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Georgia Department of Early Care and Learning

# Rules and Regulations

## **Family Day Care Homes**

Chapter 290-2-3

Updated January 1, 2010



### **290-2-3-.01 Legal Authority.**

These rules are adopted and published pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Sec. 49-5-1 et seq.

Authority O.C.G.A. Chap. 49-5-3 (1982 and 1982 Supp.); O.C.G.A. Chap. 49-5-12 (1982 and 1982 Supp.) Chap. 49-5-8. **History.** Original Rule entitled "Organization and Administration" was filed on January 30, 1974; effective February 19, 1974. **Amended:** Rule repealed. Filed October 1, 1974; effective October 21, 1974. **Amended:** Rule entitled "Definitions" adopted. Filed February 21, 1983; effective March 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Legal Authority" adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency.

## **290-2-3-.02 Title and Purpose.**

These rules shall be known as the Rules and Regulations for Family Day Care Homes. The purpose of these rules is to provide for the registration of family day care homes within Georgia.

Authority O.C.G.A. Chap. 49-5-3 (1982 and 1982 Supp.); O.C.G.A. Chap. 49-5-12 (1982 and 1982 Supp.) Chap. 49-5-8. **History.** Original Rule entitled "Administrator Director" was filed on January 30, 1974; effective February 19, 1974. **Amended:** Rule repealed. Filed October 1, 1974; effective October 21, 1974. **Amended:** Rule entitled "Applicability of Regulations" adopted. Filed February 21, 1983; effective March 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Title and Purpose" adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency.

### **290-2-3-.03 Definitions.**

In these rules, unless the context otherwise requires, the words and phrases set forth herein shall mean the following:

- (a) "Adult" means any competent individual eighteen (18) years of age or older.
- (b) "Certificate of Registration" or "Registration" means a certificate issued by the Department to a family day care home provider upon receipt of a self-certification statement that the provider has met the Rules and Regulations for Family Day Care Homes.
- (c) "Child" or "Children" means any person(s) under 18 years of age for whom day care service(s) is (are) provided in a home. For purposes of these rules, the terms shall not include children that are related to the registrant as defined in these rules, or children whose parents or guardians reside in the same residence, or children for whom no pay, either in cash or in kind, is received.
- (d) "Crime" means any felony, a violation of O.C.G.A. Sec. 16-5-23, relating to simple battery, where the victim is a minor; a violation of O.C.G.A. Sec. 16-21-1, relating to contributing to the delinquency of a minor; a violation of O.C.G.A. Sec. 16-6-1 et seq., relating to sexual offenses, excluding the offenses of bigamy or marrying a bigamist; a violation of O.C.G.A. Sec. 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph; or any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.
- (e) "Criminal record" means:
  - 1. Conviction of a crime; or
  - 2. Arrest, charge, and sentencing for a crime where:
    - (i) A plea of nolo contendere was entered to the charge; or
    - (ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of O.C.G.A. 16-13-1 et seq., relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of O.C.G.A. Sec. 16-13-1 et seq. if such violation or offense constituted only simple possession; or
    - (iii) Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of O.C.G.A. Sec. 16-13-1 et seq. relating to controlled substances, or any other offense committed in another

jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

3. Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to O.C.G.A. Sec. 17-3-1 et seq.

(f) "Department" means the Georgia Department of Human Resources.

(g) "Employee" means any person, other than the registrant, employed by a home to perform any of the home's duties which involve personal contact between that person and any child being cared for at the home and also includes any adult person who resided at the home or who, with or without compensation, performs duties for the home which involve personal contact between that person and any child being cared for by the home.

(h) "Family Day Care Home" and "Home" means a private residence operated by any person who receives therein for pay for supervision and care fewer than 24 hours per day, without transfer of legal custody, three but not more than six children under 18 years of age who are not related to such persons and whose parents or guardians are not residents in the same private residence.

(i) "Fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department based on a records check comparison of Georgia Crime Information Center (GCIC) information with fingerprints and other information in a records check application.

(j) "Parent" means the parent(s) with lawful custody of the child or the legal guardian(s) of a child enrolled in or in the process of being enrolled in a home.

(k) "Plan of correction" means a written plan prepared by the registrant and submitted to and approved by the department which states the procedure(s), method(s) and time frame(s) that will be used by the registrant to correct the area(s) of noncompliance with these rules.

(l) "Preliminary records check application" means an application for a preliminary records check determination on forms provided by the department.

(m) "Preliminary records check determination" means a satisfactory or unsatisfactory determination by the department based only upon a comparison of Georgia Crime Information Center (GCIC) information with other than fingerprint information regarding the person upon whom the records check is being performed.

(n) "Preschool age" means any child under five years of age who is not enrolled in public kindergarten.

(o) "Provider" means the registrant of the family day care home, and the person that provides care in the home.

(p) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(q) "Related" means within the second degree of consanguinity or affinity (grandchildren, nieces, nephews, first cousins).

(r) "Satisfactory determination" means a written determination that a person for whom a records check was performed was found to have no criminal record.

(s) "Supervision" and "Supervised" means that the provider is alert, is providing watchful oversight to the children, is able to respond promptly to the needs and actions of children, and can intervene promptly in the case of an emergency.

(t) "Unsatisfactory determination" means a written determination that a person for whom a records check was performed has a criminal record.

Authority O.C.G.A. Secs. 49-5-3, 49-5-8, 49-5-12. **History.** Original Rule entitled "Other Requirements" adopted. F. Jan. 30, 1974; eff. Feb. 19, 1974. **Repealed:** F. Oct. 1, 1974; eff. Oct. 21, 1974. **Amended:** New Rule entitled "Staff Requirements" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Definitions" adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency.

## **290-2-6-.04 Registration Requirements and Applications.**

(1) Registration Requirement. No person shall operate a Family Day Care Home in the State unless a Certificate of Registration has been obtained from the department.

(2) Applications. An application for a registration to operate a home shall be submitted to the department on the forms provided by the department. Any person that provides care for more than six children for pay, as defined in these rules, shall make application to the department for a license to operate as either a Group Day Care Home or a Day Care Center.

(a) Pre-Service Training. Prior to the submission of the registration application, the applicant who will be responsible for the day-to-day operations shall complete the pre-service training listed below that has been approved by the department and which will include:

1. Orientation that provides, at a minimum, instruction on the application process and gives an overview of the department's rules and regulations that relate to the operation of the family day care home;

2. Training course that includes the provider competencies that serve as a framework for professional development, which includes, but is not limited to, early learning standards, communication, developmentally appropriate practices, professional and leadership development, business management, and advocacy for the family day care home, parents, children, and staff;

3. Cardiopulmonary resuscitation (CPR) and first aid training programs offered by certified or licensed health care professionals and approved by the department, which include emergency care for infants and children.

(b) Pre-Registration Visit. Following receipt and review of the complete application package, the department may conduct an on-site inspection of the potential family day home to assess compliance with these rules. The department may deny the application for registration if conditions are found during the on-site inspection that pose health and/or safety risks to children.

(c) Criminal Records Check Required. The provider and employees of a home must submit to criminal records checks in connection with any application for a registration.

1. Preliminary Records Check. Before a registration to operate a home may be issued there shall be on file with the department a satisfactory preliminary criminal records check determination on the provider and a preliminary records check application for all employees, to include adult persons who reside at the home or who, with or without compensation, perform duties at the home which include personal contact between that adult person and children in care.

2. Ongoing Requirements. Before a person may work in a registered home, the provider shall cause the person to be employed to submit a preliminary records check application to the department. The provider shall also cause any adult person, as defined in

subparagraph 1. above, to submit a preliminary records check application to the department.

(i) No person having an unsatisfactory determination as to his or her criminal record may be a provider or employee of a home. No adult person having an unsatisfactory determination as to his or her criminal record may reside at the home and have contact with children.

3. Penalties. A registration is subject to suspension or revocation and the department may refuse to issue a registration if a provider or employee, to include an adult person as defined in subparagraph 1. above, does not undergo the records checks applicable and receive a satisfactory determination. A provider of a home having an employee whom that director knows, or should reasonably know, to have a criminal record shall be guilty of a misdemeanor.

(d) A registration will be issued, upon presentation of evidence satisfactory to the department, that the home is in compliance with applicable statutes and these rules. The registration is valid for one year unless voluntarily surrendered by the holder, or reduced to a restricted registration or suspended or revoked by the department.

1. Qualifications Requirement. In order to obtain or retain a registration, the provider of the home and its employees must be qualified, as defined in these rules, to administer or work in a home. The department may presume that the provider and employees are qualified, subject to satisfactory determinations on the criminal records checks. However, the department may require additional reasonable verification of the qualifications of the provider and employees either at the time of application for a registration or at any other time whenever the department has reason to believe or is shown by credible evidence that a provider or employee is not qualified under these rules to administer or work in a home.

(i) Reasonable verification which may be required by the department may include, but need not be limited to any or all of the following: statement(s) from an attending physician or other health care professionals attesting to the mental and/or physical health of the provider and/or employee; letters of reference from designated persons in the community where the provider and/or employee intends to work or is working; certified copies of court orders and additional criminal records check.

2. Registration is nontransferable. A registration to operate a home is not transferable in any way. A change of residence or address requires a new registration. Each registration shall be returned to the department immediately upon the closure of the home, or the suspension, revocation, or restriction of the registration.

3. Renewal of Registration. A registration will be renewed upon the filing of a renewal application and a determination by the department that the home presents satisfactory evidence of meeting the standards set forth in these rules.

(e) Denial of Application for Registration. The department may deny a registration to an applicant for knowingly making any false statement in connection with the application for a registration, for failing to comply with these rules and regulations, for flagrant and continued operation of an unregistered home in contravention of the law, for prior denial

or revocation of any registration or license within one year of the date of the application, and for failure to provide the department access to the home or to information pertinent to the initial registration of the home.

1. Notice of Denial. The department will provide an applicant a written notice of the denial of registration. The applicant shall be afforded an opportunity for a hearing in accordance with applicable law and regulations. Provided however, the department may deny an application without holding a hearing prior to the denial.

(f) No home shall claim to be a registered Family Day Care Home unless it has been issued a current and valid registration by the department.

Authority O.C.G.A. Secs. 20-1A-1 et seq., 31-2-4, 49-5-8, 49-5-12, 49-5-60. **History.** Original Rule entitled "Records" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Registration Requirements and Applications" adopted Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Jan. 12, 2009; eff. Feb. 1, 2009.

### **290-2-3-.05 Inspections and Investigations.**

The department is authorized and empowered to conduct investigations and on-site inspections of any home during the operating hours of the home. The proposed and current provider and employees shall cooperate with any inspection or investigation by responding truthfully to any legitimate departmental inquiry.

(a) Consent to Entry. An application for a registration to operate a home or the issuance of a registration by the department constitutes consent by the applicant, and provider, for the department's representative, after displaying identification to any home staff, to enter the premises at any time children are being cared for in the home. This includes both scheduled and unscheduled inspections and includes consent for meaningful access to all staff, parts of the premises of the home where children may be in care, all children present, and all records required by these rules. The department shall have the authority to

require the production of any books, records, papers, or other information related to the initial or continued registration of the home.

(b) Failure to Allow Access. Failure to allow access of the department's representative to the home, its staff, or the children receiving care at the home or the books, records, papers, or other information related to initial or continued registration, or failure to cooperate with a departmental inspection or investigation shall constitute good cause for the denial, restriction, revocation or suspension of a registration, or other penalty as provided by law.

(c) False or Misleading Statements. No provider shall make or condone any employee making false or misleading statements to the department in connection with any authorized investigation of inspection being conducted by the department.

Authority O.C.G.A. Secs. 31-2-6, 49-5-8, 49-5-12. **History.** Original Rule entitled "Children's Activities" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Inspections and Investigations" adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency.

### **290-2-3-.06 Parental Access.**

The parent(s) and guardian(s) of a child shall be permitted access to all child care areas of the home at all times a child is in attendance.

Authority O.C.G.A. Secs. 49-5-8, 49-5-12. **History.** Original Rule entitled “Nutrition and Food Service” adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled “Parental Access” adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency.

### **290-2-3-.07 Staffing and Supervision.**

(1) The provider shall be at least 21 years of age.

(2) Effective July 1, 2009, providers who apply for initial registration shall submit valid evidence/documentation of one of the following credentials/degrees issued by either the organizations listed below, an accredited educational institution, or another organization approved/recognized by the department:

(a) Child Development Associate (CDA) credential (issued by the Council for Professional Recognition);

(b) Technical Certificate of Credit (TCC) in Early Childhood Education;

(c) Technical College Diploma (TCD) in Early Childhood Education;

(d) Associate Degree in Early Childhood Education (AA, AAS, AAT);

(e) Paraprofessional Certificate (issued by the Georgia Professional Standards Commission);

(f) Bachelor's degree in Early Childhood Education; or

(g) Master's degree in Early Childhood Education.

(3) Family day care home providers and applicants who have submitted an application for registration or re-registration on or before June 30, 2009 shall be exempt from the requirement stated in (2)(a) through (g) above, except if the family day care home closes for business and then submits a new application for registration on or after July 1, 2009. Any family day care home provider who submits an application for registration on or after July 1, 2009 must meet one of the education requirements listed above. Any family day care home provider who submits a new application for registration on or before June 30, 2009 shall have a high school diploma, General Education Diploma (GED), or similar credentials and shall submit valid evidence/documentation of such credential.

(4) The provider shall have current evidence of successful completion of a biennial training program in cardiopulmonary resuscitation (CPR) and a triennial training program in first aid which have been offered by certified or licensed health care professionals and which dealt with emergency care for infants and children. Additionally, within one year of the effective date of these rules and thereafter on an annual basis, the provider shall attend ten clock hours of diverse training which is related to care of children and which is offered by an accredited college, university or vocational program or other department-approved source. Records of completion of such training programs shall be maintained in the home by the provider, as required by Rule .08(5). The ten clock hours of training shall be chosen from the following fields:

(a) Child Development: including discipline, guidance, nutrition, injury control and safety;

(b) Health: including sanitation, disease control, cleanliness, detection and disposition of illness;

(c) Child Abuse and Neglect: including identification and reporting, and meeting the needs of abused and/or neglected children; and

(d) Business Related Topics: including parental communication, recordkeeping, etc.; provided however that such business related training shall be limited to no more than two of the required ten clock hours of training.

(5) The provider and employees shall:

(a) Never have been shown by credible evidence, e.g. a court or jury, a department investigation or other reliable evidence to have abused, neglected, sexually exploited, or deprived a child or adult or to have subjected any person to serious injury as a result of intentional or grossly negligent misconduct as evidenced by an oral or written statement to this effect obtained at the time of application or at any other time the department has reason to believe that a provider or employee is not qualified under these rules to administer or work in the home; and

(b) Not be suffering from any physical handicap or mental health disorder, which would interfere with the ability to perform adequately the job duties of providing for the care and supervision of the children residing in the home in accordance with these rules; and

(c) Not have made any material false statements concerning qualifications requirements either to the department or the provider.

(6) Notwithstanding the limitation to six children prescribed by the definition of a family day care home, a provider may care for two additional children who are three years and older for two designated one hour periods daily upon approval by the department.

(7) At least one adult shall supervise children at all times. Such adult, if not the provider, shall receive orientation regarding these rules; the provider's policies regarding discipline, injuries and illnesses, and release of children; the provider's written plan for handling emergencies; and appropriate information about any child's specific health needs. Plans shall be made to obtain additional adult help in cases of emergencies.

