Disaster Preparedness: The licensee must have a written plan that addresses:

1. Evacuating and moving children to a safe location in the event of a fire, tornado, flood, or other natural or man-made disaster;
2. Notifying parents of children in care of an emergency;
3. Reunification of parents with their children in the event of an emergency that requires evacuation; and
4. How children with special needs will be safe in the event of a disaster including evacuation and reunification with the parent.

2-006.23E Notification to the Department of Emergencies: The licensee must notify the Department within 24 hours or the next business day of the following occurrences at the child care program:

1. The death of a child;
2. Any accident or injury to a child which requires hospitalization or treatment at a medical facility;
3. When a child has been missing, lost, or left unsupervised on or off the premises; and/or
4. An emergency or disaster that results in damage to the Family Child Care Home II or inability of the licensee to comply with regulations.

2-006.23E First Aid Kit: A first aid kit must be available on the premises. It must be inaccessible to children. If any poisons or medications are stored in the kit, it must be kept in locked storage. The kit must contain:

1. Fever thermometer;
2. Soap;
3. Bandages;
4. Gauze;
5. First aid tape;
6. Scissors; and
7. Disposable gloves.

2-006.24 Environmental Services: The licensee must provide child care in a safe, clean, comfortable environment. Every area and building on the same premises used for child care must comply with these regulations.

2-006.24A Housekeeping and Maintenance: The licensee must provide the necessary housekeeping and maintenance to protect the health and safety of children in care. The child care home and grounds must be kept clean, safe, and in good repair.

1. The child care home and any building on the premises in or around areas where children are present must be kept free of exposed lead-based paint surfaces that are flaking, peeling, or chipped.
2. Rooms, walls, floors, and ceilings must be kept clean, dry, in good repair, and free of odor resulting from sewage, mold, mildew, or other environmental or biological hazards or unsanitary conditions.
3. Heating, ventilation, and lighting in all rooms used for child care

must be adequate to protect the health of children.
4. The licensee must equip and maintain the premises to prevent the entrance, harborage, or breeding of rodents, flies, and all other insects and vermin. All doors opening to the outside must be self-closing (except sliding doors) and all windows used for ventilation must be screened.
5. All garbage and rubbish must be disposed of in a manner that minimizes odor and the transmission of infectious diseases, and prevents the attraction of rodents, flies, and all other insects and vermin.

2-006.24B Maintenance of Equipment, Fixtures, Furnishings, and Toys:

1. The licensee must keep equipment, fixtures, furnishings, and toys used in the child care program clean, safe, and in good repair.
2. The licensee must arrange furniture and equipment so as not to interfere with exits.

2-006.25 Environmental Safety: The licensee is responsible for maintaining a safe and hazard-free environment.

2-006.25A Smoking

1. If the child care home is in the residence of the licensee, smoking anywhere indoors in the child care home is prohibited during the hours of operation when one or more children who are not occupants of the residence are present.
2. If the child care home is not in the residence of the licensee, smoking anywhere indoors is prohibited at all times.
3. If the licensee or any household member smokes, parents must be informed before enrollment of their child(ren).

2-006.25B Alcohol and Controlled Substances

1. If the child care home is a private residence, alcohol as defined by Neb. Rev. Stat. § 53-103 must not be consumed in any area used for child care whenever any child in care is present.
2. If the child care home is not a private residence, alcohol as defined by Neb. Rev. Stat. § 53-103 must not be present in any area used for child care whenever any child in care is present.
3. The unlawful use or possession of controlled substances, as defined by Neb. Rev. Stat. §§ 28-401 to 28-403 and 28-439, is prohibited. Controlled substances that have not been legally prescribed must not be on the premises.

2-006.25C Animals/Pets: Any animal present at the child care home must not negatively affect the children. The licensee must:

1. Have all pets examined annually by a licensed veterinarian and have documentation available;
2. Complete all vaccinations recommended by the licensed veterinarian that include, at a minimum, current rabies vaccinations

for dogs, household cats, and ferrets, and have documentation available;
3. Have provisions for pet care necessary to prevent the acquisition and spread of fleas, ticks, and other parasites;
4. Ensure that no animals are allowed in the food preparation, food storage, or serving areas during food preparation and serving times; and
5. Comply with any state or local law or ordinance relating to the care and ownership responsibilities of pets or specific breeds identified by those laws or ordinances.

2-006.25D Prohibited Animals: Exotic or unusual animals, or any animal that has bitten or attacked anyone without provocation or has been determined by the local health authority to be dangerous, must not be allowed on the premises during the hours of operation.

2-006.25E Other Environmental Safety Requirements

1. Surfaces must be smooth and free of sharp edges, mold, or dirt, and the environment must be kept free of other conditions which may pose apotential risk.
2. All cleaning agents, medications (both prescription and nonprescription), and poisonous materials must be kept in locked storage at all times children are in care. Separate locked storage must be provided for medications requiring refrigeration.
3. All firearms, other potentially hazardous weapons, weapon accessories, and ammunition must not be on the premises of the child care home, unless the home is a private residence. If the child care home is a private residence, all firearms, other potentially hazardous weapons, weapon accessories, and ammunition must be kept in locked storage. Firearms must be unloaded and ammunition must be stored separately from firearms.
4. Electrical outlets within reach of children must be covered with safety caps, ground fault interrupters, or have safety outlets installed.
5. Shared use of the following items is prohibited:

a. Disposable towelettes;
b. Drinking containers, cups, or glasses;
c. Personal care items such as toothbrushes and hair brushes; and
d. Towels and washcloths.

6. Waterproof storage must be provided for soiled or wet clothing and must not be accessible to children.

2-007 PHYSICAL PLANT STANDARDS: The child care home must be maintained in a manner that is safe, clean, and functional for child care. The following regulations apply to all areas of the child care home used for child care.

2-007.01 Activity Space: The child care home must have space for children's activities, napping, and free play. The child care activity space must:

1. Have furnishings to accommodate all activities and age-appropriate needs of
all children in care;
2. Be available for all children; and
3. Have at least 35 square feet of activity space per child. Rooms not used for child care do not count in the square footage total.

2-007.02 Water Supply and Sewer Requirements

2-007.02A Water Supply: The licensee must have and maintain an accessible, adequate, safe, and potable supply of water for drinking, bathing, and hand washing.

1. If water is obtained from a source other than a public water supply system, the water must not contain contaminants that exceed the maximum contaminant levels set for nitrate, or total coliform for public water supply systems in 179 NAC 2-002, and 179 NAC 3 or the lead action level set in 179 NAC 12. The licensee must report to the Department the results of all tests that show the water contains contaminants that exceed a maximum contaminant or action level.

a. The water supply must be tested annually and the tests results must be available for review upon request.
b. If the water supply does not meet nitrate, total coliform bacteria and lead standards, the licensee must, until the contaminants are lowered to acceptable levels:

(1) Obtain water from a source approved by the Department; or
(2) Purchase water from a commercial source.

2. Drinking water must be provided by sanitary drinking fountains or individual or disposable cups.
3. The licensee must maintain hot and cold water to all hand washing and bathing locations. The hot water system must be maintained between a minimum of 100 degrees Fahrenheit and a maximum of 120 degrees Fahrenheit. Soap must be available at the hand washing sink.

2-007.02B Sewer Requirements: The licensee must maintain a sanitary and functioning sewage system which includes no open sewage discharge on the child care premises. When the Department determines that there may be open sewage present on the child care premises, a referral will be made to the Nebraska Department of Environmental Quality for an inspection.

2-007.03 Outdoor Play Areas: An outdoor play area must be available. The area must:

1. Have at least 50 square feet per child of age-appropriate play space;
2. Be kept clean and safe and contain no accident hazards, debris, or stagnant water;
3. Contain no barnyard animals or fowl; and
4. Be free of animal waste.

2-007.04 Fencing: A fence is required when the following conditions exist on or near the child care premises:

1. Drainage ditches;
2. Wells;
3. Holes;
4. Heavy machinery is used;
5. Railroad tracks;
6. Bodies of water, including decorative ponds;
7. Heavy street traffic; and
8. Other hazards.

2-007.05 Playground Surfaces: The area under climbing equipment, swings, slides, and other equipment from which children might fall must be of resilient material such as sand, dirt, grass, rubber matting, rubber mulch, wood chips, or small-to-medium size gravel.

