

# CHAPTER 114

## Department of Social Services

(Statutory Authority: 1976 Code Title 43; § 20-7-852)

### ARTICLE 1 FAIR HEARINGS

(Statutory Authority: 1976 Code, § 43-1-80)

#### **114-100. Definitions.**

- A. Adverse Action—any action in which the Department:
- (1) denies, suspends, revokes or refuses to renew a license or other permit to operate a child day care facility, foster home, child placing agency, residential child care facility or group home;
  - (2) disqualifies a person from receiving benefits, or terminates, suspends or decreases benefits, which the person was previously determined eligible to receive;
  - (3) or any other action defined as adverse within a program specific section of these regulations.
- B. Petitioner/Claimant—a party who has requested a fair hearing.
- C. Respondent—the party responding to the fair hearing request.
- D. Person—an individual, partnership, corporation, association, governmental subdivision or public or private agency or organization.
- E. Department—the South Carolina Department of Social Services.
- F. Client—an applicant for or recipient of aid granted under programs administered by the Department.
- G. Adoption Subsidies—Federal or State funds provided to assist an adoptive family in meeting some of the financial needs of the adopted child who has been identified as a special needs child.
- H. OAH—Office of Administrative Hearings.
- I. Ex-Parte Communication—any direct or indirect communication concerning the merits of a pending hearing, made by one party in the absence of another party, to a hearing officer or committee member assigned to a hearing and which was neither on the record nor on reasonable prior notice to all parties.
- J. Fair Hearing—an orderly proceeding before an impartial Department employee or committee of employees in which a petitioner may challenge an adverse action and in which both parties may present evidence to defend their positions.
- K. Party—each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- L. Advance notice period—for the Family Independence and Food Stamp programs, period of time between the date of adverse action notification and the date the adverse action becomes effective.
- M. Time—computation of time shall be governed by S. C. Code Ann. Section 15-1-10 and the South Carolina Rules of Civil Procedure.

(1) In computing any period of time herein, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday.

(2) A notice sent by regular United States mail is presumed to have been received by the fifth day following the posting; if sent by certified mail, return receipt requested, the date of receipt is the date the recipient signed the certificate of receipt.

(3) In determining whether a request for hearing is timely filed, the date of the postmark or the date of receipt by the OAH or by the Department shall be used, whichever is earlier.

**HISTORY: Added by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

### **114–110. Purpose.**

The fair hearing process is an official state action required by Federal and State laws and regulations in accordance with the Fourteenth Amendment to the United States Constitution. The process allows an individual to contest an adverse action taken by the Department and to have his or her objections to the adverse action heard by an impartial hearing officer or committee.

**HISTORY: Amended by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

### **114–120. Objectives.**

The objectives of the hearing process are:

A. To provide an opportunity for a party aggrieved by an adverse action to be heard pursuant to Federal and State laws and regulations and/or departmental policies;

B. To provide a forum for one who is the subject of a child protective services indicated case for which an appeal is allowed by statute;

C. To ensure uniform application of social services regulations and policies throughout the state;

D. To assure that an appeal of adverse action is resolved by prompt, definitive, and final administrative action.

**HISTORY: Added by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

### **114–130. General Fair Hearing Procedures.**

A. Except as otherwise specified, the procedures outlined in this section apply to all hearing requests.

B. Request for Fair Hearing

(1) A request for hearing must be made either in writing or orally, except where otherwise specified for particular programs, to the caseworker or to the OAH within thirty (30) days of receiving notification of adverse action.

(2) A request shall contain

(a) The name of the party requesting the hearing;

(b) Information sufficient to identify the decision, which is being contested; and

(c) The relief requested.

C. Representation

(1) The claimant/petitioner may appoint a representative or may represent himself/herself.

(2) The claimant/petitioner or representative may review the evidence in the case file, either on the date of the hearing or at an earlier time upon request, and present additional evidence.

(3) The claimant/petitioner or representative may present witnesses and question any witnesses at the hearing.

D. Legal Counsel to the Office of Administrative Hearings

(1) Legal counsel to the OAH shall have authority to attend the fair hearing and assist the hearing officer/committee in the preparation of its findings of fact, statements of policy, and conclusions of law. Legal counsel to the OAH shall not provide legal assistance to either party to the proceeding.

(2) Legal counsel to the OAH may be present during the committee's deliberations on its decisions.

#### E. Hearing Officers

(1) A hearing officer shall preside over all hearings. In those cases to be decided by a committee, a single hearing officer shall preside over the hearing.

(2) The presiding hearing officer has the authority to conduct a fair and impartial hearing, including the authority to:

- (a) order a pre-hearing conference for the simplification of issues or a settlement conference;
- (b) review case material prior to the hearing and to establish a procedure commensurate to the complexity of the issues presented and the types of proof likely to be introduced during the hearing;
- (c) issue subpoenas;
- (d) rule on offers of proof and the admissibility of evidence;
- (e) issue orders, rulings, and dismissals;
- (f) permit depositions to be taken when the ends of justice would be served;
- (g) regulate the course of the fair hearing and the conduct of the parties and their counsel;
- (h) administer oaths or affirmations;
- (i) rule on procedural and substantive motions;
- (j) call, examine, sequester and/or disqualify witnesses;
- (k) exclude people from the hearing room pursuant to confidentiality laws governing particular program areas; and
- (l) conclude the hearing when satisfied that all pertinent information bearing on the issue has been introduced and examined.

#### (3) Disqualification

(a) The hearing officer/committee member shall disqualify himself or herself from participating in a hearing in which the officer's/member's impartiality might be reasonably questioned based upon a personal bias or prejudice, familial relationship or other basis, or in which the hearing officer/committee member may have any interest in the matter pending for decision.

(b) A disqualification pursuant to subsection (a) shall be in writing with notice to the file and a copy delivered to the Director of Individual and Provider Rights in the OAH.

(c) A party who feels that the hearing officer's/member's impartiality might be reasonably questioned may, upon notice to the opposing party, file a motion to have the officer/member disqualified.

(i) Such a motion shall set forth the grounds upon which the party feels the officer's/member's impartiality has been compromised.

(ii) The Director of Individual and Provider Rights in the OAH shall rule on the motion and serve a written statement of the reasons supporting his or her decision.

#### F. Ex-Parte Communications

(1) Ex-parte communications are prohibited and shall not be considered in deciding any matter in issue.

(2) If a hearing officer or committee member receives an ex-parte communication that he or she knows or has reason to believe is prohibited, he or she shall promptly make the communication part of the record and shall furnish a written copy of the communication to all parties explaining the circumstances under which he or she became aware of the communication.

(3) Any party who makes an ex-parte communication may be subject to having a witness disqualified or evidence excluded at the discretion of the hearing officer in the interest of fairness and equity.

#### G. Pre-Hearing Procedure

##### (1) Scheduling of Hearings

The Office of Administrative Hearings shall schedule hearings to provide thirty (30) days notice of the hearing date to the parties, unless waived by them. Because of issues of attachment and the best interests of the child, requests for hearings regarding the placement of children shall receive priority over other appeal cases.

(2) The notice of hearing shall include the following:

- (a) Date, time, and place of the hearing;
- (b) Statement of the issues;
- (c) Notice of the right to appoint a representative;
- (d) Notice that the claimant/petitioner's failure to appear without good cause will result in dismissal of the appeal;
- (e) Request to notify the OAH if special accommodations or a translator will be needed at the hearing.

(3) Pre-Hearing Conferences

(a) Upon request of a party or a hearing officer/committee member, a pre-hearing conference may be held prior to the hearing to simplify the issues to be determined; to obtain stipulations as to the admissibility of evidence, undisputed facts or the application of a particular law; to identify and exchange documentary evidence intended to be introduced at the hearing; to determine deadlines for the completion of any discovery and, if possible, to reach a settlement.

(b) A pre-hearing conference shall be an informal proceeding conducted by the hearing officer and may be conducted via telephone, in the discretion of the hearing officer/presiding committee member.

(c) Any agreement reached may be the subject of an order issued by the hearing officer.

(4) Motions

(a) All pre-hearing motions shall contain the caption of the case, title of the motion, the name, address and signature of the person preparing it, the grounds for relief and the relief sought.

(b) All motions shall be filed and served upon the opposing party not later than ten (10) days before the hearing date, unless otherwise ordered by the hearing officer.

(c) A party may file and serve a response to a motion within ten (10) days unless the time is extended or shortened by the hearing officer.

(d) A motion for a continuance shall state the reasons for the request and whether the opposing party has consented to the request; however, no such motion may be made ex-parte except in an emergency when notice to the opposing party is not feasible.

(e) Any motion regarding discovery shall state that the moving party has made a good faith attempt to resolve, with the other party, the issues raised by the motion.

(f) The hearing officer may rule on the basis of the written motion and any response thereto or may order argument on the motion. The decision to hold oral argument is within the discretion of the hearing officer.

(5) Discovery

Discovery shall be permitted as provided in S.C. Code Ann. Section 1-23-320 (1976 & Supp. 1993); however, each party shall be limited to taking three depositions, except for good cause shown.

(6) Pre-Hearing Exchange of Information

Upon notice, the hearing officer may, in appropriate cases, require the parties to exchange prior to the hearing:

- (a) a final list of witnesses the party reasonably expects to testify;
- (b) a final list of all exhibits expected to be offered at the hearing;
- (c) a final list of all facts that the party intends to request judicial notice of, with supporting documentation.

H. Dismissals

(1) The OAH has the authority to dismiss a request for hearing when

- (a) the request for hearing is not timely filed;
- (b) the claimant/petitioner or representative requests withdrawal of the request for hearing;
- (c) the claimant/petitioner fails to appear at the scheduled time and place for the hearing;
- (d) changes in either Federal or State law require automatic grant adjustments for classes of clients.

(2) A party whose case has been dismissed may request reinstatement of the case if he/she can show good cause. Such request must be made within ten (10) days of the dismissal.

#### I. Hearing Procedure

(1) The hearing officer will give an opening statement briefly describing the nature of the proceeding and identifying the issues of the hearing.

(2) The parties shall be allowed to make opening and closing statements subject to reasonable limitations as determined by the presiding hearing officer.

#### (3) Evidence

(a) S. C. Code Ann. Section 1-23-330 (1976) (as amended) shall govern questions of admissibility;

(b) Each party shall have the opportunity to present documentary evidence and witnesses, including child witnesses, who will be subject to cross-examination. First, the Department will present evidence to support the action or inaction that is being appealed, and then the petitioner will present his or her case; however, the order of presentation may be changed at the discretion of the hearing officer/committee. The parties may present rebuttal evidence.

(4) The hearing officer shall swear or affirm each witness. At the hearing officer's discretion, witnesses may be sequestered during the hearing.

#### (5) Objections

All objections to procedure, the admissibility of evidence, or other matters must be made timely and stated on the record.

#### (6) Child Witnesses

The hearing officer may modify procedures and room accommodations to minimize the trauma of testifying, including, but not limited to:

- (a) allowing a parent or other support person to be present in the room;
- (b) allowing frequent breaks to be taken as necessary for the child's focus;
- (c) allowing leading questions during direct examination, to the extent necessary to develop the child's testimony;
- (d) allowing a more comfortable configuration of the hearing room;
- (e) requiring attorneys, or other questioners, to pose questions and objections while seated and in a manner that is not intimidating.

#### (7) Out-of-Court Statements by Certain Children

(a) An out-of-court statement made by a child who is under twelve years of age, or who functions cognitively, adaptively, or developmentally under the age of twelve, concerning any issue in dispute is admissible if the requirements of S.C. Code Section 19-1-180(B), (C), (D) and (E) are met, regardless of whether it would otherwise be admissible.

(b) The limitations of Section 19-1-180(A) do not apply.

#### J. Decision

(1) The Office of Administrative Hearings will issue a final decision, in writing, which shall include separate findings of fact and conclusions of law promptly after the date of the conclusion of the hearing. In cases heard by a committee, the entire committee shall participate in rendering the final decision, and in cases where the committee decision is not unanimous, the majority vote shall govern.

(2) The determination by the hearing committee is the final administrative determination by the Department to be afforded to the petitioner.

#### K. Motion for Reconsideration

(1) Any party aggrieved by a final order may, within ten (10) days of the service of the order, file a written Motion for Reconsideration, which shall specify in detail the grounds for relief sought and supporting authorities. The OAH may order a reconsideration on its own motion within ten (10) days after the service of the final order.

(2) The filing of a motion for reconsideration shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the Office of Administrative Hearings and shall continue in effect unless the motion is granted or until the order is superseded, modified, or set aside as provided by law.

(3) The Motion for Reconsideration will be granted only on the basis of:

- (a) a material error of law;
- (b) a material error of fact; or
- (c) the discovery of new evidence sufficiently strong to reverse or modify the order, which could not have been previously discovered by due diligence.

(4) The Office of Administrative Hearings may order a rehearing or enter an order with reference to the motion without ordering a hearing, and shall dispose of the motion within thirty (30) days after it is filed.

(5) If the Office of Administrative Hearings determines, in its discretion, that a rehearing is necessary, the matter shall be set for further proceedings as soon as practicable.

(6) If after such rehearing, it appears that the original decision, order, or determination is in any respect unlawful or unreasonable, the hearing officer/committee may reverse, change, modify, or suspend the same accordingly. Any decision, order or determination made after such reconsideration, reversing, changing, modifying or suspending the original determination shall have the same force and effect as the original decision, order, or determination.

#### L. Record After the Final Decision

The record of the contested case shall contain:

- (1) all correspondence, pleadings, motions, rulings and deposition transcripts filed with OAH;
- (2) all scheduling notices;
- (3) all evidence received or considered and proffers of evidence excluded;
- (4) a statement of matters judicially noticed;
- (5) the hearing officer's final decision;
- (6) the tape of the testimony taken during the proceeding and the transcript if prepared.

#### M. Appeal and Request for Transcript

(1) The final decision rendered by the OAH is subject to administrative or judicial review as provided by law.

(2) Upon filing a petition for review to the appropriate authority, the appellant shall request that the OAH prepare the transcript and enclose a copy of the petition for review.

(3) Either party may request that the OAH prepare the transcript in a case that has not been appealed.

(4) Within thirty (30) days of receipt of a request to prepare the transcript, the OAH shall transmit a copy of the record along with the transcript of the hearing to counsel for the Department of Social Services, the appellant and the appropriate appellate body.

(5) Upon request, an individual other than a party to the hearing, which is not otherwise confidential by statute, may receive a copy of the tape of the hearing for a reasonable fee.

#### N. Confidentiality

Information, records and other material used in connection with a hearing are confidential, according to confidentiality laws governing the subject matter/program area of the hearing.

**HISTORY: Added by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

## **114–140. Foster Care.**

### **A. Right to Appeal**

(1) A foster parent has the right to appeal:

- (a) the denial or revocation of his or her foster home license;
- (b) the denial of an application for the renewal of a foster home license; and
- (c) the removal of a foster child from the foster home, except as provided herein.

(2) A foster parent shall not have the right to appeal:

- (a) the removal of a foster child from his or her home if a court has authorized the removal or if the court has approved a placement or permanency plan which provides for such removal;
- (b) the removal of a foster child from his or her home if the denial or revocation of the foster home license has been finally decided by the Department and the last day for requesting an appeal of the Department's decision has passed;
- (c) when the foster parents have requested the removal.

### **B. Removal of Foster Children**

(1) Foster children who have resided in the foster home for 120 days or longer shall remain in the home during the hearing process, except under the following circumstances:

- (a) the Department finds good cause to believe that the health or safety of the child is threatened by the child's continued presence in the foster home;
- (b) the foster parent(s) failed to supply all the necessary information that they are required to file to complete the adoption home study within ninety (90) days after receipt of written notification that adoption is the plan for the child.

(2) When the Department intends to remove a foster child, the Department shall provide the foster parent(s) written notice ten (10) days in advance of the removal of the child. In all cases when the Department intends to remove a foster child, the Department shall give written notice to foster parent(s); however, the 10-day advance notice period shall not apply to those cases where the Department determines there are emergency circumstances warranting immediate removal of the child or to cases of removal pursuant to Section 114-140(A)(2).

### **C. Appeal Process**

(1) Appeals authorized by this section shall not be conducted by the Administrative Law Division but by the Department as set forth in these regulations.

(2) A request for hearing shall be made pursuant to section 114-130(B), except such request must be in writing.

(3) The caseworker will forward the request to the OAH within two (2) working days of Receipt thereof.

(4) A conference shall be held within fourteen (14) days of receipt of the request for a hearing; however, the foster parent may waive his or her right to the conference and proceed directly with the hearing. This conference shall be attended by the foster parent and his or her representative and the county director or designee. The caseworker and the caseworker's supervisor may also attend this conference.

(5) The OAH shall schedule a hearing to be held no sooner than thirty (30) days and no later than ninety (90) days after receipt of the request for a hearing, unless continued pursuant to section 114-130(G)(4)(d). The hearing shall be conducted by a three-member committee consisting of a hearing officer and two members appointed by the State Director or his or her designee.

(6) Decision

The final decision shall be issued within thirty (30) days of the date of the conclusion of the hearing through certified mail to the foster parent and to the respondent.

**HISTORY: Added by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

## **114–150. Adoptions.**

### **A. Application to Become Adoptive Parent - Right to Appeal**

(1) A person is entitled to appeal the Department's decision to deny or terminate its approval of that person to become an adoptive parent.

(2) A person is not entitled to appeal the Department's decision to deny its consent or refuse approval of the applicant for adoption of a specific child, except as provided in 114-150(B). (cross-reference S.C. Code Ann. Section 20-7-1690(D).

### **B. Nonresident Applicants**

A nonresident of this State who believes the Department, in violation of S.C. Code Section 20-7-1670(B), has delayed or denied placement of a child for adoption has the right to a hearing regarding such delay or denial.

### **C. Adoption Subsidies**

(1) Adoptive parents may request a hearing if:

- (a) the Department denies a request for adoption subsidies;
- (b) the Department fails to notify or advise adoptive parents of the availability of adoption subsidies for a child with special needs;
- (c) he or she believes the Department erroneously determines that a child is ineligible for adoption subsidies.

(2) In lieu of a hearing, the parties may agree upon the material facts and a proposed resolution. If the parties reach such an agreement, the hearing committee shall review the proposed agreement for conformity with existing law and determine the amount and the effective date of the subsidy.

### **D. Appeal Process**

(1) The request for hearing must be made in writing to the OAH within thirty (30) days of receipt of notification of the Department's decision to deny such an application or to terminate the approval.

(2) The OAH shall schedule a hearing to be held no sooner than thirty (30) days and no later than ninety (90) days after receipt of the request for hearing, unless continued pursuant to section 114-130(G)(4)(d). The hearing shall be conducted by a three-member committee consisting of a hearing officer and two members appointed by the State Director or his or her designee.

(3) Decision

The final decision shall be issued within thirty (30) days of the date of the conclusion of the hearing through certified mail to the adoptive parent and to the respondent.

**HISTORY: Added by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

## **114–160. Day Care.**

### **A. Request for Hearing**

A request for fair hearing shall be made in writing to the OAH within thirty (30) days of the receipt of written notification of adverse action.

### **B. Final Decisions**

All final decisions regarding day care appeals shall be rendered by the State Director of the Department of Social Services.

**HISTORY: Added by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

## **114–170. Child Protective Services.**

### **A. Request for Hearing**

A request for hearing shall be made in writing to the Department within thirty (30) days of receipt of notification of an indicated finding.



## B. Interim Reviews

(1) Within fourteen (14) days of receiving the hearing request, the Department will conduct an interim review of the findings pursuant to S.C. Code Ann. Section 20-7-655(E) and will transmit a written notice of the outcome of such review to the OAH.

(2) If the finding is reversed upon an interim review, the OAH shall notify both parties that the case is closed.

## C. Decision

(1) A decision shall be rendered by a three-member committee, composed of a hearing officer and two department representatives who have program knowledge and who are appointed by the State Director of the Department of Social Services; however, no department representatives shall be residents of or employees of the county where the case originates or, if the case decision being appealed involves institutional abuse, a member of the investigative unit which investigated the case.

(2) All committee members shall be present for the hearing; however, if a committee member is absent the parties may agree to proceed in his or her absence provided that the absent member listens to a tape recording of the full hearing prior to rendering a decision.

**HISTORY: Added by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

## **114–180. Eligibility Hearings.**

A. This section applies to any claims under the Family Independence and Food Stamp Programs, Administrative Disqualification Hearings and Electronic Benefit Transfers.

B. These hearings shall be conducted by use of the telephone, with the client and the caseworker situated in the client's county of residence and the hearing officer situated in the State Office, unless:

- (1) The client requests a face-to-face hearing;
- (2) The hearing officer determines that a face-to-face hearing is necessary.

## C. Family Independence and Food Stamps

### (1) Procedure

(a) Requests for hearing must be filed with the caseworker or the OAH within sixty (60) days of notice of the adverse action for Family Independence and within ninety (90) days of notice of the adverse action for Food Stamps.

(b) The three-member hearing committee shall be composed of a hearing officer and two members, designated by the State Director of the Department of Social Services, who have appropriate program knowledge.

(c) Decisions are based upon a majority vote. All reasonable efforts will be made to reach a decision acceptable to all panel members in accordance with Federal and State laws and regulations.

(d) A client is not entitled to a hearing of a reduction in benefits if said reduction results from federal or state law that affects the amount of benefits all recipients receive.

### (2) Continuation of Benefits Pending Appeal

(a) Family Independence - a claimant/petitioner may request continued benefits if he or she requests a hearing within ten (10) days of receipt of notice of the adverse action.

#### (b) Food Stamps

(i) Food stamps shall be continued if:

- (a) the claimant requests the hearing within the advance notice period;
- (b) the case would be open if the adverse action had not been initiated.

(ii) Cases that closed because the certification ended are not eligible for continued benefits.

(iii) A claimant can elect to refuse continued benefits.

(c) Continued benefits under the Food Stamp and Family Independence programs are subject to recoupment without additional appeal rights, if the decision becomes final and is not in the claimant's favor.

(3) A final decision on food stamp eligibility appeals shall be rendered and mailed to the parties within sixty (60) days of the date the appeal was filed.

#### D. Administrative Disqualification Hearings (ADH) and Electronic Benefits Transfer (EBT) Hearings

##### (1) Purpose

The purpose of these hearings is to determine whether the client willfully intended to deceive the department and to impose a disqualification if such intent is found.