(8) Effective one year from the effective date of this chapter, whenever other children are present in the home (the provider's own children, other related children, other children who also reside in the home, children for whom no pay or compensation is received, etc.) the total number of children present under the age of thirteen years may not exceed twelve, and the space requirement of 35 square feet per child (Rule .13(1)(a)) must be met.

(a) Effective one year from the effective date of this chapter, an employee who must be at least 16 years of age must be present to assist with supervision whenever:

1. more than three children under the age of 12 months are present; or

- 2. more than six children under the age of three years are present; or
- 3. more than eight children under the age of five years are present.

(9) If children are allowed to participate in water activities where the water is over two feet in depth, the provider or an adult shall supervise such activities and must have successfully completed a training program in lifeguarding offered by a water-safety instructor certified by the American Red Cross or YMCA or other recognized standard-setting agency for water safety instruction.

(a) For water-related activities where water is over two feet in depth, the following staff: child ratios shall be maintained:

<u>Ages of Children</u>	<u>Staff: Child Ratio</u>
Under 2 1/2	1:2
2 1/2 to 4 years	1:5
4 years & older (who cannot swim a distance of 15 yds. unassisted)	1:6
4 years & older (who can swim a distance of 15 yds. unassisted)	1:8

In lieu of requiring each child four years and older to take a swimming test, the provider may accept copies of verifications from a recognized water safety instruction organization stating that the child has successfully completed a swimming class which required the child to swim a distance of 15 yards unassisted.

Authority O.C.G.A. Secs. 20-1A-1 et seq., 49-5-3, 49-5-12. **History.** Original Rule entitled "Health and Safety" adopted. F. Feb. 21, 1983, eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Staffing and Supervision" adopted Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Jan. 12, 2009; eff. Feb. 1, 2009.

### **290-2-3-.08 Children's Records.**

(1) The home shall maintain current and updated individual records on each child in care. The home shall maintain the records outlined herein while the child is in care and for a period of one (1) year after such child is no longer in care at the family day care home. Such records shall include:

(a) Identifying information (child's name, birth date, parents name, or guardian's name if applicable, home and business addresses, telephone numbers);

(b) Name, address and telephone number of persons including child's physician to contact in emergencies;

(c) Evidence of age-appropriate immunizations, or a signed affidavit certifying that the required immunizations conflict with the religious belief of the parent or guardian or a physician statement that immunization is contraindicated;

(d) Written authorization for the child to receive emergency medical treatment when the parent or guardian is not available;

(e) Documentation of any medications given as described in rule .11 (1)(e);

(f) Record of any allergies and other known medical problems;

(g) Description of accidents or serious illnesses occurring while child is in the family day care home, including date, time and condition under which it occurred and the action taken;

(h) Parental or guardian agreements for transportation, field trips, swimming and/or other activities away from the home if the child will be participating in these activities;

(i) Name of person(s) to whom the child may be released. Such information shall contain the authorized person's address, telephone numbers, relationship to child and to parent(s) or guardian, and other identifying information.

(j) Documentation that the child has been signed in and signed out of the family day care home at the time of each arrival and departure by the parent, guardian or person(s) authorized by the parent to drop off or pick up the child, which includes at least the following information: child's name, date, drop-off and pick-up times, and initials of parent, guardian or other authorized person, and which need not be filed in the child's individual record. The family day care home shall ensure that children are only released to authorized person(s), and the home shall take necessary steps to determine that any such person(s) presenting to pick up a child in care is authorized by the parent(s) or guardian of the child and that person matches the identifying information provided by the parent or guardian.

(2) Policies and Procedures. Each family day care home shall establish policies and procedures, which shall be kept current, made available to the parents, and used to govern the operations of the family day care home. The policies and procedures shall:

(a) Be consistent with applicable laws, regulations and these rules;

(b) Include a written description of the services to be provided which specifies the following:

1. Ages of children served;

2. Months of operation;

3. Days of operation;

4. Hours of operation;

5. Dates the family day care home will be closed;

6. Admission requirements, including parental responsibilities for supplying and maintaining accurate required record information and escorting child to and from the family day care home;

7. Standard fees, payment of fees, fees related to absences and vacations and other charges such as transportation, etc.; and

8. Transportation provided, if any;

(c) The policies and procedures shall also include written procedures for the following:

1. Guidance and discipline techniques;

2. Handling emergency medical care, including where the children will be taken for emergency medical care;

3. Administering medication and recording noticeable adverse reactions to medication;

4. Notifying parents or guardian of their child's:

(i) Illness;

(ii) Injury; and

(iii) Exposure to a notifiable communicable disease;

5. Noticeable adverse reaction to medication(s);

6. Exclusion of sick children;

7. Exclusion of children with communicable diseases, as defined on the chart of communicable diseases which contains recommendations for the exclusion of sick children and their readmission, and is provided by the Department;

8. Protection of children in the event of:

(i) Severe weather;

(ii) Fire; and

(iii) Physical plant problems, such as a power failure, that affect climate control, loss of water, or structural damages;

9. The transportation of children to and from school or home, if provided, to include the procedure to be followed if no one is home to receive the transported child;

10. Identification of others providing care. The provider must inform the parents or guardian of children in care of the names of any caregiver and their responsibilities, and the names of the persons who would be called upon in an emergency;

11. Parents' or guardian's ability to visit the family day care home unannounced and at any time that their child is in care;

12. Any information requested by the parent or guardian concerning the operation of the family day care home or the care of the child. The parent(s) or guardian will be provided daily communication (verbal/written) regarding the care of the child, especially with infants, toddlers and nonverbal children. Additionally, the provider must bring special problems or significant developments to the parent's or guardian's attention as soon as they arise;

13. Notification of the existence of a firearm in the family day care home;

14. Notification of any changes in the regular composition of the household. The provider must notify the parent(s) or guardian of anyone regularly on the premises, including but not limited to spouse, friend(s), relative(s), or significant other(s);

15. Notification of the existence of any pets or other animals residing in the home or on the property of the family day care home; and

16. Notification of infant sleep position practices. The provider must notify parent(s) of Sudden Infant Death Syndrome (SIDS) risk reduction practices, sleep positioning policies, and arrangements for placing all infants on their backs for sleep.

17. Documenting the child's arrival and departure. The parent or person(s) authorized by the parent or guardian to drop off and pick up the child will document each time the parent, guardian or authorized person drops off and picks up the child. The documentation shall include at least the following information: the date, the child's name, the arrival and departure times, and the signature or initials of the parent, guardian or authorized person and shall be made available to the Department in printed or written form upon request.

(3) Documentation of family relationships for related children, other than the provider's own children, cared for in the home shall be maintained and shall include a notarized statement by the related child's parents attesting to the relationship.

(4) Documentation of the non-pay status of children in care for whom no pay is received shall be maintained and shall include a notarized statement by such child's parents or guardian attesting to the non-pay status.

(5) Copies of satisfactory criminal records check determinations, or preliminary records check applications and (fingerprint) records check applications, if determinations are in the application process, shall be maintained in the home by the provider.

(6) Documentation of all required training required by these rules shall be maintained in the home by the provider, and shall include the title of training courses received by the provider and any staff, the dates and the number of hours of the courses, and the names of the trainers or sponsoring organizations.

(7) If applicable, documentation of approved water and sewage disposal systems shall be maintained in the home by the provider.

(8) Documentation of monthly fire drills required by rule .11(2)(c) shall be maintained in the home.

Authority O.C.G.A. Secs. 20-1A-1 et seq., 49-5-8, 49-5-12. **History.** Original Rule entitled "Equipment and Supplies" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Records" adopted Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Jan. 12, 2009; eff. Feb. 1, 2009. **Repealed:** New Rule entitled "Children's Records" adopted Dec. 2, 2009; eff. Dec. 22, 2009.

### **290-2-3-.09 Children's Activities.**

(1) The family day care home shall provide a variety of daily activities appropriate for the children's chronological ages and developmental levels. Children with special needs shall be integrated into the activities provided by the family day care home unless contraindicated medically or by parental agreement. Activities shall be planned for each group to allow for:

- (a) Indoor and outdoor play;
- (b) A balance of quiet and active periods;
- (c) A balance of supervised free choice and caregiver-directed activities;
- (d) Individual, small group, and large group activities;
- (e) Large muscle activities, such as, but not limited to, running, riding, climbing, balancing, jumping, throwing, or digging;
- (f) Small muscle activities, such as, but not limited to, building with blocks or construction toys, use of puzzles, nesting or stacking toys, pegs, lacing, sorting beads, or clay;
- (g) Language experiences, such as, but not limited to, listening, talking, rhymes, finger plays, stories, use of film strips, recordings or flannel boards;
- (h) Arts and crafts, such as, but not limited to, painting, coloring, cutting, or pasting;
- (i) Dramatic play, such as, but not limited to, play in a home center, with dolls, puppets, or dress up;
- (j) Rhythm and music, such as, but not limited to, listening, singing, dancing, or making music; and
- (k) Nature and science experiences, such as, but not limited to, measuring, pouring, activities related to the "world around us" such as nature walks, plants, leaves or weather, or experiences in using the five senses through sensory play.

(2) Children shall be helped to develop skills in all areas (washing, dressing, toileting, etc.) appropriate to the age and ability of the child.

(3) Children shall spend some time of each day outside when the children's health and the weather permits.

(4) There shall be a supervised nap period during the day for preschool age children.

(5) Infants and toddlers shall not routinely be left in cribs, or playpens except for rest or sleep.

(6) The use of entertainment media, such as television programs or video tapes, and computer games shall be limited to programs, tapes, and software that are produced for the benefit of audiences comprised of young children. Such uses of entertainment media

shall be used only in addition to other activities, shall not be the primary source of children's activities, and should be limited to no more than two hours daily.

(7) The provider shall not engage in or allow children or other adults to engage in activities that could be detrimental to a child's health or well-being such as, but not limited to, horse play, rough play, wrestling, and picking up a child in a manner that could cause injury.

Authority O.C.G.A. Secs. 20-1A-1 et seq., 49-5-8, 49-5-12. **History.** Original Rule entitled "Building and Supplies" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Children's Activities" adopted Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Jan. 12, 2009; eff. Feb. 1, 2009. **Repealed:** New Rule of same title adopted. F. Dec. 2, 2009; eff. Dec. 22, 2009.

### **290-2-3-.10 Nutrition and Food Services.**

(1) Children shall be served all meals and snacks scheduled for the period of time in which they are present in the home. This includes breakfast or a morning snack, lunch, an afternoon snack, supper (if the home offers evening care), and an evening snack prior to bedtime (if the home offers night time care).

(2) Meals and snacks with serving sizes dependent upon the age of the children shall be nutritious, well balanced, and varied. Lunch and supper meals shall consist of vegetables or fruit or both; meat, poultry, fish, cheese, eggs, or protein substitute; bread; and milk unless the child has a specific health reason for prohibiting milk. Caregivers shall not use food to reward or punish children.

(3) Powdered nonfat dry milk shall not be used except for cooking purposes.

(4) The provider shall secure from the parents infant formula and a feeding plan for children under 1 year of age.

(5) Infant formula bottles shall be labeled with the individual child's name. Any unused formula or milk shall be discarded or returned to the parent at the end of the day.

(6) Infants under six months of age and older children who cannot hold their own bottles or sit alone shall be held during feeding. Baby bottles shall never be propped and the infant's head shall be elevated while feeding.

(7) Food shall be in sound condition, free from spoilage and contamination, and shall be safe for human consumption.

(8) All perishable and potentially hazardous foods shall be refrigerated at a temperature of 40 degrees or below and shall be served promptly after cooking. Hot foods shall be maintained at a temperature of 140 degrees or above except during serving.

(9) Food stored in containers such as cans, jars, and boxes shall be stored above the floor on clean surfaces.

(10) Garbage shall be stored in trash containers with lids and emptied and cleaned as needed. Areas around outdoor containers shall be kept clean.

(11) Chipped or cracked dishes shall not be used.

(12) Food preparation surface areas shall be nonporous with no cracks or unsealed seams.

(13) Food preparation areas and equipment shall be kept clean and free of accumulation of dust, dirt, food particles, and grease deposits.

(14) The person preparing meals shall wash their hands and arms thoroughly with soap and warm water before starting food service work and as often as necessary during food preparation and serving to remove soil and contamination.

(15) Non-disposable dishes and silverware shall be properly cleaned by pre-rinsing, or scraping, washing, sanitizing and air drying.

(16) Children shall not share eating or drinking utensils.

Authority O.C.G.A. Secs. 19-7-5, 20-1A-1 et seq., 49-5-8, 49-5-12. **History.** Original Rule entitled "Reporting Requirements" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Nutrition and Food Services" adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Aug. 7, 2009; eff. Aug. 27, 2009.

### **290-2-3-.11 Health, Safety, and Discipline.**

(1) Health.

(a) The department's current communicable disease chart of recommendations for exclusion of sick children from the home and their readmission shall be followed. Such chart shall be provided by the department.

(b) Age appropriate immunization, or an affidavit or physician's statement as described in Rule .08(1)(c) shall be required for each preschool age child upon admission to the home or within 30 days thereafter.

(c) Parents of any child who becomes ill or is injured while in care shall be notified immediately of any illness or injury requiring professional medical attention, or any illness which may not require professional medical attention but which produces symptoms causing moderate discomfort to the child, such as, but not limited to, any of the following: elevated temperature, vomiting or diarrhea.

(d) The home shall obtain emergency medical services when required by a child's condition.

(e) Except for first aid, personnel shall not handout prescription or nonprescription medications to a child without specific written authorization from the child's physician or parent. All medications shall be stored in accordance with the prescription or label instructions and kept in places that are inaccessible to children. Each dose of medication given to a child shall be documented showing the child's name, name of medication, date and time given, and the name of the person giving the medication.

(f) The home and any vehicle used by the home for transportation of children shall have a first aid kit which shall at least contain: scissors, tweezers, gauze pads, thermometer, adhesive tape, band-aids, insect - sting preparation, antiseptic cleaning solution, antibacterial ointment, bandages, disposable rubber gloves, protective eyewear, facemask, and cold pack. The first aid kit, together with a first aid instruction manual which must be kept with the kit at all times, shall be stored in a central location so that it is not accessible to children but is easily accessible to the provider and staff. The home must also maintain written directions for the use of universal precautions for handling blood and bodily fluids. The directions on the use of universal precautions must be kept with the first aid kit at all times.

(g) Diapers shall be changed in the child's own crib or on a nonporous surface which is cleaned with a disinfectant and dried with a single use disposable towel after each diaper change.

(h) Soiled diapers and linens shall be disposed of in a closed container and personnel shall wash their hands with soap and running water immediately after each diaper change.

(i) If used, toilet potty chairs shall after each use be emptied by disposal in a flush toilet, cleaned with a disinfectant, and stored in the bathroom. If a sink is used, it shall be disinfected after each use.

(j) When children are present for care, providers, employees, and any other persons shall not smoke or use tobacco except in areas which are totally separated from areas used for child care. If smoking occurs in other areas of the home, the provider shall so advise parents.

(k) Children shall be kept clean, dry, and comfortable.

(l) Pets in the home shall be vaccinated in accordance with the requirements of the local county Boards of Health. Unconfined pets shall not be permitted in child care areas when children are present except for supervised learning experiences.

(m) Pets and all other animals shall be controlled to assure that proper sanitation of the premises is maintained and animals are not a hazard to the children, personnel or other visitors. No animal, such as but not limited to, pit bull dogs, ferrets, and poisonous snakes, which may have a vicious propensity, shall be permitted on the family day care home premises at any time there are children on the premises. Horses or other farm animals shall not be quartered on any property over which the provider exercises any control that is located within five hundred (500) feet of the building in which the family day care home is located.

(2) Safety.

(a) A home shall have a written plan for handling emergencies, including but not limited to fire, severe weather, loss of electrical power or water, and death, serious injury or loss of a child, which may occur at the home. No home personnel shall impede in any way the delivery of emergency care or services to a child by licensed or certified emergency health care professionals.

(b) An operable telephone shall be readily available in the home with the following telephone numbers posted in a conspicuous place next to the telephone. In those areas of the state serviced by the 911 emergency number, 911 may be posted in lieu of the phone numbers required for 2., 3., and 4. below:

1. A physician or hospital;
2. An ambulance or rescue squad service;
3. The local fire department;
4. The local police department;
5. The county health department; and
6. The regional poison control center.

(c) The home shall practice fire drill procedures with children at least monthly. Such drills shall be documented and maintained on file for one year.

(d) Children shall not have access to hanging cords or other hazardous objects.

(e) Clear glass doors shall be marked to avoid accidental impact.

(f) Poisons, medicines, cleaning agents, razors, aerosol cans and other potential hazardous materials shall be stored out of reach of children or in locked cabinets.

(g) Firearms shall be stored so they are not accessible to children.

(h) At least one UL Approved smoke detector shall be on each floor of the home and such detectors shall be maintained in working order. At least one 2-A:5-B:C fire extinguisher shall be kept in the child care area to be located no more than thirty feet from the kitchen. The extinguisher shall be maintained in working order and shall be inaccessible to the children.

(i) Flammable liquids, such as gasoline or kerosene, shall not be stored inside the home.

(j) If children are transported in an automobile by the provider or a home's employee, the driver shall have a current driver's license and children shall be restrained by either individual seat belts or appropriate child restraints in accordance with state law. No child shall be left unattended in a motor vehicle.

(3) Discipline. Disciplinary actions used to correct a child's behavior, guidance techniques and any activities in which the children participate or observe at the home shall not be detrimental to the physical or mental health of any child.

(a) A provider or a home's employees shall not:

1. Physically or sexually abuse a child, or engage in or permit others to engage in sexually overt conduct in the presence of any child enrolled in the home; or

2. Inflict corporal/physical punishment upon a child; or

3. Shake, jerk, pinch or handle roughly a child; or

4. Verbally abuse or humiliate a child which includes, but is not limited to, the use of threats, profanity, or belittling remarks about a child or his family; or

5. Isolate a child in a dark room, closet, or unsupervised area; or

6. Use mechanical or physical restraints or devices to discipline children; or

7. Use medication to discipline a child, or to control children's behavior without written medical authorization issued by a licensed professional and given with the parent's written consent.

8. Discipline a child by restricting unreasonably a child from going to the bathroom; or by punishing toileting accidents; or by force feeding a child; or by not feeding a child regularly scheduled meals and/or snacks; or by forcing or withholding naps; or by allowing children to discipline or humiliate other children; or by

confining a child for disciplinary purposes to a swing, high chair, infant carrier, walker or jump seat.

9. Commit any criminal act, as defined under Georgia law which is set forth in O.C.G.A. Sec. 16-1-1 et seq., in the presence of any child enrolled in the home.

Authority O.C.G.A. Secs. 20-1A-1 et seq., 49-5-8, 49-5-12 **History.** Original Rule entitled "Registration" adopted. F. Feb. 21, 1983; effective Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Health, Safety and Discipline" adopted Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Jan. 12, 2009; eff. Feb. 1, 2009. **Repealed:** New Rule of same title adopted Dec. 2, 2009; eff. Dec. 22, 2009.

### **290-2-3-.12 Equipment and Supplies.**

(1) The home shall provide a variety of age-appropriate toys, books, and play equipment and materials to insure that each child shall have opportunity to experience and participate in a variety of activities.

(2) Provision shall be made for each child to have a comfortable, clean place to nap. A crib with a waterproof mattress shall be provided for each child under one year of age.

(3) Individual or disposable wash cloths and towels shall be provided.

(4) Furniture and equipment shall be kept clean and in a safe usable condition.

(5) All indoor and outdoor furniture, activity materials, and equipment shall be:

(a) Used in a safe and appropriate manner by each employee and child in attendance;

(b) Used in accordance with the manufacturer's instructions, recommendations, and intended use;

(c) Free from hazardous conditions such as, but not limited to, sharp rough edges or toxic paint;

(d) Kept clean;

(e) Placed so as to permit the children's freedom of movement and to minimize danger of accident and collision;

(f) Secured if equipment and furniture is of a weight or mass that could cause injury from tipping, falling, or being pulled or pushed over. Potentially unstable equipment and furniture that might injure a child if not secured include, but are not limited to, televisions, chests of drawers, bookcases, shelving, cabinets and fish tanks. Examples of items not required to be secured include, but are not limited to, child-sized tables and chairs, rocking chairs, and cribs.

(6) Toys shall be stored on low, open shelves accessible to children in each room or assigned area. Toys that launch projectiles, such as dart guns, pop guns, slingshots, etc., shall not be allowed in the home, and balloons shall not be accessible to preschool children.

(7) Toys for Children Under Three. Toys for children under three (3) years of age shall also be age-appropriate. Those toys shall be:

(a) Non-toxic and lead-free;

(b) Too large to be swallowed by a child and not capable of causing asphyxiation or strangulation;

(c) Free of sharp pieces, edges or points of small parts which may be pried off by a child;

(d) Free of rust;

(e) Easily cleaned with a disinfectant daily.

(8) Tables. There shall be table space provided for each child who is able to sit at a table unassisted. An appropriately sized chair or bench shall be provided for each child who is not an infant and who is able to use a chair or bench.

Authority O.C.G.A. Secs. 20-1A-1 et seq., 49-5-8, 49-5-12. **History.** Original Rule entitled “Inspections” adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled “Equipment and Supplies” adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Dec. 2, 2009; eff. Dec. 22, 2009.

### **290-2-3-.13 Building and Grounds.**

(1) The home's building shall be kept clean and free from obvious hazards to the children's health and safety.

(a) The areas used for child care shall provide a minimum of 35 square feet of usable floor space per child.

(b) Basement areas in excess of 25 linear feet from a window shall not be used for housing children.

(c) Furniture and equipment shall be arranged so as not to interfere with exits.

(d) The home shall be kept free of fire hazards and unnecessary or excessive combustible material.

(e) When in use, radiators, open fire, oil or wood burning stoves, floor furnaces and similar hazards shall have barriers or screens to prevent children from being burned.

(f) Unvented fuel fired heaters shall not be used unless equipped with an oxygen depletion` safety shut off system.

(g) Multiple plugs and electric extension cords shall not be used. Electrical outlets within reach of children shall be plugged or covered.

(h) Fans shall be positioned or installed so as to be inaccessible to the children.

(i) Measures shall be utilized to prevent the presence of rodents, flies, roaches and other vermin on the premises. Windows and doors used for ventilation shall be screened.

(j) Water supply and sewage disposal systems, if other than approved county or city systems, shall be approved by the proper authority having jurisdiction.

(2) Outside grounds and play areas shall be kept clean and free of obvious hazards to the children's health and safety.

(a) Outside play areas shall be free of hazards such as, but not limited to exposed sharp edges of concrete or equipment, broken glass, debris, open drainage ditches, holes and stagnant water.

(b) Climbing and swinging equipment that are not portable shall be securely anchored to eliminate accidents or injuries and have a resilient surface beneath the equipment and the fall zone from such equipment which is adequately maintained by the family day care home to assure continuing resiliency.

(c) Such outside play areas shall be protected from traffic or other hazards by fencing or other barriers at least four feet in height and approved by the department. Fencing material shall not present a hazard to children. A fence shall be provided around swimming pools to make them inaccessible when not in use.

Authority O.C.G.A. Secs. 20-1A-1 et seq., 31-2-4, 49-5-8, 49-5-12. **History.** Original Rule entitled "Variances and Waivers" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency.

**Repealed:** New Rule entitled "Building and Grounds" adopted Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Jan. 12, 2009; eff. Feb. 1, 2009.

### **290-2-3-.14 Reporting.**

(1) Within twenty-four (24) hours or the next work day, the home shall report the following to the Child Care Licensing Office:

(a) Any death of a child while in the care of the home;

(b) Any serious illness or injury requiring hospitalization or professional medical attention other than first aid administered by the provider;

(c) Any fire;

(d) Any structural disaster;

(e) Closing of the home; and

(f) Any situation when a child in care becomes missing, such as, but not limited to, a child who is left on a vehicle, a child who leaves the building, playground, or property, or a child who is left behind on any trip.

(2) Any suspected incident of child abuse, neglect or deprivation shall be reported to the local county Department of Family and Children Services in accordance with O.C.G.A. Sec. 19-7-5, and to the Child Care Licensing Office.

(3) Any cases or suspected cases of notifiable communicable diseases shall be reported to the local county health department in accordance with rules of the department regarding Notification of Disease, Chapter 290-5-3, and to the Child Care Licensing Office.

Authority O.C.G.A. Secs. 19-7-5, 20-1A-1 et seq., 49-5-8, 49-5-12. **History.** Original Rule entitled "Denial or Revocation of Certificate" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Reporting" adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Aug. 7, 2009; eff. Aug. 27, 2009.

## **290-2-3-.15 Enforcement and Penalties.**

No family day care home shall operate in the State without a Certificate of Registration that has been issued by the Department. A registration to operate a family day care home may be denied, revoked, restricted or suspended in accordance with the following:

(a) **Refusal of a License, Commission or Registration.** The Department shall refuse to issue a registration upon a showing of:

1. Noncompliance with the Rules and Regulations for Family Day Care Homes which are designated in writing to the facilities as being related to children's health and safety; or

2. Flagrant and continued operation of an unregistered family day care home in contravention of the law; or

3. Prior license, commission or registration denial or revocation within one (1) year of application.

(b) **Refusal of a License, Commission or Registration.** The Department may refuse to issue a registration upon a showing of:

1. The applicant or the agent of the applicant denies the Department's representative access to the family day care home for the purposes of determining whether a registration will be granted; or

2. The owner or employees of the family day care home do not undergo the applicable records check and receive satisfactory determinations; or

3. The applicant or agent of the applicant knowingly makes any false statement of material information in connection with the application for registration, or in the alteration or falsification of records maintained by the applicant in connection with the application for registration; or

4. The applicant or alter ego of the applicant has transferred ownership or governing authority of a family day care home, group day care home or a child care learning center within one (1) year of the date of the new application when such transfer was made in order to avert denial, suspension, or revocation of a license, commission or registration; or

5. The applicant or alter ego of the applicant or persons in management or control of the family day care home have failed to pay a civil penalty or enforcement fine previously imposed by the Department.

(c) **Revocation of a License, Commission or Registration.** The Department may revoke a registration in the following instances:

1. Where the Department's representative is refused access to the family day care home for the purpose of determining whether the family day care home is in compliance with these rules; or

2. Where the Department determines that a non-correctable deficiency, abuse or dereliction exists in the operation or management of the family day care home; or

3. Where the Department determines that a correctable abuse, dereliction or deficiency in the operation or management of the family day care home has not been corrected within a reasonable time after:

(i) having been brought immediately to the attention of the administrator of the family day care home by a Department representative; and

(ii) having been advised in writing of the deficiencies and setting a time not to exceed ten (10) working days for the filing of an acceptable plan of correction; and

(iii) the provider fails to submit an acceptable plan of correction to the Department within the specified time limits. In determining whether a plan of correction is acceptable, the Department will consider the extent of the deficiencies, whether the provider has previously been cited for the same deficiencies, the history of compliance including whether the provider has complied with previous plans of correction, and whether the correction required can be maintained over time; or

4. The provider fails to follow the accepted plan of correction; or

5. Where the provider or the provider's employees do not undergo the applicable records checks and receive satisfactory determinations; or

6. Where there is a flagrant abuse, dereliction or deficiency that constitutes shocking intentional misconduct; or

7. Where the provider knowingly makes any false statement of material information in connection with any statement made or on any documents submitted to the Department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the provider; or

8. Where the provider or alter ego of the provider fails to pay a civil penalty or enforcement fine imposed by the Department after the time period for requesting an appeal of the notice of imposition of civil penalty or enforcement fine has expired and the provider has not submitted an appeal within required time frame in accordance with these rules and regulations; or

9. Where the provider fails to pay a civil penalty or enforcement fine imposed by the Department after the licensee has submitted a timely appeal of the notice of imposition of civil penalty or enforcement fine and the imposition of the civil penalty or enforcement fine has been affirmed in accordance with the Georgia Administrative Procedure Act, O.C.G.A. Sec. 50-13-1 et seq., and applicable law.

(d) **Suspension of a Registration.** The Department may suspend the registration to operate a family day care home in the following instances:

1. Where the provider or employees of a family day care home do not undergo the applicable records checks and receive satisfactory determinations, or

2. Where the Department finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to this effect in its order summarily suspending the license pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

(e) **Restriction of a Registration.** The Department may restrict or limit a registration from providing certain kinds of care or services to children or limiting the number and/or age of the children who may be served if the Department determines that the provider either cannot comply with these rules or has not complied with these rules.

(f) **Emergency Order.** Notwithstanding other remedies available to the Department which may be pursued at the same time, the Commissioner or his/her designee may order the emergency placement of a monitor or monitors in a family day care home in accordance with the following:

1. The Department's rules and regulations are being violated which threaten the health, safety, or welfare of children in care and when one or more of the following conditions are present:

(i) The family day care home is operating without a license, commission or registration; or

(ii) The Department has denied the registration or has initiated action to revoke the existing registration of the family day care home; or

(iii) Children are suspected of being subjected to injury or life-threatening situations or the health or safety of a child or children is in danger.

2. A monitor may be placed in a family day care home for no more than ten (10) consecutive calendar days, during which time the monitor shall observe conditions and regulatory compliance with any recommended remedial action of the department. Upon expiration of the ten (10) day period, should conditions warrant, the initial ten (10) day period may be extended for an additional ten (10) day period. The monitor shall report to the Department. The monitor shall not assume any administrative responsibility within the family day care home, nor shall the monitor be liable for any actions of the family day care home. The salary and related costs and travel and subsistence allowance as defined by Department policy of placing a monitor in a family day care home shall be reimbursed to the Department by the family day care home, unless the order placing the monitor is determined to be invalid in a contested case or by final adjudication by a court of competent jurisdiction, in which event the costs associated with the monitor shall be paid by the Department.

3. The emergency order shall contain the following:

(i) The scope of the order;

(ii) The reasons for the issuance of the order;

(iii) The effective date of the order if other than the date the order is issued;

(iv) The person to whom questions regarding the order are to be addressed; and

(v) Notice of the right to a preliminary hearing.

4. Unless otherwise provided in the order, an emergency order shall become effective upon its service to the owner of the family day care home or any other agent, employee, or person in charge of the family day care home at the time of the service of the order.

5. The request for a preliminary hearing shall be made in writing within five (5) days from the time of service, excepting weekends. The request must be made to the representative of the Department designated in the order. Unless a request is made to appear in person, the preliminary hearing shall consist of an administrative review of the record, written evidence submitted by the family day care home affected, and a preliminary written argument in support of its contentions.

6. If a request is made to appear in person at the preliminary hearing, the family day care home shall provide the name and address of the person or persons, if any, who will be representing the family day care home in the preliminary hearing.

7. Upon receipt of a request for a preliminary hearing, the Department shall set and give notice of the date, time and location of the preliminary hearing. The preliminary hearing shall be held as soon as possible after a request therefore but in no event later than seventy-two (72) hours after such request, provided that a family day care home may request that such hearing be held earlier; provided, however, that in no event will a hearing be held on a weekend or holiday.

8. If a personal appearance is requested, the preliminary hearing shall consist of a review of the evidence in the record, any additional evidence introduced at the hearing, and any arguments made. A recording shall be made of the hearing.

9. The Department shall, where practicable, issue an immediate oral order and shall, in all instances, issue a written order within four (4) business days after the close of the hearing.

10. Pending final appeal of the validity of any emergency order issued as provided for pursuant to O.C.G.A. Sec. 20-1A-13, such emergency order shall remain in full effect until vacated or rescinded by the Commissioner or his/her designee.

11. The Department is not precluded from taking any other actions permitted by other laws or regulations during the time that an emergency order is in force.

(g) **Right to a Hearing.** The Department's action revoking or refusing to renew or issue a registration required pursuant to O.C.G.A. Sec. 20-1A-1 et seq. or any other adverse action, such as the imposition of an enforcement fine, the restriction or suspension of a registration, shall be preceded by notice and opportunity for a hearing and shall constitute a contested case within the meaning of the "Georgia Administrative Procedure Act", O.C.G.A. Sec. 50-13-1 et seq., except that only thirty (30) days' notice in writing from the Commissioner's designee shall be required prior to license, commission or registration revocation and except that the hearing held relating to such action by the Department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at that hearing.

1. In connection with the Department instituting proceedings to revoke, suspend, refuse to renew or restrict a previously issued registration, the Department shall provide notice sent by certified mail setting forth the facts or conduct which has warranted the Department's action. The notice shall inform the provider of the opportunity to demonstrate that the registration holder was in full compliance with all lawful requirements for the retention of the registration at the time that the facts or conduct warranting the revocation, suspension or restriction action allegedly occurred. However, this notice shall not be required in the following instances:

(i) The Department finds that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, in which case summary suspension of the registration may be ordered pending proceedings for revocation or suspension or other action, which proceeding shall be promptly instituted and determined; or

(ii) The Department's order is expressly required, by a judgment or a statute, to be made without the right to or hearing or continuance of any type.

2. The notice of revocation, suspension or restriction of a registration becomes effective thirty (30) days from the day of notice unless the registration holder requests a hearing. A request for a hearing must be made in writing within ten (10) days of receipt of the notice of revocation, suspension or restriction.

(h) **Notice of Hearing.** If the registration holder requests a hearing, a notice of hearing shall be mailed or served personally on the provider. The notice shall contain the following:

1. A statement of the date, time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular section of the statutes and rules involved;
4. A short and plain statement of the matters asserted. The Department may refer to any child that is the subject of a deficiency or violation in the notice by the child's initials. The name of the child so referenced will be released orally to the holder of the license, commission or registration upon written request to the Department. If the Department is unable to state the matters in detail at the time, the notice may be limited to a statement of the issues involved. Thereafter, upon application approved by the hearing officer, a more definite and detailed statement shall be furnished; and
5. A statement as to the right of any party to subpoena witnesses and documentary evidence through the Department.

(i) **Inspection Warrants.** If a Department representative is denied entrance to a family day care home which is believed to be subject to licensure or registration, an application for an inspection warrant may be made by the Department to a court of competent jurisdiction and, if granted, used to gain entry to that family day care home.

(j) **Injunctive Relief.** The Department may without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of a family day care home without a registration or the continued operation of a family day care home in willful violation of O.C.G.A. Sec. 20-1A-1 et seq. or of any regulation of the Department or in violation of any other order of the board or of the Department.

(k) **Criminal Penalties.** The criminal penalties which may be imposed for violation of these rules are as follows:

1. Any person who violates the provisions of O.C.G.A. Sec. 20-1A-1 et seq. or who hinders, obstructs, or otherwise interferes with any representative of the Department in the discharge of that person's official duties in making inspections or in investigating complaints shall be guilty of a misdemeanor.

2. Any person who shall make, utter, execute, or submit to the Department any oral or written representation, knowing the same to be false, for the purpose of obtaining anything of value, including any service, shall be guilty of a misdemeanor.

3. Any family day care home which operates without a currently valid license, commission, or registration issued by the Department is subject to the provisions O.C.G.A. Sec. 20-1A-10(t) which provides upon conviction of operating a family day care home without a license, commission or registration, for a fine of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for each offense. Each day of operation without a license, commission or registration constitutes a separate criminal offense.

(l) **Enforcement Fines.** The Department may assess an enforcement fine of up to five hundred dollars (\$500) per day for each rule violation, not to exceed a total of twenty-five thousand dollars (\$25,000). The Department may assess enforcement fines in accordance with the following:

1. A fine, not exceeding five hundred dollars (\$500) per day for each rule violation, may be assessed by the Department against any family day care home provider who:

(i) Violates any licensing, commissioning or registering provision of O.C.G.A. Sec. 20-1A-1 et seq. or any rule, regulation, or order issued under O.C.G.A. Sec. 20-1A-1 et seq. or any term, condition, or limitation of any license, commission or certificate of registration under O.C.G.A. Sec. 20-1A-1 et seq. thereby subjecting a child in care to injury or a life-threatening situation; or

(ii) Commits any violation for which a license, commission or registration may be revoked.

2. If any violation is a continuing one, each day of such violation will constitute a separate violation for the purpose of computing the applicable enforcement fine.

3. Whenever the Department proposes to subject a provider to the imposition of an enforcement fine, it shall notify such provider in writing. The notice shall set forth the following:

(i) The date, facts, and nature of each act or omission with which the provider is charged;

(ii) The specific and particular provisions of the Official Code of Georgia Annotated section, the rule, regulation, order, license, commission or registration involved in the violation;

(iii) Each fine which the Department proposes to impose and its amount;

(iv) That the provider has an opportunity to show in writing, within ten (10) days of the receipt of the notice, why such fine should not be imposed;

(v) That the failure to pay the enforcement fine, subsequently determined by the Department, if any, may result in collection through a civil action (lawsuit); and

(vi) That the provider also has the right to appeal the imposition of the enforcement fine pursuant to the Georgia Administrative Procedure Act, O.C.G.A. Sec. 50-13-1 et seq., by filing a timely request for a hearing within ten (10) days of receipt of the notice.

4. The written notice of the intention to impose an enforcement fine shall be sent by registered or certified mail by the Department to the last known address of such provider.

5. The amount of the enforcement fine will be assessed in accordance with the following:

(i) A fine of five hundred dollars (\$500) per day for each rule violation may be assessed for any violation of these rules which has resulted in a disabling or permanent injury or the death of a child;

(ii) A fine ranging from three hundred dollars (\$300) to four hundred ninety-nine dollars (\$499) per day for each rule violation may be assessed for any violation of these rules which has resulted in an injury or harm to a child but has left no disabling or permanent physical damage;

(iii) A fine ranging from fifty dollars (\$50) to two hundred ninety-nine dollars (\$299) per day for each rule violation may be assessed for any violation of these rules which demonstrates a reckless and serious disregard for the physical or mental health or safety of a child in care but which may or may not result in physical injury to a child or for any other violation of these rules for which a license, commission or registration may be revoked.

6. The Department will consider in assessing an enforcement fine the severity of the rule violation, the duration of noncompliance, the holder of the license, commission or registration's prior licensure history, and the voluntary reporting of the violation for which the fine is being imposed on the licensee, commission holder or registrant.

7. The assessment of an enforcement fine will not preclude the Department from taking any additional actions authorized by law or regulation including but not limited to license, commission or registration restriction, suspension, revocation, emergency monitors or the seeking of an injunction against the continued operation of the family day care home.

(m) **Complaints.** All complaints concerning unregistered family day care homes may be submitted to the Department by telephone, letter, e-mail, facsimile or personal conference. Complaints will be investigated by a Department representative, if appropriate. A written report of the findings of the investigation will be sent to the complainant upon request where authorized by law.

Authority O.C.G.A. Secs. 20-1A-1 et seq., 31-2-6, 49-5-8, 49-5-12. **History.** Original Rule entitled "Enforcement" adopted. F. Feb. 21, 1983; eff. Mar. 23, 1983, as specified by the Agency. **Repealed:** New Rule entitled "Enforcement and Penalties" adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency. **Repealed:** New Rule of same title adopted. F. Dec. 2, 2009; eff. Dec. 22, 2009.

### **290-2-3-.16 Waivers and Variances.**

The department may, in its discretion, grant waivers and variances of specific rules upon application or petition being filed on forms provided by the department. The department may establish conditions which must be met by the home in order to operate under the waiver or variance granted. Waivers and variances may be granted in accordance with the following considerations:

(a) Variance. A variance may be granted by the department upon a showing by the applicant or petitioner that the particular rule or regulation that is the subject of the variance request should not be applied as written because strict application of the rule would cause undue hardship. The applicant or petitioner must also show that adequate standards affording protection for the health, safety and care of the children exist and will be met in lieu of the exact requirements of the rule or regulations in question.

(b) Waiver. The department may dispense entirely with the enforcement of a rule or regulation by granting a waiver upon a showing by the applicant or petitioner that the purpose of the rule or regulation is met through equivalent standards affording equivalent protection for the health, safety and care of the children.

(c) Experimental Variance or Waiver. The department may grant waivers and variances to allow experimentation and demonstration of new and innovative approaches to delivery of services upon a showing by the applicant or petitioner that the intended protections afforded by the rule or regulation which is the subject of the request are met and that the innovative approach has the potential to improve service delivery.

Authority O.C.G.A. Chaps. 31-2-4, 49-5-8; 49-5-12. **History.** Original Rule entitled "Waivers and Variances" adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994, as specified by the Agency.

### **290-2-3-.17 Severability.**

In the event that any rule, sentence, clause or phrase of any of these rules and regulations may be construed by any court of competent jurisdiction to be invalid, illegal, unconstitutional, or otherwise unenforceable, such determination or adjudication shall in no manner affect the remaining rules or portions thereof. The remaining rules or portions thereof shall remain in full force and effect, as if such rule or portions thereof so determined, declared or adjudged invalid or unconstitutional were not originally a part of these rules.

Authority O.C.G.A. Chaps. 49-5-8; 49-5-12. **History.** Original Rule entitled "Severability" adopted. F. Feb. 4, 1994; eff. Mar. 1, 1994 as specified by the Agency.

### **290-2-3-.18 Notice of Revocation or Emergency Suspension Actions.**

(1) The Department shall provide notice of its actions to revoke the license or seek an emergency suspension of the home's license to operate to parents, guardians, and others who may have children in the care of the home. This notice, together with the Department's complaint intake phone number and website, shall be provided to parents, guardians, and others through the following methods:

(a) The posting of the official notice of the revocation or emergency suspension action and any final resolution at the home by Departmental staff in an area that is visible to the parents and guardians whose children attend the home;

(b) The posting of the official notice of the revocation or emergency suspension action and any final resolution on the Department's website; and

(c) The distribution by Departmental staff of a brief notice of the initial filing of actions to revoke or suspend the home's license to the parents or guardians, or persons authorized to pick up the children from care for the parents or guardians, who are at the home at the time that the notice of revocation or emergency suspension is posted by the Department.

(2) In addition, the Department may share any notice of the revocation or emergency suspension action and any information pertaining thereto with any other agencies which may have an interest in the welfare of the children in care at the home.

(3) When the Department has posted a notice of revocation and/or emergency suspension actions in the home, the home shall ensure that the notice at the home continues to be visible to the parents, guardians, and others throughout the pendency of the revocation and emergency suspension actions including any appeals. Where the home provides transportation of the children in care to and from the home and the parents, guardians, or others responsible for the care of the children do not come to the home on a regular basis, the family day care home shall send home with the children on the day that it is delivered by Departmental staff copies of the brief notice of the revocation or emergency suspension action to the parents, guardians, or others who are responsible for the care of the children enrolled in the home.

(4) The home shall have posted at the home in an area that is readily visible to the parents, guardians, and others any inspection reports that are prepared by the Department during the pendency of any revocation or emergency suspension action.

(5) It shall be a violation of these rules for the home to permit the removal or obliteration of any notices of revocation, emergency suspension action, resolution, or inspection survey reports posted by the Department on the premises of the home during the pendency of any revocation or emergency suspension action.

Authority O.C.G.A. Secs. 49-5-1 et seq., 50-13-4. **History.** Original Rule entitled "Notice of Revocation or Emergency Suspension Actions to Parents, Guardians and Others" adopted as ER. 290-2-3-0.18-.18. F. Oct. 17, 2002; eff. Oct. 16, 2002, the date of adoption. **Amended:** Permanent Rule entitled "Notice of Revocation or Emergency Suspension Actions" adopted. F. Nov. 22, 2002; eff. Dec. 12, 2002.

### **290-2-3-.19 Infant-Sleeping Safety Requirements.**

In order to reduce the risk of Sudden Infant Death Syndrome (SIDS), staff shall put an infant to sleep on the infant's back unless the home has been provided a physician's written statement authorizing another sleep position for that particular infant. The infant shall be placed for sleeping on a firm, tight-fitting mattress in a sturdy and safe crib. If the crib has side bars, the bars will be no more than two and threeeighths inches (2 <sup>3</sup>/<sub>8</sub>" ) apart. Any crib used for sleeping shall have a tight-fitting bottom crib sheet with no pillows, quilts, comforters, bumper pads, sheepskins, stuffed toys, or other soft items in the crib. If a blanket is required for the comfort of the infant, the infant's feet shall be placed at the foot of the crib and the infant shall be covered with the blanket only to chest level with the blanket tucked firmly under the crib mattress. The infant's sleeping area shall be maintained within a temperature range of sixty-five (65) to eighty-five (85) degrees depending upon the season. When an infant can easily turn over onto his or her stomach, staff shall continue to put the infant to sleep initially on the infant's back but allow the infant to roll over onto his or her stomach as the infant prefers. Positioning devices that restrict an infant's movement in the crib shall not be used unless a physician's written statement authorizing its use is provided for that particular infant.

Authority O.C.G.A. Secs. 49-5-1 et seq., 50-13-4. **History.** Original Rule entitled "Posting and Distribution of Notices of Revocation and Emergency Suspension Actions" adopted as ER. 290-2-3-0.18-.19. F. Oct. 17, 2002; eff. Oct. 16, 2002, the date of adoption. **Amended:** Permanent Rule entitled "Infant-Sleeping Safety Requirements" adopted. F. Nov. 22, 2002; eff. Dec. 12, 2002.

### **290-2-3-.20 E-Mail Contact Information.**

Each family day care home registered in the state of Georgia shall provide the Department e-mail contact information (“Contact Information”) so that this agency may contact the family day care home and send information to the family day care home via e-mail. It shall be the family day care home’s responsibility to maintain correct contact information, to update the Department if contact information changes, and to respond timely to information requests from the Department transmitted to the provided e-mail address. Delivery of any such information, including but not limited to directives, bulletins, data requests, notices of proposed amendments to rules and regulations, and any other matters affecting family day care homes, to said e-mail address shall be considered valid so long as the Department does not receive a failure to deliver message.

(a) All currently registered family day care homes shall supply the Department with an e-mail address by June 1, 2009 on forms provided by the Department. All applicants for registration shall submit a valid e-mail address to the Department at the time of application on forms provided by the Department.

Authority O.C.G.A. Sec. 20-1A-1 et seq., 49-5-1 et seq., 50-13-4. **History.** Original Rule entitled “Posting of Inspection Results” adopted as ER. 290-2-3-0.18-.20. F. Oct. 17, 2002; eff. Oct. 16, 2002, the date of adoption. **Amended:** New Rule entitled “E-mail Contact Information” adopted. F. Apr. 17, 2009; eff. May 7, 2009.