2-007.06 Toilets and Sinks: The child care home must have a toilet and sink available for children's use. Toilets and sinks must be:

1. Conveniently located;
2. Clean and in good repair;
3. Designed to accommodate children with special needs, when applicable; and
4. Of suitable height for children or have a safe stepstool.

2-007.07 Fire Safety: The child care home must maintain fire safety approval in addition to meeting the following standards:

1. There must be two unblocked exits approved by the Fire Marshal from every floor on which child care is provided;
2. Furnaces, wood-burning stoves, and other heaters must be inaccessible to children when in use;
3. Candles or incense must not be used while children are in care;
4. Open flames must not be present while children are in care;
5. All storage areas must be free of excessively combustible or highly flammable materials;
6. Bathroom and closet doors must be designed so they can be unlocked from the outside;
7. There must be properly mounted and operated smoke detection equipment as required by the Fire Marshal; and
8. When overnight care is provided, the licensee must ensure that additional fire safety requirements are met as specified in 2-006.14.

2-008 DENIAL AND DISCIPLINARY ACTIONS

2-008.01 Grounds for Denial or Disciplinary Action: The Department may deny the issuance of or take disciplinary action against a license on any of the following grounds:

1. Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the Act;
2. Violation of an order of the Department under the Act;
3. Conviction of, or substantial evidence of committing or permitting, aiding, or abetting another to commit, any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where the program is provided, or employees of the applicant or licensee that involve:

    a. Physical abuse of children or vulnerable adults as defined in Neb. Rev. Stat. § 28-371;
    b. Endangerment or neglect of children or vulnerable adults;
    c. Sexual abuse, sexual assault, or sexual misconduct;
    d. Homicide;
    e. Use, possession, manufacturing or distribution of a controlled substance listed in Neb. Rev. Stat. § 28-405;
    f. Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; and
    g. Use of a weapon in the commission of an unlawful act;

4. Conduct or practices detrimental to the health or safety of an individual served by or employed at the program;
5. Failure to allow an agent or employee of the Department access to the program for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department;
6. Failure to allow state or local inspectors, investigators, or law enforcement offices access to the program for the purposes of investigation necessary to carry out their duties;
7. Failure to meet requirements relating to sanitation, fire safety, and building codes;
8. Failure to comply with or violation of the Medication Aide Act;
9. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. §§ 28-372 and 28-711;
10. Violation of any city, village, or county rules, regulations, or ordinances regulating licensees; or
11. Failure to pay fees required under the Child Care Licensing Act.

2-008.02 Types of Disciplinary Action: The Department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act:

1. Issue a probationary license;
2. Suspend or revoke a provisional, probationary, or operating license;
3. Impose a civil penalty of up to $5 per child, based upon the number of

children for which the program is authorized to provide child care on the effective date of the finding of violation, for each day the program is in violation;
4. Establish restrictions on new enrollment in the program;
5. Establish restrictions or other limitations on the number of children or the age of the children served in the program; or
6. Establish other restrictions or limitations on the type of service provided by the program.

2-008.02A Considerations: In determining what type of disciplinary action to impose, the Department will consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;
2. The diligence exercised by the program in identifying or correcting the violation;
3. The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;
4. Any previous violations committed by the program; and
5. The financial benefit to the program of committing or continuing the violation.

2-008.02B Additional Action: If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action.

2-008.03 Unpaid Fines: Any fine imposed and unpaid under the Child Care Licensing Act will constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the program is located. The Department will, within 30 days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

2-008.04 Department's Emergency Power: Whenever the Department finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in the program, the Department may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. The order may include an immediate prohibition on the care of children by the licensee other than children of the licensee. An order under this subsection will be effective immediately. Any person to whom the order is directed must comply immediately, and upon application to the Department, the person will be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing, the Department will continue to enforce the order or rescind or modify it.

2-008.05 Re-Application After Revocation: A former licensee whose child care license has been revoked for any cause other than nonpayment of fees

is not eligible to reapply for a license for two years. The former licensee must:

1. Apply for a provisional license;
2. Meet the requirements for provisional licensure in 2-003.01; and
3. Demonstrate to the Department’s satisfaction the ability and willingness to comply with all licensing regulations.