##### (2) Procedure

(a) A hearing can be requested by either the client or a claims worker or other authorized departmental representative when the client refuses to discuss the issue or declines to sign an Administrative Consent Agreement (“ACA”), wherein the client accepts the Department’s determination of disqualification and agrees to reimburse the over issuance of benefits, if any.

(b) The request shall conform to the requirements set forth in Section 114-130(B).

(c) The hearing may take place in the client’s absence.

(d) The hearing officer shall be the sole decision maker.

**HISTORY: Added by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

### **114–190. Food Services.**

#### A. Summer Food Service Program

##### (1) Adverse Action

An applicant or participant in the Summer Food Service Program may appeal the following:

(a) a denial of an application for participation;

(b) a denial of a sponsor’s request for an advance payment;

(c) a denial of a sponsor’s claim for reimbursement, except for late submissions;

(d) the Department’s refusal to forward to Food and Consumer Service, USDA, an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;

(e) a claim against a sponsor for remittance of a payment;

(f) termination of the sponsor or a site;

(g) a denial of a sponsor’s application for a site;

(h) a denial of a food service management company’s application for registration;

(i) the revocation of a food service management company’s registration.

##### (2) Notice

(a) The sponsor or food service management company shall be advised in writing of the grounds upon which the Department based the adverse action.

(b) The notice, which shall be sent by certified mail, return receipt requested, shall also state that the sponsor or food service management company has the right to appeal the Department’s action and shall state that such appeal must be made within the specified time.

##### (3) Request for Review/Hearings

(a) All requests to review an adverse action must be made in writing within fourteen (14) days of receipt of the notification of such action.

(b) The petitioner shall be given an opportunity to refute the charges contained in the notice of action either in person or by filing written documentation with the hearing officer. Written documentation must be submitted by the petitioner within seven (7) days of submitting the request for review, must clearly identify the state action being appealed, and must include a photocopy of the notice of action issued by the Department.

(c) A hearing shall be held in addition to, or in lieu of, a review of written information submitted by the petitioner only if the petitioner specifically requests a hearing in the written request for review. The decision shall be made by a three-member committee consisting of a

hearing officer and two members appointed by the State Director of the Department of Social Services or his or her designee.

(d) If the petitioner requests a hearing in accordance with these regulations, the petitioner and the Department shall be provided with at least five (5) days advance written notice, sent certified mail, return receipt requested, of the time and place of the hearing.

(e) The hearing shall be held within fourteen (14) days of the date of the receipt of the request for review, but where applicable not before the petitioner's written documentation is received in accordance with paragraphs (3) (b) and (c) of this section.

(f) The petitioner shall be given an opportunity to review any information upon which the adverse action was based.

#### (4) Decision

Within five (5) working days after the hearing, or within five (5) working days after receipt of written documentation if no hearing is held, the hearing committee shall make a determination based on a full review of the administrative record and inform the petitioner of the decision of the review and the basis for such decision, by certified mail, return receipt requested.

(5) The Department's action shall remain in effect during the review process. However, participating sponsors and sites may continue to operate the Program during a review of a termination, and if the review results in overturning the Department's decision, reimbursement shall be paid for meals petitioner served during the review process. However, such continued Program operation shall not be allowed if the Department's action is based upon imminent danger to the health or safety of children.

### B. Child and Adult Food Service Program

#### (1) Adverse Action

An institution or sponsoring organization participating in the Child and Adult Food Service Program may appeal the following:

- (a) a denial of the institution's application for participation;
- (b) a denial of an application submitted by a sponsoring organization on behalf of a facility;
- (c) a termination of the participation of an institution or facility;
- (d) a suspension of an institution's agreement;
- (e) a denial of an institution's application for start-up payments;
- (f) a denial of an advance payment;
- (g) a denial of all or a part of the claim for reimbursement, except for a late submission;
- (h) a denial by the Department to forward to Food and Consumer Service an exception request by the institution or sponsoring organization for payment of a late claim or a request for an upward adjustment to a claim;
  - (i) a demand for the remittance of an overpayment.

#### (2) Notice

(a) The institution shall be advised in writing of the grounds on which the Department based its adverse action.

(b) The notice, which shall be sent certified mail, return receipt requested, shall also include a statement indicating that the institution has the right to appeal the action no later than fifteen (15) calendar days from the date of receipt of said notice.

#### (3) Request for Review/Hearing

(a) The petitioner must file a written request for review with the OAH or the petitioner's food service worker no later than fifteen (15) days from the date the petitioner received the notice of adverse action, and the Department shall acknowledge the receipt within ten (10) days.

(b) The petitioner may refute the charges contained in the notice of adverse action in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than thirty (30) days after the petitioner received the notice of adverse action.

(c) A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the petitioner only if the petitioner so specifies in the written request for review.

(d) If a hearing is requested by the petitioner, the petitioner and the Department shall be provided with at least ten (10) days advance written notice, sent certified mail, return receipt requested, of the time and place of the hearing.

(e) Any information upon which the adverse action was based shall be available to the petitioner for inspection from the date of receipt of the request for review.

(4) Decision

Within 120 days of the Department's receipt of the request for review, the review official shall inform the Department and the petitioner of the review official's decision.

(5) The Department's action shall remain in effect during the review process. However, participating institutions and facilities may continue to operate under the Program during a review of termination, unless the Department's action is based on imminent danger to the health or safety of participants. If the institution or facility has been terminated for this reason, the Department shall so specify in its notice of action. Institutions electing to continue operating while appealing a termination shall not be reimbursed for any meals served during the period of the appeal if the Department's action is upheld.

**HISTORY: Added by State Register Volume 24, Issue No. 7, eff July 28, 2000.**

## **ARTICLE 2 CIVIL RIGHTS**

(Statutory Authority: 1976 Code § 43-1-80)

### **114-200. Definitions.**

A. Client - an applicant for or recipient of aid or services granted under programs administered by the Department.

B. Complainant - a client who files a complaint of discrimination against the Department.

C. Days - calendar days, unless otherwise specified.

D. Department - the South Carolina Department of Social Services.

E. Discrimination - to deny unlawfully to any individual, on the basis of race, color, national origin, qualified disability, sex, age, religion, or political belief, or other unlawful basis, the opportunity to participate in or benefit from the aid of any program administered by the Department.

F. OCR - the Department's Office of Civil Rights.

G. Person - an individual, partnership, corporation, association, governmental subdivision, or public or private agency or organization.

H. Provider - a person or entity that has a contract with the Department or is a grantee or a licensee providing services under Programs administered by the Department.

**HISTORY: Added by State Register Volume 28, Issue No. 12, eff December 24, 2004.**

### **114-210. Non-Discriminatory Practices.**

A. The Department of Social Services shall administer its programs in accordance with Title VI, Section 601 of the Civil Rights Act of 1964, as amended; Title V, Section 504 of the Rehabilitation Act of 1973, as amended; Title III, Section 303 of the Age Discrimination Act of 1975, as amended; Title VII, Section 1(c) of the Food Stamp Act of 1977, as amended; Title II of the Americans with Disabilities Act of 1990, as amended; and the Multi-Ethnic Placement Act of 1994, as amended.

B. The Department shall not, directly or through contractual, licensing, or other arrangements:

1. Deny unlawfully to any individual, on the basis of race, color, national origin, qualified disability, sex, age, religion, or political belief, or other unlawful basis, the opportunity to participate in or benefit from the aid of any program administered by it;

2. Aid or perpetuate unlawful discrimination against a client by contracting with, licensing, or otherwise utilizing providers who discriminate on the basis of race, color, national origin, qualified disability, sex, age, religion, political beliefs, or other unlawful basis.

**HISTORY: Amended by State Register Volume 28, Issue No. 12, eff December 24, 2004.**

### **114–220. Administrative Civil Rights Reviews.**

A. The OCR of the Department of Social Services shall review, at least biennially, appropriate programs and offices of the Department to assess compliance with federal and state civil rights laws. Recommendations, if any, will be provided to appropriate Department management.

B. OCR may initiate a compliance review based on one or more discrimination complaints filed by a client or by a person on behalf of a client or clients.

**HISTORY: Amended by State Register Volume 28, Issue No. 12, eff December 24, 2004.**

### **114–230. Filing Complaints of Discrimination.**

A. Clients who believe that they have suffered from the unlawful discriminatory acts of the Department while applying for or accessing Department benefits or services may address a signed, written complaint to any of the following:

1. The Office of Civil Rights of the South Carolina Department of Social Services
2. The State Director of the Department
3. Department of Health and Human Services, Office of Civil Rights
4. USDA Food and Nutrition Services, Civil Rights Division
5. US Department of Justice, Civil Rights Division

B. Complainants shall file their complaints as quickly as possible. Each complaint shall include the name of the complainant and sufficient information for the Department to contact that person by mail, a clear description and the date(s) of the alleged discriminatory act, and the Department employee or volunteer that was allegedly involved. No complaint will be investigated unless it meets the following criteria:

1. The complaint must be in writing and signed by the complainant. When requested, accommodation or assistance will be provided to complainants in reducing their complaints to written form.
2. The complaint must be received by the department or by one of the above listed agencies within one hundred eighty days of the alleged discriminatory act. The Department may waive the one hundred eighty day limit if the complainant can show good cause for the delay in timeliness. The determination as to whether or not good cause exists rests solely with the Department.
3. The allegation must fall within the definition of discrimination under federal and state laws.
4. The complainant must be a member of a protected class as defined under federal and state discrimination laws.

**HISTORY: Amended by State Register Volume 28, Issue No. 12, eff December 24, 2004.**

### **114–240. Investigation of Complaints.**

A. The OCR shall assess the complaint to be sure it meets mandated criteria for timeliness, adequacy, and jurisdiction and shall determine whether or not to accept the complaint for investigation.

1. For complaints that are not accepted for investigation, the OCR may either:
  - a. Notify the complainant of OCR's determination and the reason not to investigate, or:
  - b. Notify the complainant that OCR has referred the complaint to the appropriate Department Division, Agency, or entity.
2. For complaints that are accepted for investigation, the OCR shall:

a. Complete a thorough investigation of the circumstances giving rise to the complaint within ninety days of receipt of the complaint by the Department.

b. Notify the complainant in writing that either:

1) The investigation disclosed no substantial evidence of unlawful discrimination; or

2) The investigation found that a discriminatory act did occur and that the Department will take necessary action.

B. If the complainant is dissatisfied with the OCR determination, the OCR will refer the complainant to the appropriate federal agency.

**HISTORY: Amended by State Register Volume 28, Issue No. 12, eff December 24, 2004.**

### **114–250. Complaints against Providers.**

A. Clients who believe that they have experienced an unlawful discriminatory act of any provider of the Department may address a signed, written complaint to any of the following:

1. The Office of Civil Rights of the South Carolina Department of Social Services

2. The State Director of the Department

3. Department of Health and Human Services, Office of Civil Rights

4. USDA Food and Nutrition Services, Civil Rights Division

5. US Department of Justice, Civil Rights Division

B. OCR will initially review any complaint it receives against a provider. Such a complaint will be addressed, as deemed appropriate, by the Program area or appropriate Division in coordination with OCR. Appropriate action will be taken.

**HISTORY: Added by State Register Volume 28, Issue No. 12, eff December 24, 2004.**

## **ARTICLE 3 ADMINISTRATION**

(Statutory Authority: 1976 Code § 43-1-80)

### **114–310. Declaratory Rulings.**

#### **A. Definitions**

(1) Agency—the South Carolina Department of Social Services

(2) Commissioner—The Commissioner of the South Carolina Department of Social Services or his designee.

(3) Declaratory Ruling—an agency ruling designed to clarify that which is uncertain and which expresses the opinion of the Agency regarding applicability of any rules, regulations, policies, or procedures of the Agency or any statutes administered by the Agency without ordering any action.

(4) Person—an individual, partnership, corporation, association, governmental subdivision or public or private agency or organization.

#### **B. Petition for Declaratory Ruling**

(1) Any person may petition the Agency for issuance of a declaratory ruling to remove uncertainty regarding the applicability of any rules, regulations, policies, or procedures of the Agency.

(2) Petitions for the issuance of a declaratory ruling shall:

(a) Be in the form of a letter to the Appeals Unit, Department of Social Services, P. O. Box 1520, Columbia, SC 29202

(b) State in a clear and concise manner the uncertainty which is the subject of the petition.

(c) Include a complete statement of facts and grounds for the petition.

(d) Cite statutory or other authority

(e) Contain a full disclosure of the petitioner's interest.

#### **C. Agency Action Upon Petition**

(1) Upon receipt of a written petition for a declaratory ruling, the Commissioner, shall grant prompt consideration to such a request. However, the Commissioner may designate the Executive Assistant or other administrative officer of the affected program to issue a ruling on the petition. If deemed necessary to clarify the issues involved, the Commissioner may, at his discretion, require a hearing to be held into the issue presented to the agency for declaratory action. In the event a hearing is required, the Commissioner shall set forth the procedural requirements of the hearing and all other matters pertaining thereto.

(2) The Commissioner may, upon receipt of a written petition, require the petitioner to submit additional facts, or provide an oral explanation of the issues regarding the subject of a petition. If the petitioner refuses or fails to comply with this request, the Commissioner may dismiss the petition.

#### **D. Limitation of Subject**

(1) Petitions for declaratory rulings shall be limited in subject to rules, regulations, policies and procedures of the Agency or statutes administered by the Agency.

(2) Petitions for declaratory rulings may not be utilized to resolve actual cases or controversies which are required either by contract, regulation, law or policy to be resolved through other Agency hearing procedures.

(3) Each petition shall be limited to one request for a declaratory ruling.

(4) Any petition for declaratory ruling which does not conform to these regulations may be dismissed by the Commissioner.

#### **E. Petitions involving Federal Policy, Regulations of Law**

Petitions for declaratory rulings which involve, in part, Federal policy, regulations or law may be accepted at the discretion of the Commissioner, however, since the Commissioner is dependent upon the cooperation of the Federal Government for interpretation of such matter, the time limits for rendering decisions herein (section H) do not apply.

#### **F. Declaratory Rulings on Agency's Own Motion**

In order to remove uncertainty or provide clarification, the Commissioner may, on his own motion and without notice or hearing, issue a declaratory ruling.

**G. The Appeals Unit** shall prescribe the format for declaratory rulings and shall be responsible for the transmission of such rulings to all parties concerned.

**H. A decision in writing** on a petition shall be issued by the Commissioner within thirty days from the date the petition is received by the Appeals Unit.

## **ARTICLE 4 CONFIDENTIAL INFORMATION**

(Statutory Authority: 1976 Code §§ 43-1-80, 43-1-150)

### **114-410. Release of Information and Records.**

#### **A. Definitions.**

(1) Agency—the South Carolina Department of Social Services.

(2) Client—an applicant for or recipient of aid or services granted under programs administered by the agency.

(3) Person—an individual, partnership, corporation, association, governmental subdivision or public or private organization.

(4) Public Records—records of meetings and all other records which by law are required to be kept or maintained by the agency, and includes all documents containing information relating to the conduct of the public's business prepared, owned, used or retained by the agency, regardless of

physical form or characteristics. Records such as medical records and adoption records are, by law, closed to the public. This definition excludes those records concerning which it is shown that the public interest is best served by not disclosing them to the public.

(5) Releasing authority—the agency official charged with maintenance and disposition of records created or received in accordance with the administrative or specific program material for which responsible.

(6) Researcher—a person conducting a research project or study in the field of social services which has not been requested by the agency.

#### **B. General Release Provisions.**

(1) Except in the discharge of his proper duties, no person employed by the agency will furnish copies of official records or give any information which may be used as a basis of a claim against the State or the agency.

(2) In honoring requests, the releasing authority will disclose only that information which is germane to the request.

(3) Only names and amounts of assistance received by clients have been determined to be public information. All other client information is confidential.

#### **C. Research in Agency Records.**

(1) Agency records may be made available to qualified individuals for the purpose of welfare research and study.

(2) Space and facilities will be furnished by the custodian of the records to authorized researchers.

(3) Agency records will not be removed from the premises of the custodian for the purpose of research.

(4) Records transferred to the State Records Center will not be returned to the agency for use by authorized researchers.

#### **D. Applications for Research.**

(1) All requests for access to agency records for research and study must be approved in advance by the State Commissioner of Social Services. Applications will be addressed to the Commissioner, S.C. Department of Social Services, P.O. Box 1520, Columbia, S.C. 29202.

(2) Applications will contain the following information:

(a) Name and address of the researcher, and any assistants;

(b) Professional qualifications of the researcher, and any assistants;

(c) Description of the project or field of study in which the researcher is engaged;

(d) A statement of the reason for requesting the use of agency records;

(e) A reference to the particular records to which access is requested and their location;

(f) Inclusive dates during which access is desired.

(3) Prior to being granted access to agency records, each individual named in the application will be required to sign an agreement stating that:

(a) All information obtained from the records will be treated in accordance with ethical principles to prevent a clearly unwarranted invasion of personal privacy.

(b) The identity of individuals referred to in the records will not be divulged without permission of the individuals concerned.

(c) The researcher understands that permission to examine the records does not imply approval of the project or field of study by the Commissioner or the agency.

(d) All identifying entries pertaining to an individual will be deleted from abstracts or reproduced copies of documents from the records.

(e) The researcher agrees that prior to publication or dissemination he will submit his manuscript for clearance to the Commissioner, S.C. Department of Social Services, P.O. Box 1520, Columbia, SC 29202.



(f) Any published material or lectures on the particular project or study will contain a statement as follows:

“The use of Department of Social Services records in the preparation of this material is acknowledged, but it is not to be construed as implying official approval of the Department of Social Services of the conclusions presented.”

**E. Client Case Records.**

(1) Information from case records of clients or former clients of the agency will be released only to the extent considered necessary to the accomplishment of the legitimate purposes for which the information is requested.

(2) Except when otherwise required by law, information from client case records may be released to the following persons.

(a) District Offices, Department of Social Services.

(b) County Departments of Social Services.

(c) The client or former client upon request.

(d) Direct to the next-of-kin or legal representative (upon submission by the latter of a certified copy of the court order of appointment) when the client or former client has been adjudged insane or dead. Next-of-kin or legal representative will furnish the releasing authority with the following documents, as appropriate, if not on file in the office concerned.

(i) Copy of the court order adjudging the client or former client to be insane.

(ii) Adequate proof of death of the client or former client.

(e) A representative, other than a legal representative, specifically authorized in writing by the client whose records are involved. The purpose for which the information is to be used and the nature of the service to be performed will be furnished the releasing authority.

(f) A representative, other than a legal representative, specifically authorized in writing by the next-of-kin if the client or former client is insane or dead. The purpose for which the information is to be used and the nature of the service to be performed will be furnished the releasing authority.

(g) Other governmental persons when the requesting person has a proper and legitimate need for the transcript of or information from the client case record. The following applies:

(i) If the releasing authority has doubt that the requesting person has a proper and legitimate need for the information, the latter will be requested to specify the purpose for which the information will be used.

(ii) When appropriate, the requesting person will be informed that the information will be withheld pending receipt of written consent of the client concerned.

(h) Qualified persons for the purposes of welfare research and study.

(i) Federal or State courts or other administrative bodies when required by law or pursuant to lawful court orders calling for production of the records or information in connection with civil litigation or other legal proceedings.

**F. Release of Information on Agency Programs.**

(1) Instructions in Sections B, C, D and E, above, do not preclude:

(a) Release of appropriate information concerning the current status of assistance and service programs conducted by the agency.

(b) Release of statistical data involving assistance and service programs of the agency.

(2) Nothing herein will be construed to preclude the release of information from records when required by law.

**ARTICLE 5**  
**LICENSING**  
**SUBARTICLE 1**  
**DAY CARE FACILITIES**

(Statutory Authority: 1976 Code §§ 43-1-80 and 20-7-2980, et seq.)

REGULATIONS FOR THE LICENSING OF CHILD CARE CENTERS

**114-500. General Provisions.**

A. Purpose

(1) The purpose of these regulations is to establish standards that protect the health, safety and well being of children receiving care in child care facilities, through the formulation, application and enforcement of these regulations.

B. Applicability

(1) These regulations apply to child care centers as defined in section 114-501.A. (9) relating to definitions for profit and private child care centers.

(2) These regulations apply equally to profit, not for profit and private child care centers.

(3) These regulations do not apply to the following:

(a) Educational facilities, whether private or public, which operate solely for educational purposes in grade one or above;

(b) Five-year-old kindergarten programs;

(c) Kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age;

(d) Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available; however, these facilities must meet local fire and sanitation requirements and maintain documentation of these requirements on file at the facility available for public inspection;

(e) School vacation or school holiday day camps for children operating in distinct sessions running less than three weeks per session, unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three consecutive weeks;

(f) Summer resident camps for children;

(g) Bible schools normally conducted during vacation periods;

(h) Facilities for persons with intellectual disability provided in Chapter 21, Title 44, Code of Laws of South Carolina;

(i) Facilities for the mentally ill as provided for in Chapter 17, Title 44, Code of Laws of South Carolina; and

(j) Child care centers owned and operated by a local church congregation or an established religious denomination or a religious college or university which does not receive state or federal financial assistance for child care services; however, these facilities must comply with the provisions of Code of Laws of South Carolina; Sections 20-7-2900 through 20-7-2975 and that these facilities voluntarily may elect to become licensed according to the process as set forth in Code of Laws of South Carolina; Sections 20-7-2700 through 20-7-2780 and Sections 20-7-2980 through 20-7-3090.

C. Access to and within the center, and physical site accommodations and equipment, shall be provided for children with disabilities to meet their health and safety needs in accordance with applicable state and federal laws.

**HISTORY:** Amended by State Register Volume 17, Issue No. 4, eff April 23, 1993; State Register Volume 29, Issue No. 6, eff June 24, 2005.

#### **Code Commissioner's Note**

Pursuant to 2011 Act No. 47, § 14(B), the Code Commissioner substituted "intellectual disability" for "mental retardation" and "person with intellectual disability" or "persons with intellectual disability" for "mentally retarded".

### **114-501. Definitions.**

A. Terms used in South Carolina Regulations, Chapter 114, Article 5, Part A, shall be all definitions cited in Section 20-7-2700 et seq., Code of Laws of South Carolina in addition to the definitions that follow:

(1) Applicant: A person 21 years of age or older, representing a corporation, partnership, voluntary association, other public or private organization who has completed, signed and submitted a Department of Social Services application form and other requirements to the Department in order to obtain a child care center license or approval.

(2) Approval: A written notice issued by the Department to a department, agency or institution of the State, or a county, city or other political subdivision, not otherwise regularly licensed, approving the commencement of operations of a public child care center.

(3) Blood-borne pathogens: Pathogenic microorganisms that are present in human blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

(4) Center Director: The on-site staff person, who is responsible for the daily operation of a child care center, including but not limited to supervision of staff and children. The center director can only have responsibility for one center and may not hold another full-time job during the hours of center operation.

(5) Center Co-Director: The on-site staff person who is responsible for the daily operation of a child care center when the director is not present including, but not limited to, the supervision of staff and children.

(6) Center Director Designee: The on-site staff person who assumes the responsibilities of the Director for limited periods of time, when neither the Director nor Co-Director is on-site.

(7) Central Registry of Child Abuse and Neglect: An automated, computerized listing, maintained by the Department of Social Services containing the names(s), address(es), birth date(s), identifying characteristics and other information about individual(s) who have been listed on the registry due to the determination of perpetrating abuse or neglect upon a child.

(8) Child: An individual, from birth through 15 years of age (chronologically), receiving care in a child care center; or up to 18 years of age if the child qualifies as special needs.

(9) Child care center: A center that is licensed for thirteen (13) or more children for care.

(10) Complaint: Statement(s) reporting unsatisfactory conditions in a child care facility.

(11) Complete Application: An application is complete on the date of receipt of the last document required by the Department in order to issue a license/approval.

(12) Department: Refers to the Department of Social Services.

(13) Emergency Person: An individual 18 years of age or older, not regularly employed by the child care center who is immediately available to serve as staff in emergency situations. This person shall meet all requirements of an employed teacher/caregiver, with the exception of training.

(14) Infant: A child under 12 months of age.

(15) License: A written notice issued by the Department to a private facility approving the commencement of operations of a child care center.

(16) Lifeguard: A person having the qualifications of and possessing a current American Red Cross, YMCA, or equivalent Lifeguard Certificate, current First Aid Certificate and current CPR (which includes adult, child, and infant) Certificate.

(17) Owner: The owner may be independent of the staff of the child care facility and not be required to be on the premises. However, the owner can be the director or a teacher/caregiver. If the owner serves in the capacity of staff and directly supervises children, he/she shall have state and federal fingerprint reviews completed in accordance with Section 20-7-2700 et. Seq., Code of Laws of SC (1976), as amended, in addition to meeting all other requirements.

(18) Parent: The biological or adoptive mother or father, the legal guardian of the child or the individual agency with custody of the child.

(19) Preschool Child: A child 3 or 4 years of age or older but not yet eligible for public kindergarten.

(20) Provisional approval: A written notice issued by the Department to a department, agency or institution of the State, or a county, city or other political subdivision approving the commencement of operations of a public child care center although the operator is temporarily unable to comply with all of the requirements for approval.

(21) Provisional license: A license issued by the Department to a director when the director is temporarily unable to comply with all the requirements for a license/approval.

(22) Regular approval: A written notice issued by the Department for a two-year period to a department, agency or institution of the State, or a county, city or other political subdivision, approving the operation of a public child care center in accordance with the provisions of the regulations of the Department.

(23) Regular license: A license issued by the Department for two years to a director showing that the licensee is in compliance with the regulations of the Department at the time of issuance and authorizing the licensee to operate in accordance with the regulations of the Department.

(24) Renewal: To grant an extension of a regular license.

(25) Revocation: To void the regular license of a child care center.

(26) School-aged Child: A child at least old enough to enroll in public kindergarten.

(27) Sex Offender Registry: A statewide computerized listing of names and other identifying information on convicted sex offenders maintained and updated by the State Law Enforcement Division (SLED) and authorized by Section 23-3-400 et. Seq., Code of Laws of South Carolina, 1976, as amended.

(28) Staff: Full-time and part-time management, administrative, teaching/caregiving, program, maintenance, food service and service personnel; emergency and substitute personnel; supervised students; supervised student teachers and supervised volunteers.

(29) Staff: Child Ratio: The maximum number of children permitted per teacher/caregiver.

(30) Student Teacher: An individual enrolled in his/her final practicum to be qualified for teacher certification. He or she shall meet the same health standards as other staff and undergo background investigation. He or she may be included in staff:child ratios.

(31) Student Volunteer: An individual at least 16 years of age from a recognized educational institution or who may receive credit, reimbursement for expenses or a stipend for providing services in a trainee capacity under supervision of a staff member at all times when providing direct care to children shall not be counted in the staff:child ratio.

(32) Supervision: Care provided to an individual child or a group of children. Adequate supervision requires staff awareness of and responsibility for the ongoing activity of each child, knowledge of activity requirements, and children's needs and accountability for their care. Adequate supervision also requires the director, and/or staff being near and having ready access to children in order to intervene when needed. Supervision requires adequate staff to meet staff:child ratios, being in the room at all times or on the playground at all times when children are present.

(33) Teacher/Caregiver: Any person whose duties include direct care, supervision, and guidance of children in a child care center.

(34) Toddler: A child 12 months of age or older, but younger than 24 months of age.

(35) Training: Participation by child care center staff, in workshops, conferences, educational or provider associations, formal schooling, in-service training, or planned learning opportunities provided by qualified individuals. Training shall be age appropriate for the child population served by the child care center and in such subject areas related to: child care, child growth and development and/or early childhood education, nutrition, infection control/communicable disease management and causes, health and safety, signs and treatment of child abuse and/or neglect and shall include alternatives to corporal punishment. Training for directors may also be in areas related to supervision of child care staff or program administration.

(36) Two-year olds: A child 24 months of age or older but younger than 3 years of age.

(37) Volunteer: An individual parent, grandparent, other professional or skilled individual artist or crafts person at least 16 years of age infrequently assisting with the daily activities for children in a child care center who provides services without compensation and who is supervised by staff at all times when providing direct care to children. An individual meeting this definition is not required to undergo a fingerprint background check or health screening and is not counted in staff:child ratios.

**HISTORY: Added by State Register Volume 17, Issue No. 4, eff April 23, 1993. Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114-502. Procedures.**

### **A. Licensing/approvals**

(1) Any person, corporation, partnership, voluntary association, or other organization, whether private or public, may secure information about the licensing/approval process by contacting staff of the State or Regional Child Care Licensing Office.

(2) An application for a license/approval shall be completed on appropriate Department forms and shall be signed by the director. The Department representative shall provide the applicant with the required number of forms, a copy of current child care center regulations, a copy of Section 20-7-2700 et seq., Code of Laws of South Carolina (1976), (Child Care Statute) and a copy of Sections of the Children's Code related to child abuse and neglect with an explanation of procedures and information required by the Department. The Department representative shall request in writing that health and fire officials make inspections of the facility.

(3) After giving the applicant at least two working days notice, Department staff shall arrange a licensing/approval study during an on-site visit to the proposed facility for determining compliance with applicable regulations.

(4) Health and fire officials shall inspect the facility to determine compliance with appropriate regulations and shall put in writing on appropriate forms the results of their inspections.

(5) The Department shall review the completed application form, completed licensing/approval inspection report, completed health and fire inspection reports, current child abuse and criminal history background records checks, written policies and other information specified by the Department to make a determination of issuance or non-issuance of a license/approval and shall take one of the following actions:

(a) Issue a regular license/regular approval if all the provisions of the regulations and statute for the operation of a child care center have been met;

(b) Issue a provisional license/provisional approval with an accompanying correction notice if one or more violations have been cited which do not seriously threaten the health, safety or well-being of children; or

(c) Deny the issuance of a license/approval if one or more violations seriously threaten the health, safety, or well being of the children.

(6) Failure of Department staff, except as provided by statute, to approve or deny any complete application within ninety days shall result in the granting of a provisional license/provisional approval.

(7) If a license/approval is issued, the Department staff shall mail the license/approval directly to the director.

(8) The license/approval shall state clearly the name of the director, the address and type of child care facility, the date on which the license/approval was issued and will expire, and the maximum number of children to be present in the center at any one time.

(9) Department staff shall notify the director as follows if a provisional license/provisional approval is issued or an application for a license/approval is denied:

(a) If a provisional license/provisional approval is issued, the Department shall notify the director in writing of violations to be corrected. The violations shall be cited by regulation number and shall include a form issued by the Department for the director to complete a written plan to correct each violation as approved by the Department;

(b) If a license/approval is denied, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial.

(10) If a facility is found to be in operation after the Department has denied the application for the license/approval and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel.

#### B. Provisions of the license/approval

(1) A regular license/regular approval issued by the Department to the child care center shall be valid for two years from date of issuance, unless revoked by the Department or voluntarily surrendered by the director; provided however, that a change in location, ownership or sponsorship of the facility shall automatically void the license/approval.

(2) A provisional license/provisional approval issued by the Department to a child care center shall be issued for a period within which the deficiencies shall be corrected, and within the conditions permitted by statute.

(3) A provisional license/provisional approval shall be amended from a provisional to a regular license/approval when all deficiencies have been verified as corrected.

(4) An application for a license/approval may be denied or the license/approval may be revoked by the Department if the owner, director, any staff member, volunteer(s) or emergency person(s) has been determined to have abused or neglected any child as defined in Section 20-7-490 (B), S.C. Code of Laws, 1976 as amended.

#### C. Inspection and consultation

(1) Department staff may visit and inspect a child care center at anytime during the hours of operation without prior notice to verify regulatory compliance.

(2) Department staff shall provide at least two working days notice to the director or center director prior to conducting an initial or renewal inspection.

(3) The director and staff shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff.

(4) The Department has the right to interview staff and parents relating to regulatory compliance.

(5) Upon receipt of a regulatory complaint, the Department shall conduct an unannounced inspection of the center to investigate the complaint. If the complaint is written, the Department shall provide a copy to the director upon request.

(6) The director may request consultation from the Department. Department staff shall provide technical assistance to the director as requested.

#### D. Reasons for license/approval denial, revocation, or non-renewal

(1) A license/approval may be denied, revoked or not renewed by the Department if the owner, director or staff member has been determined to have abused or neglected any child as defined in Section 20-7-490(B), S.C. Code of Laws, 1976 as amended.

(2) A license/approval may be denied, revoked or not renewed by the Department if cited deficiencies threaten serious harm to the health and/or safety of the children.

#### E. Reporting of changes affecting license/approval

(1) The director shall immediately report to the Department when an occurrence takes place that may affect the status of the license/approval including the following:

(a) Change in director, ownership, or sponsorship;

- (b) Change in center location; and
  - (c) Major renovations or alterations to the building.
- F. License/approval renewal
- (1) One hundred and twenty (120) days prior to the expiration date of the current license/approval, Department staff shall notify the director in writing of the time and requirements for renewal and shall request health and fire inspections.
  - (2) The same Department actions cited in 114-502.A.(2) through (10), above are applicable to the renewal process, except that the Department shall initiate the license/approval renewal process one hundred and twenty (120) days in advance.

**HISTORY: Amended by State Register Volume 17, Issue No. 4, eff April 23, 1993; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

### **114-503. Management, Administration, and Staffing.**

A. Display of license/approval

(1) The center shall display the current license/approval, as well as any violations in a prominent public place in the center. The back of the license/approval shall be displayed if deficiencies are listed.

(2) When advertising or issuing other public notifications of the service provided, the official license number issued by the Department shall be included.

B. Capacity

(1) No child care center shall have present at any one time children in excess of the number for which it is licensed/approved.

(2) Exception: In the event of a natural disaster or unscheduled closing of a child care center, the capacity may be exceeded temporarily for a maximum of 90 days to accommodate the displaced children. The director shall notify the Department of the situation and maintain appropriate staff:child ratios at all times. Required records shall be kept on file for the new enrollees.

C. Child abuse

(1) The center shall immediately report suspected child abuse or child neglect to the Department's Office of Child Protective and Preventive Services or to local law enforcement in accordance with South Carolina Code Annotated Section 20-7-510.

(2) The director and staff shall cooperate with Department staff during an investigation of child abuse or neglect. Cooperation shall include the following:

- (a) Participate in informational conferences with Child Protective and Preventive Services staff;
- (b) Release records as appropriate, of children and staff upon request; and
- (c) Allow access to the center premises for inspection and investigation of the child abuse allegation by the Department and other officials as permitted by statute.

D. Reporting of incidents

(1) The center shall report the following incidents to the parents/guardians immediately and provide written notification to the Department within 48 hours after the occurrence:

- (a) Accidents or injuries involving any child occurring at the center requiring professional medical treatment, and
- (b) Child or staff occurrences of communicable diseases that the Department of Health and Environmental Control (DHEC) requires to be reported in its School Exclusion List.

(2) The following incidents shall be reported to the Department immediately:

- (a) A death of a child or staff person that occurs at the center;
- (b) A child who is missing from the premises or who is left unattended in a vehicle operated by the child care center;
- (c) Major structural damage to center;
- (d) Natural or man-made disasters, including extreme weather conditions, which cause the center to be closed for more than one day of scheduled operation;

(e) An occurrence requiring the services of a fire or police department, which affects the health and safety of children;

(f) Charges or convictions of crimes against the owner, director, or any staff person;

(g) Reports of alleged child abuse involving the owner, director, or any staff person;

(h) A follow-up report shall be submitted to the Department as soon as an investigation of the facility is completed and corrective action is taken; and

(i) Parents should be notified if a legal or health issue occurs which impacts the health and safety of his/her child. This notification should occur at the time of pick-up or on the next day the child is in care.

#### E. Death of a child

(1) If the child dies while at the facility, the following shall be done:

(a) Immediately notify emergency medical personnel, the child's parents, and law enforcement;

(b) Immediately notify the licensing agency; and

(c) Provide information for children and parents as appropriate.

#### F. Parent access and communication

(1) The center shall permit the parent of a child in care free and full access to his or her child without prior notice, while their child is receiving care, unless there is a court order limiting parental access. This free access must not disrupt instructional activities and classroom routines.

(2) The center shall develop a policy for the release of children, which includes a security system to prevent the inappropriate release of a child to an unauthorized person. This policy shall be communicated with the parent upon admission.

(3) Parents shall be provided with the following information upon admission:

(a) The right of parents to free and full access to their child in accordance with 114-503.F.(1);

(b) The policy and procedures on release of children specified in 114-503.F.(2);

(c) The program activity schedule for their child's age group and child care area;

(d) The parent's responsibility to obtain necessary immunizations and physical examinations for their child;

(e) The policy and procedures for the administration of medications; and

(f) The policy and practices regarding the discipline and behavior management of children. This statement shall be re-signed if any discipline policy changes are made.

(4) Parents and staff shall sign and date an agreement, maintained on file and updated annually, that both parties have read and understand all policies relating to the operation of the facility.

#### G. Child records

(1) The facility shall keep a separate record for each child.

(2) The file shall be kept in a confidential manner, but shall be immediately available to the Department, the child's teacher/caregiver, parent, or guardian upon request.

(3) Access to records is limited to the above unless requested by court order.

(4) Entries in a child's record shall be legible, dated and signed by the individual making the entry.

(5) A child's record shall be maintained on file at the child care center and made available to the Department upon request, and it shall contain the following:

(a) Child's full legal name, nickname, birth date, date of enrollment, current home address and home telephone number;

(b) Full name of both parent(s)/guardian(s), work and home telephone numbers, or telephone number(s) where they can be reached during the time the child is in the center;

(c) Name(s), address(es) and telephone number(s) of person(s) who can assume responsibility for the child in an emergency if the parent(s)/guardian(s) cannot be reached;

(d) Name, address, and telephone number of family physician or health resource;



(e) Name(s), address(es) and verification of identification, such as valid driver's license, other picture identification or personal family code word of person(s) authorized to take the child from the child care center;

(f) Accurate records of daily attendance for each child;

(g) Authorization from parent(s)/guardian(s) for child to obtain emergency medical treatment;

(h) Authorization from parent(s)/guardian(s) for child to be transported to and from the center during field trips and other away from the center activities;

(i) Authorization from parent(s)/guardian(s) for child to participate in swimming activities; and

(j) A written statement, signed by the parents, acknowledging their understanding and acceptance of the disciplinary policies of the center.

(6) A health record shall be maintained in the center for each child enrolled, and it shall include all of the following information:

(a) A signed statement of the child's health prior to admission to the child care center on the appropriate DSS form;

(b) A current South Carolina certificate of Immunization; and

(c) Other health information if deemed necessary by the director of the center and/or by parent(s)/guardian(s).

(7) Emergency information for each child shall be easily and immediately accessible while at the center, during transportation, and during any trips away from the premises, and it shall include the following:

(a) The full name of both parents/guardian, and updated address, work, home and mobile numbers where they can be reached during the time the child is in the center;

(b) The name, address, telephone number and relationship of at least two individuals designated by the parents/guardian to be contacted in an emergency and who have the authority to obtain emergency medical treatment for the child;

(c) The name, address and telephone number of the child's physician, and the emergency care, medical and dental care provider; and

(d) Health insurance information.

(8) Emergency information shall be updated by the parent as changes occur.

H. Staff records shall include the following:

(1) Names, positions and hours of duty of staff members;

(2) Written policies that refer to or apply to DSS licensing regulations;

(3) Three letters of reference for the center director;

(4) Criminal history background records check forms for the director, staff, emergency person(s), and volunteer(s);

(5) Record of training for director and staff; and

(6) Written statements signed by all staff members regarding disciplinary policies of the center.

(7) The director shall maintain health records in the center for himself/herself, staff, and emergency person(s) in accordance with 114-505.G.(1)(a) through (c).

I. Confidentiality and applicable laws and regulations

(1) The center shall have written policy to safeguard the confidentiality of all records.

(2) A child's record, emergency information, photograph and other information about the child or family and information that may identify a child by name or address is confidential and may not be copied, posted on a web site or disclosed to unauthorized persons, without written consent from the child's parent.

(3) The center shall comply with all applicable federal, state, and local laws, regulations, and ordinances.

(4) The center shall make available at least one copy of Section 20–7–2700 et seq., Code of Laws of South Carolina, a copy of sections of the Children’s Code related to child abuse and neglect and a copy of the current regulations for child care centers that will be provided by the Department.

#### J. Communication

(1) The center shall have an operable telephone with an outside line that is accessible to staff persons in emergencies.

(2) Emergency telephone numbers for the police, fire department, ambulance service and poison control center shall be posted by each telephone.

(3) The center shall have an internal means of communication among staff.

#### K. Staffing

##### (1) Child abuse checks

(a) The director or staff shall not have been determined to have committed an act of child abuse or neglect or have been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person, any crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency or for the Crime of Contributing to the Delinquency of a Minor in Section 16–17–490.

(b) A check of the South Carolina Central Registry of Child Abuse and Neglect shall be requested by the director(s) on each staff person, except for volunteers in accordance with the following time lines:

(i) For the director(s) and at least two staff persons prior to the initial issuance of a regular or provisional license/approval.

(ii) For the director(s) and staff prior to employment.

(iii) For all other staff persons (including the emergency person) prior to employment.

(iv) For all persons hired by the child care facility at each license/approval renewal.

(c) No child care center shall employ or retain an individual who has been determined to have committed an act of child abuse or neglect.

##### (2) Background criminal history checks

(a) To be employed by or to provide teacher/caregiver services at a child care facility, a person shall first undergo a State fingerprint review from the State Law Enforcement Division (SLED).

(b) A person may be provisionally employed or may provisionally provide teacher/caregiver services after the favorable completion of the state fingerprint review. The Federal Bureau of Investigation (FBI) fingerprints shall be submitted for review within 14 business days upon receiving the SLED results. Upon the completed FBI review, the results will be forwarded to the appropriate Department for distribution.

(c) No child care facility may employ a person, engage the services of or knowingly allow a person in the child care facility during normal hours of operation who is required to register under the sex offender registry act pursuant to SC Code of Laws Section 23–3–430 or who has been convicted of:

(i) A crime listed in Code of Laws of South Carolina; Chapter 3 of Title 16, Offenses Against the Person;

(ii) A crime listed in Code of Laws of South Carolina; Chapter 15 of Title 16, Offenses Against Morality and Decency;

(iii) The crime of contributing to the delinquency of a minor, contained in Code of Laws of South Carolina; Section 16–17–490.

(d) The results of the fingerprint reviews are valid and reviews are not required to be repeated as long as the person remains employed by or continues providing teacher/caregiver services in a child care facility; however, if a person has a break in service of one year or longer, the fingerprint reviews shall be repeated.

(e) Copies of State and Federal fingerprint results shall be retained in the staff file and available for review by Department staff, upon request.

##### (3) Center Director and/or Center Co-Director(s)

- (a) There shall be a center director and/or center co-director(s) responsible for the following:
  - (i) Administration and management of the center;
  - (ii) Safety and protection of the children;
  - (iii) Development and implementation of policies and procedures;
  - (iv) Communication with parents about the policies and procedures of the center;
  - (v) Staff hiring, supervision and ongoing professional development; and
  - (vi) Compliance with all applicable laws and regulations of the child care center.
- (b) The center director(s) or a designee shall be physically present on-site during the hours of the center's operation. A center co-director is required when the program operates more than 12 hours per day.
- (c) The center director and center co-director(s) shall be at least 21 years of age and meet one of the following qualifications:
  - (i) A bachelor's degree or advanced degree from a state-approved college or university in early childhood education, child development, child psychology or a related field that includes at least eighteen credit hours in child development and/or early childhood education;
  - (ii) A bachelor's degree from a state-approved college or university in any subject area, six months experience working with children in a licensed, approved or registered child care facility;
  - (iii) An associate's degree from a state-approved college or university in early childhood education, child development, child psychology or a related field, that includes at least eighteen credit hours in child development and/or early childhood education with six months work experience in a licensed, approved or registered child care facility;
  - (iv) A diploma in child development/early childhood education from a state-approved institution or a child development associate credential (CDA), and one year work experience in a licensed, approved or registered child care facility; or
  - (v) A High School Diploma or GED with 3 years experience in a licensed, approved or registered child care facility. One year shall include supervision of child care staff.

#### (4) Caregivers/Teachers

- (a) Caregivers/Teachers shall meet the following qualifications:
  - (i) Be at least 18 years of age, and able to read and write;
  - (ii) A teacher/caregiver who began employment in a licensed or approved child care center in South Carolina after June 30, 1994, must have at least a high school diploma or General Educational Development Certificate (GED) and at least six months experience as a teacher/caregiver in a licensed or approved child care facility. However, a teacher/caregiver who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the position of teacher/caregiver, must have at least a high school Certificate of Completion and at least six months experience as a teacher/caregiver in a licensed or approved child care facility. If a teacher/caregiver does not meet the experience requirements, the teacher/caregiver must be directly supervised for six months by a staff person with at least one-year experience as a teacher/caregiver in a licensed or approved child care facility. Within six months of being employed, a teacher/caregiver must have six clock hours of training in child growth and development and early childhood education or shall continue to be under the direct supervision of a teacher/caregiver who has at least one year of experience as a teacher/caregiver in a licensed or approved child care facility.
  - (iii) A teacher/caregiver who has two years experience as a teacher/caregiver in a licensed or approved facility and was employed as of July 1, 1994, in a licensed or approved child care center in South Carolina is exempt from the high school diploma, General Education Development (GED), and Certificate of Completion requirements of (ii) above; and
  - (iv) A teacher/caregiver with an undergraduate degree from a state approved college or university in early childhood, child development, or a related field may begin working with the children immediately without additional supervision.

(b) Exception: A teacher/caregiver may be 16 or 17 years of age if he/she is continuously supervised by a qualified teacher/caregiver who is in the room at all times.

(c) Exception: Staff persons who were employed prior to the effective date of these revised regulations are not required to meet the staff qualifications specified in this chapter if the staff qualifications required in the prior regulations are met. If a teacher/caregiver has had more than a twelve-month break in service, the new guidelines shall be met for re-employment as a teacher/caregiver.

(5) Professional development

(a) The director(s) shall provide orientation for all new staff, volunteer(s), and emergency person(s) prior to their employment, volunteering, and student/teacher training. This orientation shall include the following:

- (i) Specific job duties and responsibilities;
- (ii) The requirements of this chapter related to their job; and
- (iii) The policies and procedures of the center that affect the health and safety of children.

(b) The director shall participate in at least twenty clock hours of training annually. At least five clock hours shall be related to program administration and at least five clock hours shall be in child growth and development, early childhood education and/or health and safety excluding first aid and CPR training. The remaining hours shall come from the following areas: Curriculum Activities, Nutrition, Guidance, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(c) All staff, with the exception of emergency person(s) and volunteer(s), providing direct care to the children shall participate in at least fifteen clock hours annually. At least five clock hours shall be in child growth and development and at least five clock hours shall be in curriculum activities for children excluding first aid and CPR training. The remaining hours shall come from the following areas: Guidance, Health, Safety, Nutrition, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(d) When children with special needs are enrolled, the director and staff members shall receive orientation and/or training in understanding the child's special needs and ways of working in group settings when children with special needs are enrolled.

(e) All staff shall receive information regarding the developmental abilities of the age group(s) with whom the teacher/caregiver will be working.

(f) Records of training received shall be kept on the premises and include the name of the person trained, the person or persons conducting the training, date, number of hours, location, and the competency area of the training.

(g) At least one person who is certified in pediatric first aid, including rescue breathing, CPR, and management of a blocked airway shall be present in the center at all times when children are in care, and during group outings or field trips. Training shall be provided by an individual who is certified as a trainer by a recognized health care organization.

**HISTORY: Added by State Register Volume 17, Issue No. 4, eff April 23, 1993. Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114–504. Supervision.**

A. Children shall be directly supervised at all times by qualified staff persons:

(1) Directly supervised for infants and toddlers means staff persons shall be in the same room or area as the children and that the children shall be within their sight at all times;

(2) Directly supervised for preschool and school-age children means staff persons are physically near, readily accessible, aware and responsible for the ongoing activity of each child and able to intervene when needed;

(3) The center shall have a written procedure to account for the presence of each child as the child enters and exits the premise, enters and exits a vehicle or moves to a new location in or around the center;

(4) There shall be at least two staff persons in the center at all times; and

(5) Children in feeding chairs shall be constantly supervised.

B. Ratios

(1) The following staffing ratios apply at all times children are present on the premises and during activities away from the center and shall be prominently posted in all classrooms.

STAFF:CHILD RATIOS

Child's Age	Staff:Child Ratio		
	Two years after	Three years after	Four years after
Birth to one year	1:5	1:5	1:5
One to two years	1:6	1:6	1:6
Two to three years	1:9	1:8	1:7
Three to four years	1:13	1:12	1:11
Four to five years	1:18	1:17	1:16
Five to six years	1:21	1:20	1:19
Six to twelve years	1:23	1:23	1:23

(2) When there are mixed age groups in the same room, the staff:child ratio shall be consistent with the age of the majority of the children when no infants or toddlers are in the mixed age group. When infants or toddlers are in the mixed age group, the staff:child ratio for infants and toddlers shall be maintained.

(3) For mixed age groups, with one or more infants or toddlers, the ratios applicable to the youngest child in the group apply.

C. Nap time staff:child ratios

(1) During nap times the following ratios apply as long as at least one other staff person is readily available:

NAP TIME STAFF:CHILD RATIOS

Child's Age	Staff:Child Ratio		
	Two years after	Three years after	Four years after
Birth to one year	1:5	1:5	1:5
One to two years	1:6	1:6	1:6
Two to three years	1:18	1:16	1:14
Three to four years	1:26	1:24	1:22
Four years and older	1:36	1:34	1:32

D. Water safety staffing

(1) The following staffing ratios apply at all times while children are swimming or wading. The staffing ratios shall also apply at all times while children are near a water body that poses a potential risk based upon the age of the child.

WATER SAFETY STAFF:CHILD RATIOS

Child's Age	Staff:Child Ratio
Birth to two years	1:1
Two to three years	1:2
Three to four years	1:3
Four to five years	1:6
Five years and older	2:25

(2) All swimming activities shall be supervised by a person with current lifeguard training certification. If this is a staff person who has current lifeguard training certification, they may be included in the staff:child ratio. In instances in which all staff members can, without the ability to swim, quickly reach any child, a certified lifeguard is unnecessary.

**HISTORY: Amended by State Register Volume 17, Issue No. 4, eff April 23, 1993; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114–505. Health, Sanitation and Safety.**

### **A. Child health**

(1) There shall be a statement from a parent/guardian attesting to the health status of the child within 30 days prior to admission and utilizing the appropriate DSS Form.

(2) Children shall be excluded from child care when they exhibit the conditions listed in the South Carolina Department of Health and Environmental Control Exclusion Policy, State Law 1976, Code Section 44–1–110, 44–1–140, and 44–29–10.

(3) During hours of operation there shall be no smoking or consumption of alcoholic beverages in the areas used by children or in the food preparation or storage areas. Smoking shall be permitted only in designated areas, a safe distance from the center. Consumption of alcoholic beverages or use of other non-prescription narcotic or illegal substances is prohibited on the center premises. People who appear to be under the influence of alcohol or other drugs shall not be in the center when children are present.

### **B. Sanitation**

(1) Staff shall ensure that children's faces and hands are clean.

(2) Furniture, toys, and equipment that come into contact with children's mouths shall be washed, rinsed, and sanitized daily and more often if necessary.

(3) Furniture, toys and equipment soiled by secretion or excretion shall be sanitized before reuse.

(4) Linens and blankets as well as cribs, cots, and mats shall be cleaned at least weekly.

(5) If playpens are used, they shall have waterproof, washable, comfortable pads.

(6) If children brush their teeth at the center, each child shall have a separate, labeled toothbrush, stored with bristles exposed to circulating air, and not in contact with another toothbrush.

### **C. Emergency medical plan**

(1) The center shall have an emergency medical plan to address the following:

- (a) Medical conditions under which emergency care and treatment is warranted;
- (b) Steps to be followed in a medical emergency;
- (c) The hospital or source of health care to be used;
- (d) The method of transportation to be used; and
- (e) An emergency staffing plan.

(2) Emergency information for the child shall be taken with the child to the hospital or emergency location.

(3) A staff person shall remain with the child at the hospital or emergency location until the parent arrives.

### **D. Medications or medical procedures**

(1) Written, signed and dated parental consent is required prior to the administration of any prescription or over the counter medication or administration of special medical procedures:

- (a) All medications shall be used only for the child for whom the medication is labeled;
- (b) Medications shall not be given in excess of the recommended dose; and
- (c) Prescribed special medical procedures ordered for a specific child shall be written, signed, and dated by a physician or other legally authorized healthcare provider.

(2) Storage of medications:

(a) All medications shall be kept in their original labeled containers and have child protective caps. The child's first and last name shall be on all medications;

(b) All medications shall be stored in a separate locked container under proper conditions of sanitation, temperature, light, and moisture; and

(c) Discontinued and expired medications shall not be used and shall be returned to the parent or disposed of in a safe manner.

(3) Medication log:

(a) For each medication that is administered by a staff person, a log shall be kept including the child's name, the name of the medication, dosage, date, time and name of person administering the medication. This information shall be logged immediately following the administration of the medication and a copy provided to the child's parent(s)/guardian(s).

(4) Medication errors:

(a) Medication errors, e.g. failure to administer a medication at the prescribed time, administering an incorrect dosage of medication or administering the wrong medication; shall be recorded in the child's record; and

(b) The parent shall be immediately notified and notified in writing of a medication error or a suspected adverse reaction to a medication.

#### E. First aid kit

(1) A first aid kit shall be available for the treatment of minor cuts and abrasions and shall be stored in a location inaccessible to children.

#### F. Diapering

(1) Each room in which children who wear diapers are cared for shall have its own diaper-changing area adjacent to the hand-washing sink.

(2) Facilities caring for infants shall provide a diaper changing area located within clear view.

(3) Diaper changing procedures shall be consistent with those recommended by the Center for Disease Control and Prevention.

(4) Diapering surfaces shall be sanitizable.

(5) Diapering surfaces shall be clean, seamless, waterproof and sanitary.

(6) Diapering surfaces shall be cleaned and sanitized after each use by washing to remove visible soil followed by wiping with an approved sanitizing solution (e.g. 1 tablespoon of chlorine bleach per 1 quart of water) and/or disposable, non absorbent paper sheets approved for this purpose and shall be discarded immediately after each diapering.

(7) Blood contaminated materials and diapers shall be discarded in a plastic bag with a secure tie. Surfaces contaminated with blood or blood-containing body fluids shall be cleaned with a solution of chlorine bleach and water.

(8) Diapering shall occur only at a diapering changing area or in a bathroom.

(9) Diaper changing areas shall not be used for any purpose other than for diapering.

(10) Individual disposable wipes shall be used at each diaper change and shall be placed in a plastic-lined, covered container and disposed of properly, and kept out the reach of children.

(11) Each waste and diaper container shall be labeled and clean and free of build-up of soil and odor. Wastewater from such cleaning operations shall be disposed of as sewage.

(12) Soiled disposable diapers and disposable wipes shall be kept in a closed, labeled hands-free operated, plastic lined receptacle within reach of diaper changing area separate from other trash. Soiled non-disposable items shall be kept in a sealed plastic bag after feces shall be disposed of through the sewage.

(13) Disposable non-absorbent paper sheets shall be disposed of immediately after diapering is completed.

(14) Soiled disposable diapers shall be disposed outside the building daily. Soiled non-disposable diapers shall be kept in a sealed plastic bag and returned to the parent daily.

(15) Staff shall check diapers and clothing at a frequency that ensures prompt changing of diapers and clothing.

(16) No child shall be left unattended while being diapered.

#### G. Staff health

(1) The director shall maintain the following records in the center for herself/himself, staff, and emergency person(s):

(a) Medical statements required by the Department and completed by the staff person verifying that his/her health is satisfactory. Medical statements shall be updated as necessary;

(b) A health assessment from a health care provider assessing the ability of the staff person to work with children. The health assessment shall be completed within three months prior to employment or within the first month of employment and shall include health history, physical exam, vision and hearing screening, tuberculosis screening, and a review of immunization status. A new health assessment shall be obtained by the director and staff at least every four years after the initial assessment; and

(c) Written evidence from a physician or health resource attesting that each staff person is free from communicable tuberculosis at the time of employment and subsequently according to state statute.

(2) No person who is known to be afflicted with any disease in a communicable form, or who is a known carrier of such a disease, or who is afflicted with boils, infected wounds, or sores or acute respiratory infection, shall work in any capacity in a child care center in which there is likelihood of such person transmitting disease or infection to other individuals.

(3) Any staff member, including the director, emergency person(s) and volunteer(s) who, upon examination or as a result of tests, shows a condition that could be detrimental to the children or staff, or which would prevent satisfactory performance of duties, shall not continue work at the child care center until the healthcare provider indicates that the condition no longer presents a threat to children or staff.

(4) Staff persons shall wash their hands with soap and warm running water upon arrival at the center, before preparing or serving food, before assisting a child with eating, after assisting a child with toileting or diapering, before and after toileting, after administering medication, after cleaning, after assisting with wiping noses, after contact with body fluids, after contact with animals and after using cleaning materials. Hands shall be washed even if gloves are worn to perform these tasks.

(5) Staff shall be excluded when they exhibit the conditions listed in the SC Department of Health and Environmental Control Exclusion Policy, pursuant to Section 44-1-110, 44-1-140, and 44-29-10 of the South Carolina Code Ann (2002).

#### H. Fire safety and emergency preparedness

(1) Private and public child care centers shall comply with the regulations and codes of the State Fire Marshal.

(2) In the event of a natural disaster or unscheduled closing of a child care center, the capacity may be exceeded temporarily to accommodate the displaced children. The director shall notify the Department of the situation and maintain appropriate staff:child ratios at all times. Required records shall be kept on file for the new enrollees.

(3) The facility shall have an up to date written plan for evacuating in case of fire, a natural disaster, or other threatening situation that may pose a health or safety hazard. The facility shall also include procedures for staff training in this emergency plan.

#### I. Transportation

(1) If the center provides or arranges for transportation through contract, the following transportation requirements apply:

(a) The staffing ratios specified in 114-504.B.(1) through (3) apply. The driver of the vehicle shall not be counted in the ratios for infants or toddlers.

(b) Each child shall be secured in an individual, age-appropriate safety restraint at all times the vehicle is in motion.

(c) Safety restraints shall be used in accordance with the manufacturer's instructions.

(d) A child shall not be left unattended in a vehicle.

(e) Transportation placement of children in the vehicle shall be in accordance with all applicable state and federal laws.

(f) The driver shall have a valid regular or commercial driver's license and shall be in compliance with Section 20-7-2725 (A) (4) of the Code of Laws of 1976.

(g) There shall be a first aid kit and emergency information on each child in the vehicle.

(h) Use of tobacco products is prohibited in the vehicle.



- (i) Written consent from the parent is required prior to transportation.
  - (j) When the facility provides transportation to and from the child's home, the facility staff shall be responsible for picking the child up and returning the child to a designated location.
  - (k) The director and/or staff of the center shall provide the driver of the vehicle with a record that lists the name, address, and telephone number of the center, as well as names of children being transported.
- (2) The following requirements apply for safe pick-up and drop-off:
- (a) The center shall have safe crossways and pick-up and drop-off locations and communicate these locations to the parents.
  - (b) Children shall be directly supervised during boarding and exiting vehicles.
  - (c) The director and/or staff shall have on file, in the facility, written permission from parent(s)/guardian(s) for transporting children to and from the home, school, or other designated places, including center-planned field trips and activities.
  - (d) Written transportation plans for routine travel shall be on file. Plans shall include a checklist to account for the loading and unloading of children at every location.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114–506. Program.**

### **A. Program of activities**

- (1) There shall be a written, planned, daily program of activities for all children.
- (2) Activities shall be developmentally appropriate.
- (3) Staff shall plan and provide daily age-appropriate activities in accordance with the child's developmental level, such as stories, music, art, cooking, living skills, puzzles, blocks, etc.
- (4) Children shall be provided daily indoor opportunities for freedom of movement.
- (5) Quiet areas with supervision shall be made available to children desiring to be alone or to work on homework.
- (6) Staff persons shall provide the opportunity for the children to ask questions and engage in conversations with others. Staff shall have frequent positive verbal communications with the children.
- (7) Age appropriate radio and television, VCR tapes, DVDs and other media shall be previewed by the director and staff and used only as a supplement and enhancement to the daily program. No child shall be required to view these media programs.
- (8) All children shall be given the opportunity for outdoor play, weather permitting.
- (9) Napping expectations and time periods shall be developmentally appropriate and meet the needs of the individual child.

### **B. Discipline and behavior management**

- (1) The facility's discipline policy shall outline methods of guidance appropriate to the ages of the children. Positive, non-violent, non-abusive methods for managing behavior shall be implemented.
- (2) All teacher/caregivers shall sign a facility agreement to implement the discipline and behavior management policy, with a statement that specifies no corporal punishment shall be used except when authorized in writing by the parent(s)/guardian(s); corporal punishment shall not exceed guidelines established in Section 20-7-490(c)(1)(a) through (e) of the Code of Laws of South Carolina, 1976 amended.
- (3) Emotional abuse is also prohibited, including but not limited to: profane, harsh, demeaning or humiliating language in the presence of children. Threatening, humiliating, ignoring, corrupting, terrorizing, or rejecting a child is prohibited.
- (4) Withholding, forcing, or threatening to withhold or force food, sleep or toileting is prohibited.
- (5) Unsupervised isolation of a child shall not be allowed. The child shall be within sight of staff if isolation from the group is used.
- (6) The use of children to discipline other children is prohibited.

(7) Children shall not be restrained through drugs or mechanical restraints.

(8) Each child care center has the option to prohibit corporal punishment.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114–507. Physical Site.**

### **A. Indoor space and conditions**

(1) The director shall provide at least thirty-five (35) square feet of indoor play space per child, measured by Department staff from wall to wall. Department staff shall determine the total number of children to be cared for in each room by measuring and computing the rooms separately. Bathrooms, reception areas, isolation rooms, halls and space occupied by cupboards, shelves, furniture and equipment which are accessible to children for their use shall be allowable space. Kitchens, storage rooms, and storage cabinets used solely for or by staff shall be excluded. Halls, although included in total indoor space, shall not be used for activities or storage of furniture and equipment.

#### **(2) Ventilation**

(a) Child care areas, dining areas, kitchens, and bathrooms shall be ventilated by mechanical ventilation, such as fans or air conditioning, or at least one operable window.

(b) If freestanding fans are used, fans shall have a stable base, be equipped with protective guards and be placed in a safe location.

(c) Windows, including windows in doors, when utilized for ventilation purposes shall be securely screened to prevent the entrance of insects.

(d) Windows accessible to children under 5 years of age that are above ground level of the building shall be adjusted to limit the opening to less than 6 inches or protected with guards that do not block outdoor light.

(3) Safety glass shall be used on clear glass windows and doors that are within thirty-two inches above floor level and that are accessible to children. Decals shall be applied to all glass or sliding patio doors and placed at eye level of the children being cared for at the facility.

#### **(4) Lighting**

(a) Rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps, and fire escapes shall be lighted.

(b) At least twenty foot candles of light shall be required on all work surfaces in food preparation, equipment washing, utensil washing, hand-washing areas, and toilet rooms.

(c) Adequate, safe lighting for individual activities, for corridors, and for bathrooms shall be provided.

#### **(5) Environmental hazards**

(a) Safety barriers shall be placed around all heating and cooling sources, such as hot water pipes, fixed space heaters, wood- and coal-burning stoves, hot water heaters, and radiators, that are accessible to children to prevent accidents or injuries upon contact by the child.

(b) Knives, lighters, matches, projectile toys, tobacco products, microwave ovens, and other items that could be hazardous to children shall not be accessible to children.

(c) To prevent lead poisoning in children, child care centers shall meet applicable lead base paint requirements, as established by the South Carolina Department of Health and Environmental Control (DHEC), pursuant to South Carolina Code annotated Section 44–53–1310, et seq., and Regulation Number (61–85).

(d) Floors, walls, ceilings, windows, doors and other surfaces shall be free from hazards such as peeling paint, broken or loose parts, loose or torn flooring or carpeting, pinch and crush points, sharp edges, splinters, exposed bolts and openings that could cause head or limb entrapment.

(e) The use of sinks, equipment, and utensil-washing sinks, or food preparation sinks for the cleaning of garbage and refuse containers, mops or similar wet floor cleaning tools, and for the disposal of mop water or similar liquid waters is prohibited.

(f) Children shall not be present in the area during construction or remodeling and not in the immediate area during cleaning or in such a manner as not to create a condition that might result in an accident or cause harm to the health and safety of the children.

(g) The following items shall be secured or inaccessible to children for whom they are not age appropriate:

(i) Items that may cause strangulation such as blind cords, plastic bags, necklaces, and drawstrings on clothing and string;

(ii) Items that may cause suffocation such as sand, beanbag chairs, pillows, soft bedding, and stuffed animals; and

(iii) Items that may cause choking such as materials smaller than 1 ¼ inch in diameter, items with removable parts smaller than 1 ¼ inch in diameter, Styrofoam objects and latex balloons.

#### (6) Water Supply

(a) The water supply shall meet applicable requirements for water quality and testing in accordance with DHEC.

(b) The center shall have hot and cold water under pressure. (Forty PSI recommended) If an individual private well water supply is used, the director shall obtain approval pursuant to DHEC to ensure safe location, construction, and proper maintenance and operation of the system.

(c) Hot water shall be between 100 to 120 degrees Fahrenheit.

(d) Safe drinking water shall be available to children at all times and there shall be no use of common drinking cups.

(e) If a water fountain is available, it shall be of an angle-jet design, maintained in good repair and kept sanitary. There shall be no possibility of mouth or nose submersion.

(f) Ice used for any purpose shall be made from water from an approved source. The ice shall be handled and stored in a sanitary manner.

#### (7) Temperature

(a) Temperature shall be maintained between 68 and 80 degrees Fahrenheit as appropriate to the season while children are present in the center.

(b) When outdoor temperature exceeds 90 degrees Fahrenheit, caution shall be used when children are involved in outdoor physical activities.

#### (8) Sanitation

(a) Clean and sanitary conditions shall be maintained indoors and outdoors, including indoor and outdoor recreational equipment and furnishings.

(b) Measures to control insects, rodents, and other vermin shall be taken to prevent harborage, breeding, and infestation of the premises.

(c) All solid wastes shall be disposed of at sufficient frequencies and in such a manner not to create a rodent, insect, or vermin problem.

(d) Trash in diapering areas shall be kept in closed, hands-free operated, plastic lined receptacles in good repair.

(e) Trash in kitchen areas shall be kept in closed, plastic lined receptacles.

(f) Trash in children's restrooms, classrooms, and eating areas shall be kept in plastic lined receptacles.

(g) Trash receptacles outside the building, shall be watertight with firm fitting lids that prevent the penetration of insects and rodents.

(h) Trash disposal and sewage system construction and usage shall be in accordance with local standards and ordinances.

(i) The use of child care room, bathroom, or kitchen sinks for cleaning of trash receptacles or cleaning equipment is prohibited.

#### (9) Doors

(a) Protective gates shall be of the type that do not block emergency entrances and exits and that prevent finger pinching and head or limb entrapment.

(10) Landings, stairs, handrails, and railings

(a) Children shall not have access to a door that swings open to a descending stairwell or outside steps, unless there is a landing that is at least as wide as the doorway at the top of the stairs.

(b) Each ramp and each interior stairway and outside steps exceeding two steps shall be equipped with a secure handrail at the height appropriate for the sizes of the children at the center.

(c) Stairs shall have a nonskid surface.

(d) Each porch and deck that has over an 18-inch drop shall have a well-secured railing.

(e) Interior stairs that are not enclosed shall have a barrier to prevent falls.

(11) Electrical sources

(a) The center shall be connected with an electrical source.

(b) Electrical outlets and fixtures shall be connected to the electrical source in a manner that meets local electrical codes, as certified by an electrical code inspector. - NFPA 70 and 99 Compliance.

(c) Electrical outlets shall be securely covered with childproof covers or safety plugs when not in use in all areas accessible to children.

(d) No electrical device accessible to children shall be located so that it could be plugged into the outlet while in contact with a water source, such as sinks, tubs, shower areas, or swimming/wading pools, unless ground fault devices are utilized.

(12) Bathrooms

(a) There shall be at least one flush toilet for every 20 children over two years of age. Staff shall be included when determining availability of toilets if there are no staff rest rooms.

(b) If seat adapters are used for toilet training, they shall be cleaned and sanitized after each use.

(c) Toilet training equipment shall be provided to children who are being toilet trained.

(d) There shall be at least one sink with hot and cold running water under pressure for every 20 children over two years of age. Sinks shall be located in or near each toilet area.

(e) Toilets and sinks shall be at heights accessible to the children using them or shall be equipped with safe and sturdy platforms or steps.

(f) Privacy shall be provided for toilets used by preschool and school age children.

(g) Floor and wall surfaces in the toilet area shall have smooth, washable surfaces. Carpeting is not permitted in the toilet area.

(h) Toilets, toilet seat adapters, sinks and restrooms shall be cleaned at least daily and shall be in good repair.

(i) Liquid or granular soap and disposable towels shall be provided at each sink.

(j) Children shall not be left unattended in a bathtub or shower.

(k) Easily cleanable receptacles shall be provided for waste material. Toilet rooms used by women shall be provided with at least one covered waste receptacle.

(l) Bathroom facilities shall be completely enclosed.

B. Outdoor space

(1) The director shall provide at least seventy-five (75) square feet of outdoor play space per child. Where outdoor space is insufficient at the center, the director and/or staff may take the children outdoors in shifts or utilize parks or other outdoor play areas which meet safety requirements and which are easily accessible.

(2) The outdoor space shall be free from hazards and litter.

(3) Outdoor walkways shall be free from debris, leaves, ice, snow, and obstruction.

(4) Children shall be restricted from unsafe areas and conditions such as traffic, parking areas, ditches, and steep slopes by a fence or natural barrier that is at least four feet high.

C. Furniture, toys, and recreational equipment shall:

(1) Be clean and free from hazards such as broken or loose parts, rust or peeling paint, pinch or crush points, unstable bases, sharp edges, exposed bolts, and openings that could cause head or limb entrapment;

(2) Meet the standards of the US Consumer Products Safety Commission (CPSC), if applicable. Recalled products listed by the CPSC shall not be accessible to children;

(3) Be developmentally and size appropriate, accommodating the maximum number of children involved in an activity at any one time;

(4) The sides of playpens shall remain latched as long as a child is using the playpen. If playpens are used they shall have waterproof, washable, comfortable pads;

(5) All arts and crafts and play materials shall be nontoxic;

(6) Outdoor recreational equipment shall be made of durable, non-rusting, non-poisonous materials, and shall be sturdy;

(7) Stationary outdoor equipment shall be firmly anchored and shall not be placed on a concrete or asphalt surface. Cushioning material such as mats, wood chips or sand shall be used under climbers, slides, swings, and large pieces of equipment;

(8) Swings shall be located to minimize accidents and shall have soft and flexible seats;

(9) Cushioning material shall extend at least six (6) feet beyond the equipment and swings;

(10) Slides shall have secure guards along both sides of the ladder and placed in a shaded area;

(11) Outdoor metal equipment shall be located in shaded areas or otherwise protected from the sun;

(12) Outdoor equipment shall be arranged so that children can be seen at all times;

(13) The height of play equipment shall be developmentally and size appropriate;

(14) Sand in a sand box shall be securely covered when not in use and, if outdoors, constructed to provide for drainage;

(15) Indoor recreational equipment and furnishings shall be cleaned and disinfected when they are soiled or at least once weekly and shall be of safe construction and free of sharp edges and loose or rusty points. Indoor recreational equipment and furnishings shall be clean and shall be of safe construction and free of sharp edges and loose or rusty points; and

(16) A properly fitting bicycle helmet that is approved by American National Standards Institute, Snell Memorial Foundation, or American Society for Testing and Materials, shall be worn by each child when riding a bicycle, skateboard, roller blades, or skates. Helmets are optional for use with tricycles.

D. Rest equipment

(1) Cribs shall meet the requirements of the US Consumer Products Safety Commission (CPSC).

(2) Individual, clean, developmentally appropriate cribs, cots, or mats shall be provided for each infant, toddler and preschool child, labeled with the child's name and used only by that child.

(3) Cribs, cots, and mats shall be made of easily cleanable material.

(4) Placement of sleeping and napping equipment shall allow ready access to each child by staff.

(5) Individual, clean, appropriate coverings shall be provided.

(6) Cots and mats shall be stored so that the surface on which a child lies does not touch the floor.

E. Environmental hazards

(1) Poisons or harmful agents

(a) Poisons or harmful agents shall be kept locked, stored in the original containers, labeled and inaccessible to children.

(b) Poisons or harmful agents shall be purchased in childproof containers, if available.

(c) Play materials, including arts and crafts, shall be non-poisonous.

(d) Poisonous plants are not permitted.

(e) Pesticides shall be of a type applied by a licensed exterminator in a manner approved by the United States Environmental Protection Agency. Pesticides shall be used in strict compliance with label instructions and should not be used while children are present. Pesticide containers shall be prominently and distinctly marked or labeled for easy identification of contents and stored in a secure site accessible only to authorized staff.

(2) Water hazards

(a) Swimming pools located at the center or used by the center shall conform to the regulations of DHEC for construction, use, and maintenance.

(b) Swimming pools, stationary wading pools and other water sources such as ditches, streams, ponds, and lakes shall be made inaccessible to children by a secure fence that is at least 4 feet high; exits and entrances shall have self-closing, positive latching gates with locking devices.

(c) Children shall not be permitted in hot tubs, spas, or saunas.

(d) Children shall not be permitted to play in areas where there are swimming pools or other water sources without constant supervision.

(3) Firearms, weapons, and ammunition are not permitted in the center or on the premises without the express permission of the authorities in charge of the premises or property. This does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science.

(4) Animals: The following requirements apply in regard to animals:

(a) Healthy animals which present no apparent threat to the health and safety of the children shall be permitted, provided they are cleaned, properly housed, fed and cared for and have had required vaccinations, as appropriate. Live animals shall be excluded from areas where food for human consumption is stored, prepared or served.

(b) Animals shall not be permitted if a child in the room or area is allergic to the specific type of animal.

(c) Animal litter and waste shall not be accessible to children.

(d) Reptiles and rodents shall not be accessible to children without adult supervision.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114–508. Meal Requirements; Food Preparation and Serving; Storage and Protection of Food Supplies, Utensils and Equipment.**

### **A. Meal requirements**

(1) If food is provided by the facility, the following requirements shall be met:

(a) Daily menus shall be dated and posted in a conspicuous location in public view.

(b) Meals and snacks provided shall be in compliance with the USDA Child Care Food Program Guidelines. Centers that do not provide overnight care shall serve at least one meal and at least one snack that meet USDA Child Care Food Program Guidelines. Centers providing care between the hours of 6:00 p.m. and midnight shall additionally meet USDA Child Care Food Program Guidelines in serving dinner and at least one additional snack. Meal components and serving sizes shall be in accordance with these guidelines.

(c) Only Grade A pasteurized fluid milk and fluid milk products may be given to any child less than 24 months old, except with a written permission from the child's health provider.

(d) Whole milk may not be served to children less than 12 months of age, except with a written permission from the child's health provider.

(e) Reconstituted milk shall not be served to any child, regardless of age.

(2) Food served shall be suited to the child's age and appetite. Second portions shall be available.

(3) Round, firm foods shall not be offered to children younger than four years old. Examples of such foods include: hot dogs, grapes, hard candy, nuts, peanuts, and popcorn. Hot dogs may be served if cut lengthwise and quartered; grapes may be served if cut in halves.

(4) All food in child care centers shall be from a source approved by the health authority and shall be clean, wholesome, unspoiled, free from contamination, properly labeled, and safe for human consumption.

(5) The use of food in hermetically sealed containers that was not prepared in an approved food-processing establishment is prohibited.

(6) The use of home-canned foods is not allowed.

(7) The following requirements shall be met when it is necessary to provide meals through a catering service:

(a) Catered meals shall be obtained from a food service establishment approved by the DHEC.

(b) If adequate cleaning and sanitizing equipment is not available, only disposable eating and drinking utensils shall be used to serve catered meals or food; and

(c) The procedures and equipment used to transport catered meals shall be approved by the DHEC.

(8) Meals and snacks may be provided by the center or the parent. The center shall have a small supply of nutritional food and beverages available in the event a parent neglects to bring the child's food on an unanticipated basis.

(9) Dietary alternatives shall be available for a child who has special health needs or religious beliefs.

(10) Written permission/instructions for dietary modifications signed by the child's health care provider or parent or legal guardian are required.

#### B. Food preparation

(1) Adequate hand-washing facilities, separate from food preparation sinks, equipped with hot and cold water under pressure supplied through a mixing faucet, shall be provided in the food preparation area. Hot water shall be at least 125 degrees Fahrenheit. (Facilities shall not be required to install an additional hand-washing sink in the food preparation area if, in the opinion of the health authority, the existing hand-washing facilities are adequate.)

(2) Sanitary soap and towels shall be provided.

(3) Utensils, such as forks, knives, tongs, spoons, and scoops shall be provided and used to minimize handling of food in all food preparation areas.

(4) Staff shall thoroughly wash their hands and exposed areas of arms with soap and warm water in an approved hand-washing sink before starting work, during work as often as is necessary to keep them clean, e.g., after smoking, eating, drinking, or using the toilet. Staff shall keep their fingernails clean and trimmed.

(5) The outer clothing of all staff shall be clean. The director shall ensure proper hair restraints are worn to protect from falling hair.

(6) Staff shall neither use tobacco in any form while preparing or serving food, nor while in areas used for equipment or utensil washing or for food preparation. Staff shall use tobacco only in approved, designated areas.

(7) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to an internal temperature of at least 140 degrees Fahrenheit, with the following exceptions:

(a) Hamburger shall be cooked to at least 155 degrees Fahrenheit.

(b) Poultry, poultry stuffing, stuffed meats, and stuffing-containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process.

(c) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit.

(d) Rare roast beef and rare beefsteak shall be cooked to surface temperature of at least 130 degrees Fahrenheit.

(8) Potentially hazardous food such as meats, cooked rice, and cream-filled pastries shall be prepared (preferably from chilled products) with a minimum of manual contact and on surfaces with utensils that are clean and sanitized prior to use.

(9) Metal, stem-type, numerically-scaled indicating thermometers, accurate to plus or minus three degrees Fahrenheit, shall be provided and used to ensure that proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods are maintained.

(10) Potentially hazardous foods shall be thawed as follows:

(a) In refrigerated units at a temperature not to exceed 45 degrees Fahrenheit;

(b) Under potable running water from the cold water supply with sufficient water velocity to remove loose food particles;

(c) In a microwave oven only when food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

(11) All raw fruits and vegetables shall be washed thoroughly before being cooked, served, or placed in refrigerators.

#### C. Food service

(1) No child shall be deprived of a meal or snack if he/she is in attendance at the time the meal or snack is served.

(2) Easily breakable dinnerware shall not be used.

(3) Children shall not be forced to eat.

(4) Food shall not be used as a punishment.

(5) Children shall not be allowed in the kitchen except during supervised activities.

(6) Portions of food once served shall not be served again.

(7) Single-service articles shall be stored in closed cartons or containers to protect them from contamination.

(8) Use of "common drinking cups" is prohibited.

(9) Disposable cups, if used, shall be handled and stored properly to prevent contamination.

(10) Reuse of single service articles is prohibited.

(11) If potentially hazardous foods that have been cooked and then refrigerated are to be served hot, they shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food-storage facility. Steam tables, double boilers, warmers, and similar hot food holding facilities are prohibited from use for the rapid reheating of potentially hazardous foods.

#### D. Storage

(1) All food shall be properly labeled and stored, and shall be protected against contamination.

(2) The director shall provide refrigeration units and insulated facilities, as needed, to ensure that all potentially hazardous foods are maintained at 45 degrees Fahrenheit or below or 130 degrees Fahrenheit or above, except during necessary periods of preparation.

(3) Thermometers shall be accurate to plus or minus 3 degrees and conspicuously placed in the warmest area of all cooling and warming units to ensure proper temperatures.

(4) Containers of food, food preparation equipment and single service articles shall be stored at least 6" above the floor, on clean surfaces, and in such a manner to be protected from splash and other contamination.

(5) Food not subject to further washing or cooking before serving shall be stored in such a manner to be protected against contamination from food requiring washing or cooking.

(6) The storage of food or food equipment, utensils, or single-service articles in toilet rooms and under exposed sewer lines is prohibited.

(7) Custards, cream fillings, or similar products which are prepared by hot or cold processes shall be kept at safe temperatures except during necessary periods of preparation and service.

(8) All cleaning supplies, detergents, and other potentially poisonous items shall be stored away from food items and shall be inaccessible to children.



E. Cleaning, storage, and handling of utensils and equipment

- (1) Tableware shall be washed, rinsed, and sanitized after each use.
- (2) All kitchenware and food-contact surfaces of equipment shall be washed, rinsed, and sanitized.
- (3) The cooking surfaces of cooking devices shall be cleaned as often as necessary and shall be free of encrusted grease deposits and other soil.
- (4) Non-food contact surfaces of all equipment, including tables, counters, and shelves, shall be cleaned at such frequency as is necessary to be free of accumulation of dust, dirt, food particles, and other debris.
- (5) After sanitation, all equipment and utensils shall be air-dried.
- (6) Prior to washing, all equipment and utensils shall be rinsed or scraped, and when necessary, presoaked to remove gross food particles and soil.
- (7) When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent solution that is kept reasonably clean, be rinsed thoroughly of such solution, sanitized by one of the following methods:
  - (a) Complete immersion for at least 30 seconds in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75 degrees Fahrenheit;
  - (b) Complete immersion for at least 30 seconds in a clean solution containing at least 12.5 parts per million of available iodine and having a pH no higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit;
  - (c) Complete immersion for at least 30 seconds in a clean solution containing at least 200 parts per million of quaternary ammonium at a temperature of at least 75 degrees Fahrenheit; or
  - (d) Complete immersion in hot water at a temperature of 170 degrees Fahrenheit in a three-compartment sink.
- (8) Other chemical sanitizing agents may be used which have been demonstrated to the satisfaction of the health authority to be effective and non-toxic under use conditions, and for which suitable field tests are available. Such sanitizing agents, in use solution, shall provide the equivalent bactericidal effect for a solution containing at least 50 parts per million of available chlorine at a temperature not less than 75 degrees Fahrenheit.
- (9) A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.
- (10) All dishwashing machines shall be approved by the South Carolina Department of Health and Environmental Control (DHEC) and shall meet applicable installation requirements.
- (11) Food-contact surfaces of cleaned and sanitized equipment and utensils shall be handled in such a manner as to be protected from contamination.
- (12) Cleaned and sanitized utensils shall be stored above the floor in a clean, dry location so that food-contact surfaces are protected from contamination.
- (13) Clean spoons, knives, and forks shall be picked up and touched only by their handles. Clean cups, glasses, and bowls shall be handled so that fingers and thumbs do not contact inside surfaces or lip-contact surfaces.
- (14) Dish tables or drain boards of adequate size to properly handle soiled utensils prior to washing and for cleaned utensils following rinsing and sanitizing shall be provided.

**HISTORY:** Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.

## **114-509. Infant and Toddler Care, Care for Mildly Ill Children, and Night Care.**

A. Infant and toddler care

(1) Stimulation and nurturing

- (a) Children shall not remain in their cribs or play equipment for other than sleeping and specific, short time-limited quiet play.
- (b) Infants and toddlers shall be routinely held, talked to, rocked, caressed, carried, nurtured, read to, sung to and played with throughout the day.

(c) There shall be toys and materials that encourage and stimulate children through seeing, feeling, hearing, smelling and tasting.

(2) Programs for infants and toddlers

(a) Staff shall provide appropriate attention to the needs of children.

(b) The daily program for infants and toddlers shall include goals for children, which promote healthy child development and allow for individual choice and exploration.

(c) Information about the child's daily needs and activities shall be shared with parents.

(3) Feeding, eating and drinking

(a) Cups and bottles shall be labeled with the child's name and used only by that child.

(b) Infants shall be fed in accordance with the time schedule, specific food and beverage items and quantities as specified by the parent.

(c) Infants shall be held while being bottle fed until they are able to hold their own bottles. Bottles shall not be propped or given in cribs or on mats.

(d) Due to nutritional concerns, the microwaving of breast milk is prohibited. The microwaving of formula and other beverages is strongly discouraged due to the possibility of a burn injury to the child. However, if the facility plans to use this method of heating formula and other beverages, they must notify all parents in writing as part of the enrollment or orientation process.

(e) All warmed bottles shall be shaken well and the temperature tested before feeding to a child.

(f) Baby formula, juice, and food served in a bottle shall be prepared, ready to feed, identified, and packaged for single use for the appropriate user. Any excess formula, juice, or food shall be discarded after each feeding. Formula, juice and food requiring refrigeration shall be maintained at 45 degrees Fahrenheit or below.

(g) Infants and toddlers shall not sleep with bottles in their mouths.

(h) Toddlers shall be offered water routinely throughout the day.

(i) Breast milk and formula shall be dated and labeled with the child's name and refrigerated until ready to use.

(j) Food for infants shall be cut in pieces one-quarter inch or less.

(k) Food for toddlers shall be cut in pieces one-half inch or less.

(4) Feeding chairs

(a) Feeding chairs shall have a stable base.

(b) Feeding chairs shall have a T-shaped safety strap that prevents the child from slipping or climbing out of the chair. The safety strap shall be used at all times the child is in the chair.

(c) Feeding chair trays shall be in good repair and made of an easily cleanable surface and shall not have chips or cracks.

(d) Feeding chairs shall be used only for eating or a specific, short time-limited tabletop play activity.

(e) Seat heights of feeding chairs shall be appropriate to the age and development of the child. Feeding chairs shall be in good repair and children shall be constantly supervised.

(5) Sleeping

(a) Infants shall be placed on their backs to sleep unless the parent provides a note from a physician specifying otherwise.

(b) Crib mobiles shall not be permitted for infants or toddlers who can sit.

(c) Cribs shall be spaced so that there is at least three feet of space on two sides of the crib. Cribs shall not be placed next to each other so that one child may reach into the other child's crib.

(d) Two years from the effective date of these regulations, stacked cribs will no longer be permitted.

(6) Equipment and materials

(a) The infant and toddler room shall have chairs for staff persons to sit while holding and feeding children.

(b) Indoor space shall be protected from general walkways where crawling children may be on the floor.

(c) Mobile walkers are not permitted.

#### B. Care for mildly ill children

##### (1) Parent notification and instructions

(a) If a child becomes ill while in care, the center shall notify the parent or responsible party immediately.

(b) If a child may have been exposed to a serious communicable disease that is spread through casual contact, the center shall notify the parents of all potentially exposed children about the nature of the illness and the potential exposure to the illness, and recommend consultation with the child's physician.

(c) If a center chooses to provide care to a mildly ill child, the center shall receive instructions from the parent for any special care needs of the child.

##### (2) Policies and procedures

(a) If a center chooses to provide care to a mildly ill child, the center shall have written policies and procedures specifying inclusion and exclusion from the group, communication with parents, recording of illness and care provided, specific types of illnesses and symptoms which prohibit care from being provided, special staff training required and emergency health procedures.

(b) Children shall be excluded when they exhibit the conditions listed in the South Carolina Department of Health and Environmental Control Exclusion Policy, State Law 1976, Code Section 44-1-110, 44-1-140, and 44-29-10.

(c) If a child is in a rest area due to illness, the child shall be directly supervised at all times.

(d) A hand-washing sink shall be in close proximity to the area designated for mildly ill children.

#### C. Night care

##### (1) Requirements for staffing ratios:

(a) Staff counted in the staffing ratios shall be awake, alert and attentive to the children at all times.

(b) The supervision and ratio requirements for sleeping hours are the same as specified for napping in 114-504.C.

(2) An unannounced emergency drill shall be held during sleeping hours at least every 60 days.

##### (3) Sleeping equipment

(a) Each child shall have a bed with a solid foundation, a fire retardant mattress, a pillow, and bedding appropriate for the temperature of the center.

(b) Cots and portable beds are not permitted.

##### (4) Bedtime

(a) Children shall be provided the opportunity to read or be read to before bedtime.

(b) There shall be books, games, and other quiet time activities for the child prior to bedtime.

(c) Special bedtime routines as specified by the parent shall be followed to the extent feasible.

##### (5) Bathing

(a) If children bathe at the center, there shall be one bathtub or shower with a slip resistant surface for every ten children.

(b) Each child shall have his or her own clean towel and washcloth.

##### (6) Night clothes

(a) The center shall make arrangements with the parent to provide clean, appropriate night clothes.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## REGULATIONS FOR THE LICENSING OF GROUP CHILD CARE HOMES

### **114-510. General Provisions.**

#### A. Purpose

(1) The purpose of these regulations is to establish standards that protect the health, safety and well being of children receiving care in child care facilities, through the formulation, application, and enforcement of these regulations.

#### B. Applicability

(1) These regulations apply to group child care homes as defined in section 114-511A(9) relating to definitions.

(2) These regulations apply equally to profit, not for profit and private child care homes.

(3) These regulations do not apply to the following:

(a) Educational facilities, whether private or public, which operate solely for educational purposes in grade one or above;

(b) Five-year-old kindergarten programs;

(c) Kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age;

(d) Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available; however, these facilities must meet local fire and sanitation requirements and maintain documentation of these requirements on file at the facility available for public inspection;

(e) School vacation or school holiday day camps for children operating in distinct sessions running less than three weeks per session, unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three consecutive weeks;

(f) Summer resident camps for children;

(g) Bible schools normally conducted during vacation periods;

(h) Facilities for persons with intellectual disability provided in Chapter 21, Title 44;

(i) Facilities for the mentally ill as provided for in Chapter 17, Title 44; and

(j) Child care centers owned and operated by a local church congregation or an established religious denomination or a religious college or university which does not receive state or federal financial assistance for child care services; however, these facilities must comply with the provisions of Sections 20-7-2900 through 20-7-2975 and that these facilities voluntarily may elect to become licensed according to the process as set forth in Sections 20-7-2700 through 20-7-2780 and Sections 20-7-2980 through 20-7-3090.

C. Access to and within the group child care home, and physical site accommodations and equipment, shall be provided for children with disabilities to meet their health and safety needs in accordance with applicable state and federal laws.

**HISTORY: Amended by State Register Volume 19, Issue No. 5, May 26, 1995, by 114-515 eff 180 days after final publication in State Register; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

#### **Code Commissioner's Note**

Pursuant to 2011 Act No. 47, § 14(B), the Code Commissioner substituted "intellectual disability" for "mental retardation" and "person with intellectual dis-

ability" or "persons with intellectual disability" for "mentally retarded".

## **114-511. Definitions.**

A. Terms used in South Carolina Regulations, Chapter 114, Article 5, Part A, shall be all definitions cited in Section 20-7-2700 et seq., Code of Laws of South Carolina in addition to the definitions that follow:

(1) Applicant: A person 21 years of age or older, who has completed, signed and submitted a Department of Social Services application form and other requirements to the Department in order to obtain a group child care license.

(2) Blood-Borne Pathogens: Pathogenic microorganisms that are present in human blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

(3) Central Registry of Child Abuse and Neglect: An automated, computerized listing, maintained by the Department of Social Services containing the names(s), address(es), birth date(s), identifying characteristics and other information about individual(s) who have been listed on the registry due to the determination of perpetrating abuse or neglect upon a child.

(4) Child: An individual, from birth through 15 years of age (chronologically), receiving care in a child care facility; or up to 18 years of age if the child qualifies as special needs.

(5) Complaint: Statement(s) reporting unsatisfactory conditions in a child care facility.

(6) Complete Application: An application is complete on the date of receipt of the last document required by the Department in order to issue a license.

(7) Department: Refers to the Department of Social Services.

(8) Emergency Person: An individual 18 years of age or older, not regularly employed by the group child care home who is immediately available to serve as staff in emergency situations. This person shall meet all requirements of an employed teacher/caregiver, with the exception of training.

(9) Group Child Care Home: A residence occupied by the operator in which he/she regularly provide child care for at least seven but not more than twelve children, unattended by a parent or a legal guardian including those children living in the home and children received for child care who are related to the resident teacher/caregiver. However, an occupied residence in which child care is provided only for a child or children related to the resident teacher/caregiver or only for the child or children of one unrelated family or only for a combination of these children is not a group child care home.

(10) Infant: A child under 12 months of age.

(11) License: A written notice issued by the Department to a private facility approving the commencement of operations of a group child care home.

(12) Lifeguard: A person having the qualifications of and possessing a current American Red Cross, YMCA, or equivalent Lifeguard Certificate, current First Aid Certificate and current CPR (which includes adult, child, and infant) Certificate.

(13) Operator: The person held legally responsible for the group child care home operation.

(14) Parent: The biological or adoptive mother or father, the legal guardian of the child or the individual agency with custody of the child.

(15) Preschool Child: A child 3 or 4 years of age or older but not yet eligible for public kindergarten.

(16) Provisional License: A license issued by the Department to an operator when the operator is temporarily unable to comply with all the requirements for a license.

(17) Regular License: A license issued by the Department for two years to an operator showing that the licensee is in compliance with the regulations of the Department at the time of issuance and authorizing the licensee to operate in accordance with the regulations of the Department.

(18) Renewal: To grant an extension of a regular registration.

(19) Revocation: To void the regular license of a child care facility.

(20) School-Aged Child: A child at least old enough to enroll in public kindergarten.

(21) Sex Offender Registry: A statewide computerized listing of names and other identifying information on convicted sex offenders maintained and updated by the State Law Enforcement Division (SLED) and authorized by Section 23-3-400 et. Seq., Code of Laws of South Carolina, 1976, as amended.

(22) Staff: Full-time and part-time management, administrative, teaching/caregiving, program, maintenance, food service and service personnel; emergency and substitute personnel; supervised students; supervised student teachers and supervised volunteers.

(23) Supervision: Care provided to an individual child or a group of children. Adequate supervision requires staff awareness of and responsibility for the ongoing activity of each child, knowledge of activity requirements and children's needs and accountability for their care. Adequate supervision also requires the operator, and/or staff being near and having ready access to children in order to intervene when needed. Supervision requires adequate staff to meet staff:child ratios, being in the room at all times or on the playground at all times when children are present.

(24) Teacher/Caregiver: Any persons whose duties include direct care, supervision and guidance of children in a child care facility.

(25) Toddler: A child 12 months of age or older, but younger than 24 months of age.

(26) Training: Participation by child care home staff, in workshops, conferences, educational or provider associations, formal schooling, in-service training, or planned learning opportunities provided by qualified individuals. Training shall be age appropriate for the child population served by the group child care home and in such subject areas related to: child care, child growth and development and/or early childhood education, nutrition, infection control/communicable disease management and causes, health and safety, signs and treatment of child abuse and/or neglect and shall include alternatives to corporal punishment. Training for operators may also be in areas related to supervision of child care staff or program administration.

(27) Two-year olds: A child 24 months of age or older but younger than three years of age.

(28) Volunteer: An individual parent, grandparent, other professional or skilled individual artist or crafts person at least 16 years of age infrequently assisting with the daily activities for children in a child care center who provides services without compensation and who is supervised by staff at all times when providing direct care to children. An individual meeting this definition is not required to undergo a fingerprint background check or health screening and is not counted in staff:child ratios.

**HISTORY: Amended by State Register Volume 19, Issue No. 5, May 26, 1995, by 114-515 eff 180 days after final publication in State Register; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114-512. Procedures.**

### **A. Licensing**

(1) Any person, corporation, partnership, voluntary association or other organization, whether private or public, may secure information about the licensing process by contacting staff of the State or Regional Child Care Licensing Office.

(2) An application for a license shall be completed on appropriate Department forms and shall be signed by the operator. The Department representative shall provide the applicant with the required number of forms, a copy of current group child care home regulations, a copy of Section 20-7-2700 et seq., Code of Laws of South Carolina (1976), and a copy of Sections of the Children's Code related to child abuse and neglect with an explanation of procedures and information required by the Department. The Department representative shall request in writing that health and fire officials make inspections of the home.

(3) After giving the applicant at least two working days notice, Department staff shall arrange a licensing study during an on-site visit to the proposed group child care home to determine compliance with applicable regulations.

(4) Health and fire officials shall inspect the group child care home to determine compliance with appropriate regulations and shall put in writing on appropriate forms the results of their inspections.

(5) The Department shall review the completed application form, completed licensing inspection report, completed health and fire inspection reports, current child abuse and criminal history

background records checks, written policies and other information specified by the Department to make a determination of issuance or non-issuance of a license and shall take one of the following actions:

- (a) Issue a regular license if all the provisions of the regulations and statute for the operation of a group child care home have been met;
  - (b) Issue a provisional license with an accompanying correction notice if one or more violations have been cited which do not seriously threaten the health, safety or well-being of children; or
  - (c) Deny the issuance of a license if one or more violations seriously threaten the health, safety, or well being of the children.
- (6) Failure of Department staff, except as provided by statute, to approve or deny any complete application within ninety days shall result in the granting of a provisional license.
- (7) If a license is issued, the Department staff shall mail the license directly to the operator.
- (8) The license shall state clearly the name of the operator, the address and type of child care facility, the date on which the license was issued and will expire, and the maximum number of children to be present in the group child care home at any one time.
- (9) Department staff shall notify the operator as follows if a provisional license is issued or an application for a license is denied:
- (a) If a provisional license is issued, the Department shall notify the operator in writing of violations to be corrected. The violations shall be cited by regulation number and shall include a form issued by the Department for the operator to complete a written plan to correct each violation as approved by the Department; or
  - (b) If a license is denied, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial or suspension and inform the operator of the right to appeal the decision through administrative channels to the Department and according to established appeals procedure for the Department. Upon appeal, the decision of the Department is final unless appealed by a party pursuant to an Administrative Law Judge.
- (10) If a group child care home is found to be in operation after the Department has denied the application for the license and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel.

#### B. Provisions of the license

- (1) A regular license issued by the Department to the group child care home shall be valid for two years from date of issuance, unless revoked by the Department or voluntarily surrendered by the operator; provided however, that a change in location, ownership or sponsorship of the group child care home shall automatically void the license.
- (2) A provisional license issued by the Department to a group child care home shall be issued for a period within which the deficiencies shall be corrected, and within the conditions permitted by statute.
- (3) A provisional license shall be amended from a provisional to a regular license when all deficiencies have been verified as corrected.
- (4) An application for a license may be denied or the license may be revoked by the Department if the operator and any staff member, volunteer(s) or emergency person(s) has been determined to have abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

#### C. Inspection and consultation

- (1) Department staff may visit and inspect a group child care home at anytime during the hours of operation without prior notice to verify regulatory compliance.
- (2) Department staff shall provide at least two working days notice to the operator prior to conducting an initial or renewal inspection.
- (3) The operator and staff shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff.
- (4) The Department has the right to interview staff and parents relating to regulatory compliance.

(5) Upon receipt of a regulatory complaint, the Department shall conduct an unannounced inspection of the home to investigate the complaint. If the complaint is written, the Department shall provide a copy to the operator upon request.

(6) The operator may request consultation from the Department. Department staff shall provide technical assistance to the operator as requested.

#### D. Reasons for license denial, revocation, or non-renewal

(1) A license may be denied, revoked or not renewed by the Department if the operator or teacher/caregiver has been determined to have abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

(2) A license may be denied, revoked or non-renewed by the Department if cited deficiencies threaten serious harm to the health and/or safety of the children.

#### E. Reporting of changes affecting license

(1) The operator shall immediately report to the Department when an occurrence takes place that may affect the status of the license including the following:

- (a) Change in operator;
- (b) Change in location; and
- (c) Major renovations or alterations to the home.

#### F. License renewal

(1) One hundred and twenty (120) days prior to the expiration date of the current license, Department staff shall notify the operator in writing of the time and requirements for renewal and shall request health and fire inspections.

(2) The same Department actions cited in 114-512A(2-10), above are applicable to the renewal process, except that the Department shall initiate the license renewal process one hundred and twenty (120) days in advance.

**HISTORY: Amended by State Register Volume 19, Issue No. 5, May 26, 1995, by 114-515 eff 180 days after final publication in State Register; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

### **114-513. Management, Administration, and Staffing.**

#### A. Display of license

(1) The group child care home shall display the current license, as well as any violations in a prominent public place in the group child care home. The back of the license shall be displayed if deficiencies are listed.

(2) When advertising or issuing other public notifications of the service provided, the official license number issued by the Department shall be included.

#### B. Capacity

(1) No group child care home shall have present at any one time children in excess of the number for which it is licensed.

#### C. Child abuse

(1) The group child care home shall immediately report suspected child abuse or child neglect to the Department's Office of Child Protective and Preventive Services (CPS) or to local law enforcement in accordance with South Carolina Code Annotated Section 20-7-510.

(2) The operator and staff shall cooperate with Department staff during an investigation of child abuse or neglect. Cooperation shall include the following:

- (a) Participate in informational conferences with CPS staff;
- (b) Release records as appropriate, of children and staff upon request; and
- (c) Allow access to the group child care home for inspection and investigation of the child abuse allegation by the Department and other officials as permitted by statute.

#### D. Reporting of incidents

(1) The operator shall report the following incidents to the parents/guardians immediately and provide written notification to the Department within 48 hours after the occurrence:



(a) Accidents or injuries involving any child occurring at the group child care home requiring professional medical treatment; and

(b) Child or staff occurrences of communicable diseases that the Department of Health and Environmental Control (DHEC) requires to be reported in its Exclusion List.

(2) The following incidents shall be reported to the Department immediately:

(a) A death of a child that occurs at the group child care home;

(b) A child who is missing from the premises or who is left unattended in a vehicle operated by the group child care home;

(c) Major structural damage to the group child care home;

(d) Natural or man-made disasters, including fire or extreme weather conditions, which cause the group child care home to be closed for more than one day of scheduled operation;

(e) An occurrence that requires the services of a fire or police department, which affects the health and safety of children;

(f) Charges or convictions of crimes against the operator or any staff person; or

(g) Reports of alleged child abuse involving the operator or any staff person.

(3) A follow-up report shall be submitted to the Department as soon as an investigation of the group child care home is completed and corrective action is taken.

(4) Parents should be notified if a legal or health issue occurs which impacts the health and safety of his/her child. This notification should occur at the time of pick-up or on the next day the child is in care.

#### E. Death of a child

(1) If the child dies while at the group child care home, the following shall be done:

(a) Immediately notify emergency medical personnel, the child's parents, and law enforcement;

(b) Immediately notify the licensing agency; and

(c) Provide information for children and parents as appropriate.

#### F. Parent access and communication

(1) The operator shall permit the parent of a child in care free and full access to his or her child without prior notice, while their child is receiving care, unless there is a court order limiting parental access. This free access must not disrupt instructional activities and classroom routines.

(2) The operator shall develop a policy for the release of children, which includes a security system to prevent the inappropriate release of a child to an unauthorized person. This policy shall be communicated with the parent upon admission.

(3) Parents shall be provided with the following information upon admission:

(a) The right of parents to free and full access to their child in accordance with 114-513F(1);

(b) The policy and procedures on release of children specified in 114-513F(2);

(c) The program activity schedule for their child's age group and child care area;

(d) The parent's responsibility to obtain necessary immunizations and physical examinations for their child;

(e) The policy and procedures for the administration of medications; and

(f) The policy and practices regarding the discipline and behavior management of children. This statement shall be re-signed if any discipline policy changes are made.

(4) Parents and staff shall sign and date an agreement, maintained on file and updated annually, that both parties have read and understand all policies relating to the operation of the group child care home.

#### G. Child records

(1) The operator shall keep a separate record for each child.

(2) The file shall be kept in a confidential manner, but shall be immediately available to the Department, the child's teacher/caregiver, parent, or guardian upon request.

(3) Access to records is limited to the above unless requested by court order.

(4) Entries in a child's record shall be legible, dated and signed by the individual making the entry.

(5) A child's record shall be maintained on file at the group child care home and made available to the Department upon request, and it shall contain the following:

(a) Child's full legal name, nickname, birth date, date of enrollment, current home address and home telephone number;

(b) Full name of both parent(s)/guardian(s), work and home telephone numbers, or telephone number(s) where they can be reached during the time the child is in the group child care home;

(c) Name(s), address(es) and telephone number(s) of person(s) who can assume responsibility for the child in an emergency if the parent(s)/guardian(s) cannot be reached;

(d) Name, address and telephone number of family physician or health resource;

(e) Name(s), address(es) and verification of identification, such as valid driver's license, other picture identification or personal family code word of person(s) authorized to take the child from the group child care home;

(f) Accurate records of daily attendance for each child;

(g) Authorization from parent(s)/guardian(s) for child to obtain emergency medical treatment;

(h) Authorization from parent(s)/guardian(s) for child to be transported to and from the group child care home during field trips and other activities away from the group child care home;

(i) Authorization from parent(s)/guardian(s) for child to participate in swimming activities; and

(j) A written statement, signed by the parents, acknowledging their understanding and acceptance of the disciplinary policies of the group child care home.

(6) A health record shall be maintained in the group child care home for each child enrolled, and it shall include all of the following information:

(a) A signed statement of the child's health prior to admission to the group child care home on the appropriate Department of Social Services (DSS) Form;

(b) A current South Carolina Certificate of Immunization; and

(c) Other health information if deemed necessary by the operator of the group child care home and/or by parent(s)/guardian(s).

(7) Emergency information for each child shall be easily and immediately accessible while at the group child care home, during transportation, and during any trips away from the premises, and it shall include the following:

(a) The full name of both parents/guardian, and updated address, work, home and mobile numbers where they can be reached during the time the child is in the group child care home;

(b) The name, address, telephone number and relationship of at least two individuals designated by the parents/guardian to be contacted in an emergency and who have the authority to obtain emergency medical treatment for the child;

(c) The name, address and telephone number of the child's physician, and the emergency care medical and dental care provider; and

(d) Health insurance information.

(8) Emergency information shall be updated by the parent as changes occur.

H. Staff records shall include the following:

(1) Names, positions and hours of duty of staff members;

(2) Written policies that refer to or apply to DSS licensing regulations;

(3) Three letters of reference for the group child care home operator;

(4) Criminal history background records check forms for the operator, staff, emergency person(s) and volunteer(s) not meeting the definition at 114-511A(28);

(5) Record of training for operator and staff; and

(6) Written statements signed by all staff members regarding disciplinary policies of the group child care home.

(7) The operator shall maintain health records in the group child care home for himself/herself, staff, emergency person(s) and volunteer(s) in accordance with 114-515G(1)(a) and (b).

#### I. Confidentiality and applicable laws and regulations

(1) The group child care home shall have written policy to safeguard the confidentiality of all records.

(2) A child's record, emergency information, photograph and other information about the child or family and information that may identify a child by name or address is confidential and may not be copied, posted on a web site or disclosed to unauthorized persons, without written consent from the child's parent.

(3) The group child care home shall comply with all applicable federal, state and local laws, regulations and ordinances.

(4) The operator shall make available at least one copy of Section 20-7-2700 et seq., Code of Laws of South Carolina, a copy of sections of the Children's Code related to child abuse and neglect and a copy of the current regulations for group child care homes that will be provided by the Department.

#### J. Communication

(1) The group child care home shall have an operable telephone with an outside line that is accessible to staff persons in emergencies.

(2) Emergency telephone numbers for the police, fire department, ambulance service and poison control center shall be posted by each telephone.

#### K. Staffing

(1) Child abuse checks.

(a) The operator and staff members shall not have been determined to have committed an act of child abuse or neglect or have been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person, any crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency or for the Crime of Contributing to the Delinquency of a Minor in Section 16-17-490.

(b) A check of the South Carolina Central Registry of Child Abuse and Neglect shall be requested by the operator(s) on each staff person, except for volunteers in accordance with the following time lines:

(i) For the operator prior to the initial issuance of a regular or provisional license.

(ii) For teacher/caregivers, prior to working alone with children.

(iii) For all other staff persons (including the emergency person) prior to employment.

(iv) For all persons hired by the group child care home at each license renewal.

(c) No group child care home shall employ or retain an individual who has been determined to have committed an act of child abuse or neglect.

(2) Background criminal history checks.

(a) To be employed by or to provide teacher/caregiver services at a group child care home, a person shall first undergo a State fingerprint review from the State Law Enforcement Division (SLED).

(b) A person may be provisionally employed or may provisionally provide teacher/caregiver services after the favorable completion of the state fingerprint review. The Federal Bureau of Investigation (FBI) fingerprints shall be submitted for review within 14 business days upon receiving the SLED results. Upon the completed FBI review, the results will be forwarded to the appropriate Department for distribution.

(c) No group child care home may employ a person, engage the services of, or knowingly allow a person in the child care facility during normal hours of operation who is required to register under the sex offender registry act pursuant to Section 23-3-430 or who has been convicted of:

(i) A crime listed in Chapter 3 of Title 16, Offenses Against the Person;

- (ii) A crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;
  - (iii) The crime of contributing to the delinquency of a minor, contained in Section 16-17-490;
  - (iv) The felonies classified A through F in SC Code of Laws Chapter 1 of Title 16 at Section 16-1-10A;
  - (v) The offenses enumerated in Chapter 1 of Title 16 at Section 16-1-10D; or
  - (vi) A criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.
- (d) The results of the fingerprint reviews are valid and reviews are not required to be repeated as long as the person remains employed by or continues providing teacher/caregiver services in a child care facility; however, if a person has a break in service of one year or longer, the fingerprint reviews shall be repeated.
- (e) Copies of State and Federal fingerprint results shall be retained in the staff file and available for review by Department staff, upon request.
- (3) Operator and primary caregiver.
- (a) The operator or primary caregiver shall be responsible for the following:
    - (i) Administration and management of the group child care home;
    - (ii) Safety and protection of the children;
    - (iii) Development and implementation of policies and procedures;
    - (iv) Communication with parents about the policies and procedures of the group child care home;
    - (v) Teacher/caregiver hiring, supervision and ongoing professional development; and
    - (vi) Compliance with all applicable laws and regulations of the group child care home.
  - (b) The operator or the primary caregiver shall be physically present on-site during the hours of operation of the group child care home.
  - (c) The operator shall be at least 21 years of age and meet one of the following qualifications:
    - (i) A bachelor's degree or advanced degree from a state-approved college or university in early childhood education, child development, child psychology or a related field that includes at least eighteen credit hours in child development and/or early childhood education;
    - (ii) A bachelor's degree from a state-approved college or university in any subject area, six months experience working with children in a licensed, approved or registered child care facility;
    - (iii) An associate's degree from a state-approved college or university in early childhood education, child development, child psychology or a related field, that includes at least eighteen credit hours in child development and/or early childhood education with six months work experience in a licensed, approved or registered child care facility;
    - (iv) A diploma in child development/early childhood education from a state-approved institution or a child development associate (CDA) credential, and one year work experience in a licensed, approved or registered child care facility; or
    - (v) A high school diploma or General Educational Development Certificate (GED) with 3 years experience in a licensed, approved or registered child care facility. One year shall include supervision of child care staff. However, a operator or primary caregiver who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the position, must have at least a high school Certificate of Completion and at least six months experience as a teacher/caregiver in a licensed, approved or registered child care facility.
- (4) Teacher(s)/caregiver(s).
- (a) Teacher(s)/caregiver(s) shall meet the following qualifications:
    - (i) Be at least 18 years of age, and able to read and write.
    - (ii) A teacher/caregiver who began employment in a licensed or approved child care facility in South Carolina after June 30, 1994, must have at least a high school diploma or GED and at

least six months experience as a teacher/caregiver in a licensed or approved child care facility. However, a teacher/caregiver who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the position of teacher/caregiver, must have at least a high school Certificate of Completion and at least six months experience as a teacher/caregiver in a licensed or approved child care facility. If a teacher/caregiver does not meet the experience requirements, the teacher/caregiver must be directly supervised for six months by a staff person with at least one-year experience as a teacher/caregiver in a licensed or approved child care facility. Within six months of being employed, a teacher/caregiver must have six clock hours of training in child growth and development and early childhood education or shall continue to be under the direct supervision of a teacher/caregiver who has at least one year of experience as a teacher/caregiver in a licensed or approved child care facility.

(iii) A teacher/caregiver who has two years experience as a teacher/caregiver in a licensed or approved facility and was employed as of July 1, 1994, in a licensed or approved child care facility in South Carolina is exempt from the high school diploma, GED, and Certificate of Completion requirements of (b) above.

(iv) A teacher/caregiver with an undergraduate degree from a state approved college or university in early childhood, child development, or a related field may begin working with the children immediately without additional supervision.

(b) Exception: A teacher/caregiver/teacher may be 16 or 17 years of age if he/she is continuously supervised by a qualified teacher/caregiver who is in the room at all times.

(c) Exception: Staff persons who were employed prior to the effective date of these revised regulations are not required to meet the staff qualifications specified in this chapter if the staff qualifications required in the prior regulations are met. If a teacher/caregiver has had more than a twelve-month break in service, the new guidelines shall be met for re-employment as a teacher/caregiver.

#### (5) Professional development.

(a) The operator shall provide orientation for all new teacher/caregiver(s), volunteer(s) and emergency person(s) prior to their employment and volunteering. This orientation shall include the following:

(i) Specific job duties and responsibilities;

(ii) The requirements of this chapter related to their job; and

(iii) The policies and procedures of the group child care home that affect the health and safety of children.

(b) The operator shall participate in at least fifteen (15) clock hours of training annually. At least five clock hours shall be related to program administration and at least five clock hours shall be in child growth and development, early childhood education and/or health and safety excluding first aid and CPR training. The remaining hours shall come from the following areas: Safety, Health, Nutrition, Guidance, or Professional Development and must include blood-borne pathogens training as required by the Occupational Safety and Health Administration (OSHA).

(c) All staff, with the exception of emergency person(s) and volunteer(s), providing direct care to the children shall participate in at least ten (10) clock hours of training annually. At least four clock hours shall be in child growth and development and at least four (4) clock hours shall be in curriculum activities for children excluding first aid and CPR training. The remaining hours shall come from the following areas: Curriculum Activities, Nutrition, Guidance, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(d) When children with special needs are enrolled, the operator and teacher/caregivers shall receive orientation and/or training in understanding the child's special needs and ways of working in group settings when children with special needs are enrolled.

(e) All staff shall receive information regarding the developmental abilities of the age group(s) with whom the teacher/caregiver will be working.

(f) Records of training received shall be kept on the premises and include the name of the person trained, the person or persons conducting the training, date, number of hours, location, and the competency area of the training.

(g) At least one person who is certified in pediatric first aid, including rescue breathing, CPR, and management of a blocked airway shall be present in the group child care home at all times when children are in care, and during group outings or field trips. Training shall be provided by an individual who is certified as a trainer by a recognized health care organization.

**HISTORY: Amended by State Register Volume 19, Issue No. 5, May 26, 1995, by 114-515 eff 180 days after final publication in State Register; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114-514. Supervision.**

A. Children shall be directly supervised at all times by qualified staff persons.

(1) Directly supervised means staff persons are physically near, readily accessible, aware and responsible for the ongoing activity of each child and able to intervene when needed.

(2) There shall be an additional teacher/caregiver present when attendance reaches nine children or when four or more of the children are younger than two years old.

(3) Children in feeding chairs shall be constantly supervised.

B. Nap time staff:child ratios

(1) During nap times staffing ratios do not change as long as at least one other staff person is readily available.

C. Water safety staffing

(1) The following staffing ratios apply at all times while children are swimming, wading or near a water source. The staffing ratios shall also apply at all times while children are near a water body that poses a potential risk based upon the age of the child.

### WATER SAFETY STAFF:CHILD RATIOS

Child's Age	Staff: Child Ratio
Birth to two years	1:1
Two to three years	1:2
Three to four years	1:3
Four and older	1:6

(2) All swimming activities shall be supervised by a person with current lifeguard training certification. If this is a staff person who has current lifeguard training certification, they may be included in the staff:child ratio. In instances in which all staff members can, without the ability to swim, quickly reach any child, a certified lifeguard is unnecessary.

**HISTORY: Amended by State Register Volume 19, Issue No. 5, May 26, 1995, by 114-515 eff 180 days after final publication in State Register; State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114-515. Health, Sanitation and Safety.**

A. Child health

(1) Children shall be excluded from child care when they exhibit the conditions listed in the DHEC Exclusion Policy.

(2) During hours of operation there shall be no smoking or consumption of alcoholic beverages in the areas used by children or in the food preparation or storage areas. Smoking shall be permitted only in designated areas, a safe distance from the group child care home. Consumption of alcoholic beverages or use of other non-prescription narcotic or illegal substances is prohibited on the group child care home premises. People who appear to be under the influence of alcohol or other drugs shall not be in the group child care home when children are present.

B. Sanitation

(1) Staff shall ensure that children's faces and hands are clean.

(2) Furniture, toys, and equipment that come into contact with children's mouths shall be washed, rinsed, and sanitized daily and more often if necessary.

(3) Furniture, toys and equipment soiled by secretion or excretion shall be sanitized before reuse.

(4) Linens and blankets as well as cribs, cots, and mats shall be cleaned at least weekly.

(5) If playpens are used, they shall have waterproof, washable, comfortable pads.

(6) If children brush their teeth at the group child care home, each child shall have a separate, labeled toothbrush, stored with bristles exposed to circulating air, and not in contact with another toothbrush.

#### C. Emergency medical plan

(1) The group child care home shall have an emergency medical plan to address the following:

(a) Medical conditions under which emergency care and treatment is warranted;

(b) Steps to be followed in a medical emergency;

(c) The hospital or source of health care to be used;

(d) The method of transportation to be used; and

(e) An emergency staffing plan.

(2) Emergency information for the child shall be taken with the child to the hospital or emergency location.

(3) A staff person shall remain with the child at the hospital or emergency location until the parent arrives.

#### D. Medications or medical procedures

(1) Written, signed and dated parental consent is required prior to the administration of any prescription or over the counter medication or administration of special medical procedures.

(a) All medications shall be used only for the child for whom the medication is labeled.

(b) Medications shall not be given in excess of the recommended dose.

(c) Prescribed special medical procedures ordered for a specific child shall be written, signed and dated by a physician or other legally authorized healthcare provider.

(2) Storage of medications.

(a) All medications shall be kept in their original labeled containers and have child protective caps. The child's first and last name shall be on all medications.

(b) All medications shall be stored in a separate locked container under proper conditions of sanitation, temperature, light, and moisture.

(c) Discontinued and expired medications shall not be used and shall be returned to the parent or disposed of in a safe manner.

(3) Medication log.

(a) For each medication that is administered by a staff person, a log shall be kept including the child's name, the name of the medication, dosage, date, time and name of person administering the medication. This information shall be logged immediately following the administration of the medication.

(4) Medication errors.

(a) Medication errors (e.g. failure to administer a medication at the prescribed time, administering an incorrect dosage of medication or administering the wrong medication) shall be recorded in the child's record.

(b) Written documentation that the medication was given shall be provided to the parent.

(c) The parent shall be immediately notified of a medication error or a suspected adverse reaction to a medication.

#### E. First aid kit

(1) A first aid kit shall be available for the treatment of minor cuts and abrasions and shall be stored in a location inaccessible to children.

## F. Diapering

(1) Diaper changing procedures shall be consistent with those recommended by the Center for Disease Control and Prevention.

(2) Diapering surfaces shall be clean, seamless, waterproof and sanitary.

(3) Blood contaminated materials and diapers shall be discarded in a plastic bag with a secure tie. Surfaces contaminated with blood or blood-containing body fluids shall be cleaned with an approved solution of chlorine bleach and water.

(4) Individual disposable wipes shall be used at each diaper change and shall be placed in a plastic-lined, covered container and disposed of properly, and kept out the reach of children.

(5) Soiled disposable diapers and disposable wipes shall be kept in a closed, labeled hands-free operated, plastic lined receptacle within reach of diaper changing area separate from other trash. Soiled non-disposable diapers shall be kept in a sealed plastic bag after feces shall be disposed of through the sewage.

(6) Staff shall check diapers and clothing at a frequency that ensures prompt changing of diapers and clothing.

(7) No child shall be left unattended while being diapered.

## G. Staff health

(1) The operator shall maintain the following records in the group child care home for herself/himself, staff, emergency person(s) and household members:

(a) Medical statements required by the Department and completed by the staff person verifying that his/her health is satisfactory. Medical statements shall be updated as necessary; and

(b) A health assessment from a health care provider assessing the ability of the operator, staff, and emergency staff person to work with children. The health assessment shall be completed within three months prior to employment or within the first month of employment and shall include health history, physical exam, vision and hearing screening, tuberculosis screening, and a review of immunization status. A new health assessment shall be obtained by the operator and teacher/caregivers at least every four years after the initial assessment or as necessary.

(2) No person who is known to be afflicted with any disease in a communicable form, or who is a known carrier of such a disease, or who is afflicted with boils, infected wounds, or sores or acute respiratory infection, shall work in any capacity in a group child care home in which there is likelihood of such person transmitting disease or infection to other individuals.

(3) Any staff member, including the operator, emergency person(s) and volunteer(s) who, upon examination or as a result of tests, shows a condition that could be detrimental to the children or staff, or which would prevent satisfactory performance of duties, shall not continue work at the group child care home until the healthcare provider indicates that the condition no longer presents a threat to children or staff.

(4) Staff persons shall wash their hands with soap and warm running water upon arrival at the group child care home, before preparing or serving food, before assisting a child with eating, after assisting a child with toileting or diapering, before and after toileting, after administering medication, after cleaning, after assisting with wiping noses, after contact with body fluids, after contact with animals, and after using cleaning materials. Hands shall be washed even if gloves are worn to perform these tasks.

(5) Staff shall be excluded when they exhibit the conditions listed in the DHEC Exclusion Policy.

## H. Fire safety and emergency preparedness

(1) Group child care homes shall comply with the regulations and codes of the State Fire Marshal.

(2) The group child care home shall have an up to date written plan for evacuating in case of fire, a natural disaster or threatening situation that may pose a health or safety hazard. The group child care home shall also include procedures for staff training in this emergency plan.

(3) Portable heat sources will be used according to the manufacturers' instructions and kept in good working order and out of the reach of children.

## I. Transportation



(1) If the operator provides or arranges for transportation, the following transportation requirements apply:

- (a) The staffing ratios specified in 114-514A(2) apply. The driver of the vehicle shall not be counted in the ratios;
- (b) Transportation and placement of children shall be in accordance with state and federal laws;
- (c) A child shall not be left unattended in a vehicle;
- (d) The driver shall have a valid regular or commercial driver's license and shall be in compliance with Section 20-7-2725A(4) of the Code of Laws of 1976;
- (e) Use of tobacco products is prohibited in the vehicle; and
- (f) Written consent from the parent is required prior to transportation.

(2) The following requirements apply for safe pick-up and drop-off:

- (a) The group child care home shall have safe crossways and designated pick-up and drop-off locations and communicate these locations to the parents; and
- (b) Children shall be supervised during boarding and exiting vehicles.

**HISTORY: Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114-516. Program.**

### **A. Program of activities**

- (1) There shall be planned, daily program of activities for all children.
- (2) Activities shall be developmentally appropriate.
- (3) Staff shall plan and provide daily age-appropriate activities such as stories, music, art, cooking, living skills, puzzles, blocks, etc. in accordance with the child's developmental level.
- (4) Children shall be provided daily indoor opportunities for freedom of movement.
- (5) Quiet areas with supervision shall be made available to children desiring to be alone or to work on homework.
- (6) Staff persons shall provide the opportunity for the children to ask questions and engage in conversations with others. Staff shall have frequent positive verbal communications with the children.
- (7) Age appropriate radio and television, VCR tapes, DVDs and other media shall be previewed by the operator and staff and used only as a supplement and enhancement to the daily program. No child shall be required to view these media programs.
- (8) All children, including infants and toddlers shall be given the opportunity for outdoor play, weather permitting.
- (9) Napping expectations and time periods shall be developmentally appropriate and meet the needs of the individual child.

### **B. Discipline and behavior management**

- (1) The group child care home's discipline policy shall outline methods of guidance appropriate to the ages of the children. Positive, non-violent, non-abusive methods for managing behavior shall be implemented.
- (2) All teacher/caregivers shall sign an agreement to implement the discipline and behavior management policy, with a statement that specifies no corporal punishment shall be used except when authorized in writing by the parent(s)/guardian(s); corporal punishment shall not exceed guidelines established in Section 20-7-490(2)(a) of the Code of Laws of South Carolina, 1976 amended.
- (3) Emotional abuse is also prohibited, including but not limited to: profane, harsh, demeaning or humiliating language in the presence of children. Threatening, humiliating, ignoring, corrupting, terrorizing, or rejecting a child is prohibited.
- (4) Withholding, forcing, or threatening to withhold or force food, sleep or toileting is prohibited.

(5) Unsupervised isolation of a child shall not be allowed. The child shall be within sight of staff if isolation from the group is used.

(6) The use of children to discipline other children is prohibited.

(7) Children shall not be restrained through drugs or mechanical restraints.

(8) Each group child care home has the option to prohibit corporal punishment.

**HISTORY: Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114-517. Physical Site.**

### **A. Indoor space and conditions**

(1) The operator shall provide at least thirty-five (35) square feet of indoor play space per child, measured by Department staff from wall to wall. Bathrooms, reception areas, isolation rooms, halls and space occupied by cupboards, shelves, furniture and equipment which are accessible to children for their use shall be allowable space. Kitchens, storage rooms and storage cabinets used solely for or by staff shall be excluded. Halls, although included in total indoor space, shall not be used for activities or storage of furniture and equipment.

#### **(2) Ventilation.**

(a) Child care areas, dining areas, kitchens, and bathrooms shall be ventilated by mechanical ventilation, such as fans or air conditioning, or at least one operable window.

(b) If freestanding fans are used, fans shall have a stable base, be equipped with protective guards and be placed in a safe location.

(c) Windows, including windows in doors, when utilized for ventilation purposes shall be securely screened to prevent the entrance of insects.

(3) Safety glass shall be used on clear glass windows and doors that are within thirty-two inches above floor level and that are accessible to children. Decals shall be applied to all glass or sliding patio doors and placed at eye level of the children being cared for at the group child care home.

#### **(4) Lighting.**

(a) Rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps and fire escapes shall be lighted.

(b) At least twenty foot candles of light shall be required on all work surfaces in food preparation, equipment washing, utensil washing, hand-washing areas, and toilet rooms.

(c) Adequate, safe lighting for individual activities, for corridors, and for bathrooms shall be provided.

#### **(5) Environmental hazards.**

(a) Safety barriers shall be placed around all heating and cooling sources, such as hot water pipes, fixed space heaters, wood- and coal-burning stoves, hot water heaters, and radiators, that are accessible to children to prevent accidents or injuries upon contact by the child.

(b) Knives, lighters, matches, projectile toys, tobacco products, microwave ovens and other items that could be hazardous to children shall not be accessible to children.

(c) To prevent lead poisoning in children, group child care homes shall meet applicable lead base paint requirements, as established by DHEC.

(d) Floors, walls, ceilings, windows, doors and other surfaces shall be free from hazards such as peeling paint, broken or loose parts, loose or torn flooring or carpeting, pinch and crush points, sharp edges, splinters, exposed bolts and openings that could cause head or limb entrapment.

(e) The use of sinks, equipment and utensil-washing sinks, or food preparation sinks for the cleaning of garbage and refuse containers and the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid waters is prohibited.

(f) Children shall not be present in the area during construction or remodeling and not in the immediate area during cleaning or in such a manner as not to create a condition that might result in an accident or cause harm to the health and safety of the children.

(g) Microwave ovens shall be inaccessible to children.

(h) The following items shall be secured or inaccessible to children for whom they are not age appropriate:

(i) Items that may cause strangulation such as blind cords, plastic bags, necklaces, and drawstrings on clothing and string;

(ii) Items that may cause suffocation such as sand, beanbag chairs, pillows, soft bedding, and stuffed animals; and

(iii) Items that may cause choking such as materials smaller than 1 ¼ inch in diameter, items with removable parts smaller than 1 ¼ inch in diameter, Styrofoam objects and latex balloons.

(6) Water supply.

(a) The water supply shall meet applicable requirements for water quality and testing in accordance with DHEC.

(b) The group child care home shall have hot and cold water under pressure. (Forty PSI recommended.) If an individual private well water supply is used, the operator shall obtain approval pursuant to DHEC to ensure safe location, construction, and proper maintenance and operation of the system.

(c) The hot water supply shall meet applicable requirements of DHEC.

(d) Safe drinking water shall be available to children at all times and there shall be no use of common drinking cups.

(e) If a water fountain is available, it shall be of an angle-jet design, maintained in good repair and kept sanitary. There shall be no possibility of mouth or nose submersion.

(f) Ice used for any purpose shall be made from water from an approved source. The ice shall be handled and stored in a sanitary manner.

(7) Temperature.

(a) Temperature shall be maintained between 68 and 80 degrees Fahrenheit as appropriate to the season while children are present in the group child care home.

(b) When outdoor temperature exceeds 90 degrees Fahrenheit, caution shall be used when children are involved in outdoor physical activities.

(8) Sanitation.

(a) Clean and sanitary conditions shall be maintained indoors and outdoors, including indoor and outdoor recreational equipment and furnishings.

(b) Measures to control insects, rodents, and other vermin shall be taken to prevent harborage, breeding, and infestation of the premises.

(c) All solid wastes shall be disposed of at sufficient frequencies and in such a manner not to create a rodent, insect, or vermin problem.

(d) Trash in diapering areas shall be kept in closed, hands-free operated, plastic lined receptacles in good repair.

(e) Trash in kitchen areas shall be kept in closed, plastic lined receptacles.

(f) Trash in children's restrooms, classrooms, and eating areas shall be kept in plastic lined receptacles.

(g) Trash receptacles outside the building, shall be watertight with firm fitting lids that prevent the penetration of insects and rodents.

(h) Trash disposal and sewage system construction and usage shall be in accordance with local standards and ordinances.

(i) The use of child care room, bathroom, or kitchen sinks for cleaning of trash receptacles or cleaning equipment is prohibited.

(9) Doors.

(a) Protective gates shall be of the type that do not block emergency entrances and exits and that prevent finger pinching and head or limb entrapment.

(10) Landings, stairs, handrails, and railings.

(a) Children shall not have access to a door that swings open to a descending stairwell or outside steps, unless there is a landing that is at least as wide as the doorway at the top of the stairs.

(b) Each ramp and each interior stairway and outside steps exceeding two steps shall be equipped with a secure handrail at the height appropriate for the sizes of the children at the group child care home.

(c) Stairs shall have a nonskid surface.

(d) Each porch and deck that has over an 18-inch drop shall have a well-secured railing.

(e) Interior stairs that are not enclosed shall have a barrier to prevent falls.

(11) Electrical sources.

(a) The group child care home shall be connected with an electrical source.

(b) Electrical outlets and fixtures shall be connected to the electrical source in a manner that meets local electrical codes, as certified by an electrical code inspector.

(c) Electrical outlets shall be securely covered with childproof covers or safety plugs when not in use in all areas accessible to children.

(d) No electrical device accessible to children shall be located so that it could be plugged into the outlet while in contact with a water source, such as sinks, tubs, shower areas, or swimming/wading pools.

(12) Bathrooms.

(a) There shall be at least one flush toilet.

(b) If seat adapters are used for toilet training, they shall be cleaned and sanitized after each use.

(c) Toilet training equipment shall be provided to children who are being toilet trained.

(d) There shall be at least one sink with hot and cold running water under pressure in or near each toilet area.

(e) Toilets and sinks shall be at heights accessible to the children using them or shall be equipped with safe and sturdy platforms or steps.

(f) Toilets, toilet seat adapters, sinks and restrooms shall be cleaned at least daily and shall be in good repair.

(g) Liquid or granular soap and disposable towels shall be provided at each sink.

(h) Children shall not be left unattended in a bathtub or shower.

(i) Easily cleanable receptacles shall be provided for waste material.

B. Outdoor space

(1) The outdoor space shall be free from hazards and litter.

(2) Outdoor walkways shall be free from debris, leaves, ice, snow, and obstruction.

(3) Children shall be restricted from unsafe areas and conditions such as traffic, parking areas, ditches, and steep slopes by a fence or natural barrier that is at least four feet high.

C. Furniture, toys, and recreational equipment shall meet the following requirements:

(1) Be clean and free from hazards such as broken or loose parts, rust or peeling paint, pinch or crush points, unstable bases, sharp edges, exposed bolts, and openings that could cause head or limb entrapment.

(2) Meet the standards of the U.S. Consumer Products Safety Commission (CPSC), if applicable. Recalled products listed by the CPSC shall not be accessible to children.

(3) Be developmentally and size appropriate, accommodating the maximum number of children involved in an activity at any one time.

(4) The sides of playpens shall remain latched as long as a child is using the playpen. If playpens are used, they shall have waterproof, washable, comfortable pads.

(5) All arts and crafts and play materials shall be nontoxic.

(6) Outdoor recreational equipment shall be made of durable, non-rusting, non-poisonous materials, and shall be sturdy.

(7) Stationary outdoor equipment shall be firmly anchored and shall not be placed on a concrete or asphalt surface. Cushioning material such as mats, wood chips or sand shall be used under climbers, slides, swings, and large pieces of equipment.

(8) Swings shall be located to minimize accidents and shall have soft and flexible seats.

(9) Cushioning material shall extend at least six (6) feet beyond the equipment and swings.

(10) Slides shall have secure guards along both sides of the ladder and placed in a shaded area.

(11) Outdoor metal equipment shall be located in shaded areas or otherwise protected from the sun.

(12) Outdoor equipment shall be arranged so that children can be seen at all times.

(13) The height of play equipment shall be developmentally and size appropriate.

(14) Sand in a sand box shall be securely covered when not in use and, if outdoors, constructed to provide for drainage.

(15) Indoor recreational equipment and furnishings shall be cleaned and disinfected when they are soiled or at least once weekly and shall be of safe construction and free of sharp edges and loose or rusty points. Indoor recreational equipment and furnishings shall be clean and shall be of safe construction and free of sharp edges and loose or rusty points.

(16) A properly fitting bicycle helmet that is approved by American National Standards Institute, Snell Memorial Foundation, or American Society for Testing and materials, shall be worn by each child when riding a bicycle, skateboard, roller blades, or skates. Helmets are optional for use with tricycles.

#### D. Rest equipment

(1) Cribs shall meet the specification of the CPSC.

(2) Individual, clean, developmentally appropriate cribs, cots, or mats shall be provided for each infant, toddler, and preschool child, labeled with the child's name and used only by that child.

(3) Cribs, cots, and mats shall be made of easily cleanable material.

(4) Placement of sleeping and napping equipment shall allow ready access to each child by staff.

(5) Individual, clean, appropriate coverings shall be provided.

(6) Cots and mats shall be stored so that the surface on which a child lies does not touch the floor.

#### E. Environmental hazards

(1) Poisons or harmful agents.

(a) Poisons or harmful agents shall be kept locked, stored in the original containers, labeled and inaccessible to children.

(b) Poisons or harmful agents shall be purchased in childproof containers, if available.

(c) Play materials, including arts and crafts, shall be non-poisonous.

(d) Poisonous plants are not permitted.

(e) Pesticides shall be used in strict compliance with label instructions and should not be used while children are present. Pesticide containers shall be prominently and distinctly marked or labeled for easy identification of contents and stored in a secure site accessible only to authorized staff.

(2) Water hazards.

(a) Swimming pools located at the group child care home or used by the group child care home shall conform to the regulations of DHEC for construction, use and maintenance.

(b) Swimming pools, stationary wading pools and other water sources such as ditches, streams, ponds, and lakes shall be made inaccessible to children by a secure fence that is at least 4 feet high; exits and entrances shall have self-closing, positive latching gates with locking devices.

(c) Children shall not be permitted in hot tubs, spas, or saunas.

(d) Children shall not be permitted to play in areas where there are swimming pools or other water sources without constant supervision.

(3) Firearms, weapons, and ammunition are to be kept in a locked drawer or cabinet.

(4) Animals: The following requirements apply in regard to animals:

(a) Healthy animals which present no apparent threat to the health and safety of the children shall be permitted, provided they are cleaned, properly housed, fed and cared for and have had required vaccinations, as appropriate;

(b) Animals shall not be permitted if a child in the room or area is allergic to the specific type of animal;

(c) Animal litter and waste shall not be accessible to children; and

(d) Reptiles and rodents shall not be accessible to children without adult supervision.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114–518. Meal Requirements and Preparation, Serving, Storage and Protection of Food Supplies.**

### **A. Meal requirements**

(1) If food is provided by the group child care home, the following requirements shall be met:

(a) Daily menus shall be dated and posted in a conspicuous location in public view;

(b) Meals and snacks provided shall be in compliance with the United States Department of Agriculture (USDA) Child Care Food Program Guidelines. Group child care homes that do not provide overnight care shall serve at least one meal and at least one snack, which meet USDA Child Care Food Program Guidelines. Group child care homes providing care between the hours of 6:00 p.m. and midnight shall additionally meet USDA Child Care Food Program Guidelines in serving dinner and at least one additional snack. Meal components and serving sizes shall be in accordance with these guidelines;

(c) Only Grade A pasteurized fluid milk and fluid milk products may be given to any child less than 24 months old, except with a written permission from the child's health provider;

(d) Whole milk may not be served to children less than 12 months of age, except with a written permission from the child's health provider; and

(e) Reconstituted milk shall not be served to any child, regardless of age.

(2) Food served shall be suited to the child's age and appetite. Second portions shall be available.

(3) Round, firm foods shall not be offered to children younger than four years old. Examples of such foods include: hot dogs, grapes, hard candy, nuts, peanuts, and popcorn. Hot dogs may be served if cut lengthwise and quartered; grapes may be served if cut in halves.

(4) All food in group child care homes shall be clean, wholesome, unspoiled, free from contamination, properly labeled, and safe for human consumption.

(5) Meals and snacks may be provided by the group child care home or the parent. The group child care home shall have a small supply of nutritional food and beverages available in the event a parent neglects to bring the child's food on an unanticipated basis.

(6) Dietary alternatives shall be available for a child who has special health needs or religious beliefs.

(7) Written permission/instructions for dietary modifications signed by the child's health care provider or parent or legal guardian are required.

### **B. Food Preparation**

(1) Adequate hand-washing facilities equipped with hot and cold water under pressure, supplied through a mixing faucet, shall be provided in or convenient to the food preparation area.

(2) Sanitary soap and towels shall be provided.

(3) Utensils, such as forks, knives, tongs, spoons, and scoops shall be provided and used to minimize handling of food in all food preparation areas.

(4) Staff shall thoroughly wash their hands and exposed areas of arms with soap and warm water before starting work, during work as often as is necessary to keep them clean, e.g., after smoking, eating, drinking, or using the toilet. Staff shall keep their fingernails clean and trimmed.

(5) The outer clothing of all staff shall be clean.

(6) Staff shall neither use tobacco in any form while preparing or serving food, nor while in areas used for equipment or utensil washing or for food preparation.

(7) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to an internal temperature of at least 140 degrees Fahrenheit, with the following exceptions:

(a) Hamburger shall be cooked to at least 155 degrees Fahrenheit;

(b) Poultry, poultry stuffing, stuffed meats, and stuffing-containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process;

(c) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit; and

(d) Rare roast beef and rare beefsteak shall be cooked to surface temperature of at least 130 degrees Fahrenheit.

(8) Potentially hazardous food such as meats, cooked rice, and cream-filled pastries shall be prepared (preferably from chilled products) with a minimum of manual contact and on surfaces with utensils that are clean and sanitized prior to use.

(9) Metal, stem-type, numerically-scaled indicating thermometers, accurate to plus or minus three degrees Fahrenheit, shall be provided and used to ensure that proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods are maintained.

(10) Potentially hazardous foods shall be thawed as follows:

(a) In refrigerated units at a temperature not to exceed 45 degrees Fahrenheit;

(b) Under potable running water from the cold water supply with sufficient water velocity to remove loose food particles;

(c) In a microwave oven only when food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

(11) All raw fruits and vegetables shall be washed thoroughly before being cooked, served, or placed in refrigerators.

### C. Food service

(1) No child shall be deprived of a meal or snack if he/she is in attendance at the time the meal or snack is served.

(2) Easily breakable dinnerware shall not be used.

(3) Children shall not be forced to eat.

(4) Food shall not be used as a punishment.

(5) Children shall not be allowed in the kitchen except during supervised activities.

(6) Portions of food once served shall not be served again.

(7) Single-service articles shall be stored in closed cartons or containers to protect them from contamination.

(8) Use of common drinking cups is prohibited.

(9) Disposable cups, if used, shall be handled and stored properly to prevent contamination.

(10) Reuse of single service articles is prohibited.

(11) If potentially hazardous foods that have been cooked and then refrigerated are to be served hot, they shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food-storage facility. Steam tables, double boilers, warmers, and similar hot food holding facilities are prohibited from use for the rapid reheating of potentially hazardous foods.

#### D. Storage

- (1) All food shall be properly labeled and stored, and shall be protected against contamination.
- (2) The operator shall provide refrigeration units to ensure that all potentially hazardous foods are maintained at 45 degrees Fahrenheit or below or 130 Fahrenheit or above, except during necessary period of preparation.
- (3) Thermometers shall be accurate to plus or minus 3 degrees and conspicuously placed in the warmest area of all cooling and warming units to ensure proper temperatures.
- (4) Containers of food, food preparation equipment and single service articles shall be stored at least 6" above the floor, on clean surfaces, and in such a manner to be protected from splash and other contamination.
- (5) Food not subject to further washing or cooking before serving shall be stored in such a manner to be protected against contamination from food requiring washing or cooking.
- (6) The storage of food or food equipment, utensils, or single-service articles in toilet rooms and under exposed sewer lines is prohibited.
- (7) Custards, cream fillings, or similar products which are prepared by hot or cold processes shall be kept at safe temperatures except during necessary periods of preparation and service.
- (8) All cleaning supplies, detergents, and other potentially poisonous items shall be stored away from food items and shall be inaccessible to children.

#### E. Cleaning, storage, and handling of utensils and equipment

- (1) Tableware shall be washed, rinsed, and sanitized after each use.
- (2) All kitchenware and food-contact surfaces of equipment shall be washed, rinsed, and sanitized.
- (3) Residential dishwashers may be used for washing and rinsing providing that dishes and utensils are sanitized upon removal.
- (4) The cooking surfaces of cooking devices shall be cleaned as often as necessary and shall be free of encrusted grease deposits and other soil.
- (5) Non-food contact surfaces of all equipment, including tables, counters, and shelves, shall be cleaned at such frequency as is necessary to be free of accumulation of dust, dirt, food particles, and other debris.
- (6) Prior to washing, all equipment and utensils shall be rinsed or scraped, and when necessary, presoaked to remove gross food particles and soil.
- (7) Food-contact surfaces of cleaned and sanitized equipment and utensils shall be handled in such a manner as to be protected from contamination.
- (8) Cleaned and sanitized utensils shall be stored above the floor in a clean, dry location so that food-contact surfaces are protected from contamination.
- (9) Clean spoons, knives, and forks shall be picked up and touched only by their handles. Clean cups, glasses, and bowls shall be handled so that fingers and thumbs do not contact inside surfaces or lip-contact surfaces.

**HISTORY: Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

### **114-519. Infant and Toddler Care, Care for Mildly Ill Children, and Night Care.**

#### A. Infant and toddler care

- (1) Stimulation and nurturing.
  - (a) Children shall not remain in their cribs or play equipment for other than sleeping and specific, short time-limited quiet play.
  - (b) Infants and toddlers shall be routinely held, talked to, rocked, caressed, carried, nurtured, read to, sung to and played with throughout the day.
  - (c) There shall be toys and materials that encourage and stimulate children through seeing, feeling, hearing, smelling and tasting.
- (2) Programs for infants and toddlers.
  - (a) Staff shall provide appropriate attention to the needs of children.



(b) The daily program for infants and toddlers shall include goals for children, which promote healthy child development and allow for individual choice and exploration.

(c) Information about the child's daily needs and activities shall be shared with parents.

(3) Feeding, eating and drinking.

(a) Cups and bottles shall be labeled with the child's name and used only by that child.

(b) Infants shall be fed in accordance with the time schedule, specific food and beverage items and quantities as specified by the parent.

(c) Infants shall be held while being bottle fed until they are able to hold their own bottles. Bottles shall not be propped or given in cribs or on mats.

(d) Due to nutritional concerns, the microwaving of breast milk is prohibited. The microwaving of formula and other beverages is strongly discouraged due to the possibility of a burn injury to the child. However, if the facility plans to use this method of heating formula and other beverages, they must notify all parents in writing as part of the enrollment or orientation process.

(e) All warmed bottles shall be shaken well and the temperature tested before feeding to a child.

(f) Baby formula, juice, and food served in a bottle shall be prepared, ready to feed, identified, and packaged for single use for the appropriate user. Any excess formula, juice or food shall be discarded after each feeding. Formula, juice and food requiring refrigeration shall be maintained at 45 degrees Fahrenheit or below.

(g) Infants and toddlers shall not sleep with bottles in their mouths.

(h) Toddlers shall be offered water routinely throughout the day.

(i) Breast milk and formula shall be dated and labeled with the child's name and refrigerated until ready to use.

(j) Food for infants shall be cut in pieces one-quarter inch or less.

(k) Food for toddlers shall be cut in pieces one half inch or less.

(4) Feeding chairs.

(a) Feeding chairs shall have a stable base.

(b) Feeding chairs shall have a T-shaped safety strap that prevents the child from slipping or climbing out of the chair. The safety strap shall be used at all times the child is in the chair.

(c) Feeding chair trays shall be in good repair and made of an easily cleanable surface and shall not have chips or cracks.

(d) Feeding chairs shall be used only for eating or a specific, short time-limited tabletop play activity.

(e) Seat heights of feeding chairs shall be appropriate to the age and development of the child. Feeding chairs shall be in good repair and children shall be constantly supervised.

(5) Sleeping.

(a) Infants shall be placed on their backs to sleep unless the parent provides a note from a physician specifying otherwise.

(b) Crib mobiles shall not be permitted for infants or toddlers who can sit.

(c) Two years from the effective date of these regulations, stacked cribs will no longer be permitted.

(6) Equipment and materials.

(a) Indoor space shall be protected from general walkway where crawling children may be on the floor.

(b) Mobile walkers are not permitted.

B. Care for mildly ill children

(1) Parent notification and instructions.

(a) If a child becomes ill while in care, the operator shall notify the parent or responsible party immediately.

(b) If a child may have been exposed to a serious communicable disease that is spread through casual contact, the group child care home shall notify the parents of all potentially exposed children about the nature of the illness and the potential exposure to the illness, and recommend consultation with the child's physician.

(c) If an operator chooses to provide care to a mildly ill child, the operator shall receive instructions from the parent for any special care needs of the child.

(2) Policies and procedures.

(a) If an operator chooses to provide care to a mildly ill child, the group child care home shall have written policies and procedures specifying inclusion and exclusion from the group, communication with parents, recording of illness and care provided, specific types of illnesses and symptoms which prohibit care from being provided, special staff training required and emergency health procedures.

(b) Children shall be excluded when they exhibit the conditions listed in the DHEC Exclusion Policy.

(c) If a child is in a rest area due to illness, the child shall be supervised at all times.

### C. Night care

(1) In group child care homes providing overnight care, at least two adults shall be on the premises at all times, physically near, readily accessible, and responsible for the ongoing activity of each child and able to intervene when needed.

(2) The operator shall present written evidence that a plan has been worked out whereby an additional, outside person can be quickly summoned to assist in an emergency.

(3) Sleeping equipment.

(a) Each child shall have a bed with a solid foundation, a fire retardant mattress, a pillow, and bedding appropriate for the temperature of the group child care home.

(b) Cots and portable beds are not permitted.

(4) Bedtime.

(a) Children shall be provided the opportunity to read or be read to before bedtime.

(b) There shall be books, games, and other quiet time activities for the child prior to bedtime.

(c) Special bedtime routines as specified by the parent shall be followed to the extent feasible.

(5) Bathing.

(a) If children bathe at the group child care home, there shall be a bathtub or shower with a slip resistant surface.

(b) Each child shall have his or her own clean towel and washcloth.

(6) Night clothes.

(a) The group child care home shall make arrangements with the parent to provide clean appropriate nightclothes.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## REGULATIONS FOR THE REGISTRATION OF CHILD CARE CENTERS OPERATED BY CHURCHES OR RELIGIOUS ENTITIES

### **114-520. General Provisions.**

#### A. Purpose

(1) The purpose of these regulations is to establish standards that protect the health, safety and well being of children receiving care in child care facilities, through the formulation, application and enforcement of these regulations.

#### B. Applicability

(1) These regulations apply to child care centers operated by churches or religious entities as defined in section 114-521A(8).

(2) These regulations do not apply to the following:

(a) Educational facilities, whether private or public, which operate solely for educational purposes in grade one or above;

(b) Five-year-old kindergarten programs;

(c) Kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age;

(d) Facilities operated for more than four hours a day in connection with a shopping center or service or other similar facility, where the same children are cared for less than four hours a day and not on a regular basis while parents or custodians of the children are occupied on the premises or are in the immediate vicinity and immediately available; however, these facilities must meet local fire and sanitation requirements and maintain documentation of these requirements on file at the facility available for public inspection;

(e) School vacation or school holiday day camps for children operating in distinct sessions running less than three weeks per session, unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three consecutive weeks;

(f) Summer resident camps for children;

(g) Bible schools conducted during school vacation periods;

(h) Facilities for persons with intellectual disability provided in Chapter 21, Title 44; and

(i) Facilities for the mentally ill as provided for in Chapter 17, Title 44.

C. Access to and within the center, and physical site accommodations and equipment, shall be provided for children with disabilities to meet their health and safety needs in accordance with applicable state and federal laws.

**HISTORY:** Amended by State Register Volume 17, Issue No. 4, eff April 23, 1993; State Register Volume 29, Issue No. 6, eff June 24, 2005.

#### Code Commissioner's Note

Pursuant to 2011 Act No. 47, § 14(B), the Code Commissioner substituted "intellectual disability" for "mental retardation" and "person with intellectual dis-

ability" or "persons with intellectual disability" for "mentally retarded".

## 114-521. Definitions.

A. Terms used in South Carolina Regulations, Chapter 114, Article 5, Part A, shall be all definitions cited in Section 20-7-2700 et seq., Code of Laws of South Carolina in addition to the definitions that follow:

(1) Applicant: A person 21 years of age or older, representing a corporation, partnership, voluntary association, other public or private organization who has completed, signed and submitted a Department of Social Services (DSS) application form and other requirements to the Department in order to obtain a child care center registration.

(2) Blood-borne pathogens: Pathogenic microorganisms that are present in human blood that can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV) and human immunodeficiency virus (HIV).

(3) Center director: The on-site staff person, who is responsible for the daily operation of a child care center, including but not limited to supervision of staff and children. The center director can only have responsibility for one center and may not hold another full-time job during the hours of center operation.

(4) Center co-director: The on-site staff person who is responsible for the daily operation of a child care center when the director is not present including, but not limited to, the supervision of staff and children.

(5) Center director designee: The on-site staff person who assumes the responsibilities of the Director for limited periods of time, when neither the Director nor Co-Director is on-site.

(6) Central registry of child abuse and neglect: An automated, computerized listing, maintained by the DSS containing the names(s), address(es), birth date(s), identifying characteristics and other

information about individual(s) who have been listed on the registry due to the determination of perpetrating abuse or neglect upon a child.

(7) Child: An individual, from birth through 15 years of age (chronologically), receiving care in a child care center; or up to 18 years of age if the child qualifies as special needs.

(8) Child care center: A center that is registered for thirteen (13) or more children for care.

(9) Complaint: Statement(s) reporting unsatisfactory conditions in a child care facility.

(10) Complete application: An application is complete on the date of receipt of the last document required by the Department in order to issue a registration.

(11) Department: Refers to the Department of Social Services.

(12) Emergency person: An individual 18 years of age or older, not regularly employed by the child care center who is immediately available to serve as staff in emergency situations. This person shall meet all requirements of an employed teacher/caregiver, with the exception of training.

(13) Infant: A child under 12 months of age.

(14) Lifeguard: A person having the qualifications of and possessing a current American Red Cross, YMCA, or equivalent Lifeguard Certificate, current First Aid Certificate and current CPR (which includes adult, child, and infant) Certificate.

(15) Parent: The biological or adoptive mother or father, the legal guardian of the child or the individual agency with custody of the child.

(16) Preschool child: A child 3 or 4 years of age or older but not yet eligible for public kindergarten.

(17) Provisional registration: A registration issued by the Department to a director when the director is temporarily unable to comply with all the requirements for a registration.

(18) Regular registration: A registration issued by the Department for two years to a director showing that the registrar is in compliance with the regulations of the Department at the time of issuance and authorizing the religious entity to operate in accordance with the regulations of the Department.

(19) Renewal: To grant an extension of a regular registration.

(20) School-aged child: A child at least old enough to enroll in public kindergarten.

(21) Sex offender registry: A statewide computerized listing of names and other identifying information on convicted sex offenders maintained and updated by the State Law Enforcement Division (SLED) and authorized by Section 23-3-400 et. Seq., Code of Laws of South Carolina, 1976, as amended.

(22) Staff: Full-time and part-time management, administrative, teaching/caregiving, program, maintenance, food service and service personnel; emergency and substitute personnel; supervised students; supervised student teachers and supervised volunteers.

(23) Staff:child ratio: The maximum number of children permitted per teacher/caregiver.

(24) Student teacher: An individual enrolled in his/her final practicum to be qualified for teacher certification. He or she shall meet the same health standards as other staff and undergo background investigation. He or she may be included in staff:child ratios.

(25) Student volunteer: An individual at least 16 years of age from a recognized educational institution or who may receive credit, reimbursement for expenses or a stipend for providing services in a trainee capacity under supervision of a staff member at all times when providing direct care to children shall not be counted in the staff:child ratio.

(26) Supervision: Care provided to an individual child or a group of children. Adequate supervision requires staff awareness of and responsibility for the ongoing activity of each child, knowledge of activity requirements and children's needs and accountability for their care. Adequate supervision also requires the director, and/or staff being near and having ready access to children in order to intervene when needed. Supervision requires adequate staff to meet staff:child ratios.

(27) Suspend: To void the regular registration of a child care center operated by a religious body.

(28) Teacher/caregiver: Any person whose duties include direct care, supervision, and guidance of children in a child care center.

(29) Toddler: A child 12 months of age or older but younger than 24 months of age.

(30) Training: Participation by child care center staff, in workshops, conferences, educational or provider associations, formal schooling, in-service training, or planned learning opportunities provided by qualified individuals. Training shall be age appropriate for the child population served by the child care center and in subject areas related to: administration, child growth and development and health and safety (such as, but not limited to child care, nutrition, infection control, communicable disease management and causes and signs of child abuse and neglect). Training for directors may also be in areas related to supervision of child care staff or program administration.

(31) Two-year olds: A child 24 months of age or older but younger than 3 years of age.

(32) