# 10- DEPARTMENT OF HUMAN SERVICES

 148 BUREAU OF SOCIAL SERVICES

CHAPTER 17 RULES FOR THE LICENSING OF FAMILY FOSTER HOMES PROVIDING ONLY RESPITE CARE FOR CHILDREN

SUMMARY: These rules describe the procedures and standards for licensing of Family Foster Homes Providing Only Respite Care for Children under 18 years of age. These rules are designed to protect the health, safety, well being and development of children.

1. DEFINITIONS

 As used in these rules the following definitions shall apply:

A. "Family Foster Home for Children" means a children's home that is a private dwelling where substitute parental care is provided within a family on a regular, 24-hour a day, residential basis to children under 18 years of age and unrelated to the foster family by blood or by marriage or adoption. The total number of children in care may not exceed 6, including the family’s legal children under 16 years of age, with no more than 2 of these children under the age of 2. in order to keep siblings together this definition shall not prohibit the placement of more than the allowed number.

B. "Blood relatives" shall mean mother, father, child, brother, sister, grandparents, uncles, aunts, nieces, nephews, first cousins, and any of the foregoing relatives by adoption. The definition for an Indian child's "Blood Relative" shall be in accordance with the Indian Child Welfare Act which is mother, father, a person who has reached the age of eighteen and is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin.

C. "Relatives by marriage" shall mean step-child, step-brother, stepmothers step-father, step-sister, step-grandparents.

D. 'Department" shall mean the Department of Human Services.

E. "Respite care recipient" shall mean a child under 18 years of age, unrelated to the respite care provider by blood, marriage or by adoption.

F. "Indian child" shall mean an unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

G. "Respite care provider" shall mean a person maintaining a family respite home providing only respite care for children.

H. "Respite Care" shall mean substitute parental care provided within a family on a 24 hour a day basis not to exceed a period of 3 consecutive weeks for each individual child.

I. "Respite Home" shall mean a Family Foster Home Providing Only Respite Care for Children, hereinafter called Respite Homes.

J. "Scheduled Drug" shall mean any scheduled drug, W, X, Y and Z pursuant. to Title 17-A MRSA §1102.

K. "Practices detrimental to the welfare of children" shall include but not be limited to:

1. Sexual acts or sexual contact with a child, sexually suggestive touching, verbal harassment or insinuations or exposure of a child to viewing such acts or practices.

2. Acts of violence within the family including verbal abuse and physical harming of a person with an object or a blow with the hand which occur in the presence of a child or the effects of which are observed by a child.

3. Using, trafficking in, or furnishing any scheduled drug which was not obtained by valid medical prescription for use only by the person for whom the drug was prescribed.

4. Instances of intoxication within the respite home which occur in the presence of a child and the behavior of which are observed by a child.

2. LICENSING PROCEDURES

A. Any person conducting or maintaining a respite home for children under 18 years of age, including respite care for Indian children, and who has been determined to be in compliance with applicable licensing requirements may receive a license from the Department. There is no charge for this license.

B. Application for a license shall be made to the Department on a form prescribed by the Department.

C. Following the receipt of an application the Department will evaluate the adequacy of care provided or planned for respite care recipients and the adequacy of the physical plant in accordance with the applicable laws and regulations adopted by the Department and a decision will be made by the Department -to grant or deny a license.

D. When the Department has reasonable cause to believe that the applicant, licensee, or person residing in the respite care provider's household may have a physical or mental health problem which would have a detrimental impact on the care of children, the Department may request the applicant or licensee to provide the Department with a physician's or psychologist's report which includes a diagnosis of any physical or mental conditions and the professionals assessment of the impact or the effect of the condition and its treatment on the functioning of such individual. No person shall be required to submit to a physician's report if he or she states in writing that it is contrary to his or her religious teachings and practice unless there is probable cause to suspect that he or she manifests the symptoms of communicable or contagious disease or illness which may affect the quality of child care provided.

E. At the time of application, references shall be required from three persons who are acquainted with but not related to the applicants.

F. At the time of application the applicant shall submit releases signed by each adult member of the household permitting the Department to request criminal history records from the Department of Public Safety, State Police, Bureau of Identification.

G. Upon receipt of the application, the Department shall request criminal history records from the Department of Public Safety, State Police, Bureau of Identification for each adult member of the household of the applicant.

H. The applicants may withdraw the application at any time during the application period upon notification to the Department. The Department shall acknowledge all withdrawals in writing.

I. The maximum number of children to be maintained in a respite home shall be stated on the license. The license may be reissued for a larger or smaller number of children. In determining the maximum number, the Department shall consider such factors as: the safety, health and age of the children, as well as the ability of the respite care providers to adequately care for and supervise the children in the household.

J. The license to operate a respite home does not provide licensure to operate a Family Foster Home for Children. However, a provider having a license to operate a Family Foster Home for Children may provide respite care for children.

K. The respite care provider shall permit Department staff to enter a respite home at any reasonable time to either (a) license or evaluate compliance with the rules and (b) privately talk with the respite care recipients in the home.

L. Licenses shall be effective only at the address given on the license. If the licensee moves to a new location, the license at the former address becomes void. The licensee must reapply sufficiently in advance of the move for a license to cover the new location.

M. Applications for renewal of a license shall be made prior to the date of expiration in order that necessary licensing procedures may be completed to assure the continuity of the license. A re-evaluation of the respite home with respect to continuing compliance with these licensing rules will be made at renewal time by a representative of the Department.

N. The licensee shall be responsible for reporting to the Department any changes in the home or the family which might affect the status of the license.

0. In some instances, there are no common definitions as to degree of acceptability. When such instances occur in these rules, the determination of acceptability or non-acceptability shall be made at the discretion of the Department.

P. No license to operate a respite home at any location can be issued until such home passes a satisfactory inspection for fire safety and fire protection. However, a temporary license may be issued pursuant to 3(D) of these Rules.

(1) For licenses for 3 or more children, such inspection shall be made annually after initial licensing.

(2) For licenses for 1 or 2 children such inspections shall be made every three years or more often at the discretion of the Department.

(3) All inspections shall be made under the provisions of Title 25, M.R.S.A. sections 2360, 2391, 2392 and 2452. Such inspections are made by the State Fire Marshal's Office in the Department of Public Safety at the request of the Department.

(4) In the case of an unsatisfactory fire inspection, the applicant shall submit a plan of correction to the State Fire Marshal's Office within 10 days of receipt of the notice of deficiencies. A conditional license shall be issued if the State Fire Marshal does find deficiencies but finds that there is a satisfactory plan of correction.

Q Water which is used for drinking and cooking purposes must be obtained. from a satisfactory supply. If the supply is not from a municipal water system, or an already approved supply, it must meet the standards of the Division of Health Engineering, Department of Human Services. Water from sources other than municipal water systems shall be tested every year by the Division of Health Engineering.

R. As part of the application or renewal process, the applicant or licensee shall provide appropriate releases of information so that the Department may obtain relevant information to ascertain whether the applicant or licensee is in compliance with these Rules.

3. TYPES OF LICENSES

 The Department shall issue the following types of licenses:

A. A provisional license shall be issued by the Department to an applicant who:

(1) Has not previously operated the facility for which the application is made or is licensed but has not operated during the term of that license;

(2) Complies with all applicable laws and rules, except those which can only be complied with once clients are served by the applicant; and

(3) Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license term.

B. The Department shall issue a full license to an applicant who complies with all applicable laws and rules.

C. A conditional license may be issued by the Department when the individual or agency fails to comply with applicable laws and rules and, in the judgment of the Commissioner, the best interest of the public would be so served by issuing a conditional license. The Department shall specify in writing when and what corrections must be made during the term of the conditional license.

D. A temporary license may be issued on a one-time basis when a preliminary evaluation of the home by the department has determined that the applicants are capable of providing respite care, in accordance with applicable laws and rules relating to minimum standards of health, safety and well-being, except that it is not possible to obtain a fire safety-inspection in accordance with section 8103 prior to licensure and there are no obvious fire safety violations and, in the judgment of the commissioner, the best interest of the public will be served by issuing a temporary license.

4. TERM OF LICENSE

A. The provisional license shall be issued for a minimum period of 3 months or a longer period, as deemed appropriate by the Department, not to exceed 12 consecutive months.

B. The terms of full licenses shall be for one year.

C. The conditional license shall be issued for a specific period, not to exceed one year, or the remaining period of the previous full license, whichever the Department determines appropriate based on the laws and rules violated.

D. A temporary license shall be for a specific period not to exceed 120 days.

E. Regardless of the term and type of the license, the Department shall monitor for continued compliance with applicable laws and rules on at least an annual basis.

5. FAILURE TO COMPLY WITH APPLICABLE LAWS AND RULES

A. When an applicant falls to comply with applicable laws and rules, the Department may refuse to issue or renew the license. The notice of a refusal to issue or renew and a statement indicating the reasons for refusal shall be formulated in writing and mailed to the applicant.

B. If, at the expiration of a full or provisional license, at the expiration of a temporary license or during the term of a full license the facility falls to comply with applicable law and rules and, in the judgment of the Commissioner, the best interest of the public would be served, the Department may issue a conditional license, or change a full license to a conditional license. Failure by the conditional licensee to meet the conditions specified by the Department shall permit the Department to void the conditional license or refuse to issue a full license. The conditional license shall be void when the Department has delivered in hand or by certified mail a written notice to the licensee or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the respite home.

C. Whenever, upon investigation, conditions are found which, in the opinion of the Department, immediately endanger the health or safety of persons living in or attending a facility, the Department may request the Administrative Court for- an emergency suspension pursuant to Title 4 M.R.S.A., section 1153.

D. A license to operate a respite home for children may be suspended or revoked for violation of applicable law and rules, committing, permitting, aiding or abetting any illegal practices in the operation of the facility or conduct or practices detrimental to the welfare of persons living in respite homes.

 When the Department believes that a license should be suspended or revoked, it shall file a complaint with the Administrative Court as provided in the Maine Administrative Procedure Act, Title 5, chapter 375.

6. SUBSEQUENT APPLICATION FOR A FULL LICENSE

 Subsequent to any of the following actions, an application for a full license may be considered by the Department when the deficiencies identified by the Department at the time the action was taken have been corrected:

A. issuance or voiding of a conditional license;

B. Refusal to issue or renew a full license;

C. Revocation or suspension of a full license;

D. Refusal to issue a provisional. license; or

E. Expiration of a temporary license.

7. APPEAL PROCEDURE

 Any person aggrieved by the Department's decision to take any of the following actions, may request an administrative hearing, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

A. Issue a conditional license;

B. Amend or modify a license;

C. Hold a conditional license;

D. Refuse to issue or renew a full license;

E. Refuse to issue a provisional license;

F. Refuse to issue a temporary license; or

G. Refuse to grant a waiver of these regulations.

8. WAIVERS

 The Commissioner or his designee may upon written request of any individual or agency waive or modify a provision of these regulations, which is not mandated by Maine Statute. The individual or agency shall provide clear and convincing evidence including at the request of the Commissioner or his designee, expert opinion which satisfies the Commissioner or his designee that the applicant's or licensees alternative method will comply. with the intent of the regulation for which waiver or modification is sought. Application for a waiver or modification shall be made on forms supplied by the Department and must include:

A. A statement of the provision for which waiver or modification is requested;

B. An explanation of the reasons why the provisions cannot be met and why a waiver or modification is being requested; and

C. A description of the alternative method proposed for meeting the intent of the provision sought to be waived or modified.

 All requests will be answered in writing and a record of them will be maintained. Such waiver or modification shall be granted for a specific period of time not to exceed the period of the license. If the waiver or modification continues to be necessary, a new application for waiver or modification must be made.

9. LICENSING REQUIREMENTS FOR FAMILY FOSTER HOMES PROVIDING ONLY RESPITE CARE FOR CHILDREN

A. QUALIFICATIONS OF THE RESPITE CARE PROVIDERS

1. The respite care providers must be at least 18 years of age.

2. The members of the respite family having significant responsibility for caring for respite care recipients shall be emotionally stable and mature, and able to exercise good judgment in the handling of a child and shall not engage in practices detrimental to the welfare of children.

3. No other members of the household shall engage in practices detrimental to the welfare of children.

4. The relationships of the members of the respite family to each other should be generally positive with each family member meeting his social, emotional, and developmental needs adequately through a combination of family and community relationships and activities.

5. The applicant or licensee shall bring the following information regarding themselves or other persons residing in the home to the attention of the Department:

a. Convictions for sexual or violent crimes involving adults or activities which could have resulted in convictions for such crimes if prosecuted;

 Conviction for any crimes involving children or activities which could have resulted in convictions for such crimes if prosecuted;

b. Convictions for operating under the influence or for any other activity which involves substance abuse;

c. Admission to a mental health or substance abuse treatment facility and involvement in mental health or substance abuse counseling;

d. Any serious physical problems that have required admission to a hospital or other in-patient facility;

e. Whether or not Child Protective Services has ever investigated the family situation for allegations of child abuse or neglect either when the person was a child or since he or she has become an adult;

f. Any prior conditional licenses, license suspensions, fines or revocations regarding child or adult care licenses or approval issued to the applicant;

g. The removal of children from their care or custody; and 16.

h. Any other information regarding their circumstances or treatment of children which is relevant to the Department's decision to issue a license.

 If such information as described above exists, the respite family home applicant or licensee shall furnish the Department with written releases permitting the Department to obtain information regarding any of the above from appropriate officials or persons to determine whether there is a present threat to the health, safety and welfare of children.

 In deciding what action to take regarding a license under the foregoing circumstances, the Department shall make a determination if sufficient evidence has been presented by the applicant or licensee to indicate that the problems which resulted in any of the above have been adequately resolved so that the applicant or licensee is in compliance with 9(A)(2) above and with any other applicable rules.

6. The respite family must accept the relationship of the respite care recipient with his/her own family members, including visitation arrangements in accordance with the care plan developed by the placing agency. Respite families with Indian child(ren) must be able to accept visitation arrangements with the child's parent(s), grandparents and siblings.

7. The respite care provider shall cooperate and participate in implementing any plan developed by the child's parent or guardian or other placing agent for the respite care recipient.

8. The respite family shall not care for adult boarders or roomers or operate under another license to provide child care. Exceptions to this rule must receive prior approval from the Director of the Division of Child and Family Services, of the Department, or his/her designee.

9. Whenever the respite care providers are absent from the home, they must designate responsible adult individuals to supervise.

10. The respite care provider(s) shall not discriminate against respite care recipients placed in their home on the basis of race, color or national origin.

11. The respite family shall have an ongoing, predictable income to assure that the home is maintained in conformity with the requirements of these regulations.

12. The respite care provider(s) shall keep information about a respite care recipient's previous history and own family members confidential, and provide such information only to therapists, physicians, social workers and educators or others as directed by the placing agency to meet the irresponsibilities to the respite care recipient or with written permission of the parent or legal custodian.

13. Applicants shall have completed a pre-service training program for respite care providers offered or approved by the Department of Human Services, during the term of the temporary or provisional license, or have demonstrated competence by test, equivalent prior training or experience.

14. Respite care providers shall participate in ongoing training of at least 3 hours of specialized training a year which is related to the type and age of children being cared for.

15. Respite care providers shall maintain a register of all children placed in their home including dates of admission and discharge and to whom discharged and shall make this register available to the Department of Human Services.

B. NUMBER AND AGES OF CHILDREN IN CARE

 The total number of children in care may not exceed 6, including the family's legal children under 16 years of age, with no more than 2 of these children under the age of 2. The only exception which may be made to the number and ages of children is to allow siblings to be kept together. Exceptions to this limit, in order to keep siblings together, must receive prior approval from the Director of the Division of Child and Family Services of the Department, or his/her designee.

C. SUPERViSION OF RESPITE CHILDREN

 The respite care provider(s) or designated adult individuals responsible in their absence, must provide supervision and care appropriate to each respite care recipient's age, level of development and ability to accept independence and responsibility.

D. CHILD MANAGEMENT

1. Respite care providers must be positive in their approach to discipline. Any discipline or control must be appropriate to the child's age and developmental level. The only form of physical discipline which may be used is a single mild spank on the clothed buttocks with the bare open hand; or a single mild slap on the hand to protect the child from harm, except that no form of physical discipline will be used with a mentally retarded child pursuant to: 34-B M.R.S.A. §5601 et seq.

2. In no instance shall a child be subjected to:

a. Verbal abuses derogatory remarks regarding himself or members of his family, threats to expel the child from the respite home or other forms of psychological abuse;

b. Physical punishment, discipline by shaking, or striking with an object or a blow with the hand, except as provided in D.I., except that no form of physical discipline would be used with a mentally retarded child pursuant to: 34-B M.R.S.A. §5601 et seq.

c. Severe, cruel, humiliating or unnecessary punishment;

d. Deprivation of meals;

e. Deprivation of mail or family contacts except as approved, in writing, by the parent or legal custodian of the child;

f. Physical restraint except when necessary to protect the child from inflicting injury to himself or another. Holding shall be the only means of restraining a child to assist the child who is out of control to gain control of his or her emotions;

g. Administration of medications, including psychotropic medications, as a means of punishment or non therapeutic control.

3. The respite care provider(s) method(s) of discipline for their own children must be consistent with 9(D)(1) and 9(D)(2) of these Rules.

4. Separation when used as discipline shall be brief and appropriate to the child's age and circumstances, and the child shall be within hearing of an adult in a safe, lighted, well-ventilated, unlocked room and visually checked at least every 10 minutes.

5. Disciplinary measures must be:

a. Administered as soon after the offensive behavior as possible.

b. Reasonably related to the nature of the offense and not excessive.

c. Carried out by the adult person responsible for the care of the child and who witnessed or became aware of the misbehavior

E. SAFETY MD SANITATION

1. No license to operate a respite home at any location can be issued until such home passes a satisfactory inspection for fire safety and fire protection. The fire safety inspection shall be done in compliance with 2(P) of these Rules. A conditional license will be issued if the State Fire Marshal does find deficiencies but finds that there is a satisfactory plan of correction. The department may issue a temporary license only without a fire inspection provided that a preliminary evaluation of the home reveals no obvious fire safety violations.

2. Water which is used for drinking and cooking purposes must meet the standards of the Division of Health Engineering, Department of Human Services, in compliance with 2(Q) of these Rules.

3. When it is necessary for the safety of the respite care recipient, the respite care providers must store medication in a place inaccessible to the respite care recipient. The respite care provider shall dispense such medication as prescribed.

4. The premises must be kept in a state of cleanliness and maintained in a condition insuring health and safety.

5. When it is necessary for the safety of the respite care recipient, all potentially harmful materials such as poisonous, toxic or flammable materials must be stored in securely locked storage spaces or kept in a place inaccessible to the child.

6. Household materials, tools and equipment which may be dangerous to children shall be stored out of the reach of respite care recipients when appropriate.

7. Firearms shall be rendered inoperable and unloaded or shall be unloaded and locked up to prevent unauthorized use. Ammunition, projectiles such as arrows, or other items which can be used to make the weapon operable, shall be locked separately. Weapons shall not be transported in any vehicle in which children are riding unless the weapons are made inoperable and inaccessible.

8. Toilet facilities must be in good repair and sanitary condition.

9. Bath facilities must be provided.

F. SHELTER REQUIREMENTS

1. The respite home shall have adequate heat, light and ventilation for safe and comfortable occupancy.

2. The respite how shall have adequate family living space in addition to bedrooms for the comfort of family members, for family meals, and for recreation.

3. The respite how must have a telephone and must make the number available to the custodian of the child being placed and to the child placing agency, if any.

4. No lock or fastening to prevent free escape from the inside of any room used by children shall be permitted.

5. Locks on the doors of all closets, bedrooms and bathrooms shall be openable from both sides in an emergency.

6. The dining area(s) shall have adequate space for eating. There shall be adequate facilities and space for family food storage which shall be in a sanitary condition.

7. Bedrooms shall meet the following criteria:

a. Each bedroom used by respite care recipients shall contain at least 40 square feet of floor space per person except that a room for a child shall contain at least 60 square feet of floor space. All bedrooms must have an average ceiling height of at least 7 ft. There must be at least one outside window. This window must be openable or other means of ventilation shall be provided.

b. Closets, alcoves and corridors or any other room which is normally used for other than sleeping purposes must not be used as bedrooms.

c. All bedrooms must have doors and provide reasonable privacy.

8. No adult shall regularly share a bedroom with a respite care recipient over one year of age unless necessary for the child's emotional or physical health except as approved, in writing, by the custodian of the child or placing agency.

9. No child over 5 years of age may sleep in the same room with a child of the opposite sex.

10. Each respite care recipient must have his or her own bed with adequate, clean bedding.

11. Individual space must be-provided for storing a respite care recipient's clothing and other personal possessions.

12. An adult must sleep in the house near enough to care for a respite care recipient's needs.

13. Sleeping areas for respite care recipients who have physical handicaps which limit mobility shall be on floors with a direct fire exit to the outside.

14. Respite care providers caring for hearing impaired children shall assure that an emergency communication system with visual as well as auditory alarms to warn of smoke or fire danger is in place.

15. Stairs having an open side leading from one floor to another must have a handrail on the open side.

G. HEALTH STANDARDS

1. Respite care providers shall assure that the respite care recipient receives scheduled medical, dental and psychological care according to the directives of the Department or person legally responsible for the child.

2. The Respite care provider(s) shall request current medical information for each respite care recipient, including details of any chronic illness or any condition requiring ongoing treatment.

3. Respite care providers shall have on file a medical consent form for emergencies when the parent or legal guardian cannot be reached for each privately boarded respite care recipient, unless the child is in the custody of the Department of Human Services.

4. Respite care provider(s) shall obtain and make available to the placement agency of the privately boarded child's parent or guardian reports of examinations, and other medical or dental treatment and drugs prescribed for each respite care recipient during respite cars.

5. Provision for emergency transportation to a medical facility must be available.

6. At the discretion of the Department, the applicant or licensee shall provide the Department with a physicians or psychologists' report regarding any person residing or employed in the respite care providers household which includes a diagnosis of any physical or mental conditions and their assessment of the impact of the effect of the conditions and its treatment on the functioning of the individual. This provision shall be done in compliance with Rule 2(D) of these Rules.

H. FOOD REQUIREMENTS

1. The respite family shall provide food of sufficient quality and quantity to meet the nutritional medical and psychological requirements of the respite care recipients.

2· The quantity and quality of food provided for respite care recipients shall not be less or of a different type than that provided for the members of the respite family unless medically required.

I. CLOTHING REQUIREMENTS

1. Clothing and shoes must be kept clean and in good condition.

2. Respite care providers shall be responsible for insuring that the respite care recipient's personal belongings including money and clothing go with the child when he/she leaves their home.

3. Each respite care recipient shall have individual toilet articles. The respite care provider shall encourage good health habits and personal hygiene.

10. EFFECTIVE DATE OF THESE RULES

A. These rules governing the licensing of Foster Family Homes Providing Only Respite Care for Children become effective December 22, 1986.

B. These rules shall apply to all applications received after the effective date.

11. REVIEW OF THESE RULES.

These rules governing the licensing of Family Foster Homes Providing Only Respite Care for Children shall be reviewed within three years from the effective date as required in Part IV Department of Health and Human Services, Regulations for Foster Care Maintenance Payments, Adoption Assistance, and Child Welfare Services §1356.21(g)(1) and (2).

Authority: 22 M.R.S.A. §8102.

EFFECTIVE DATE: December 22, 1986

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 16, 2025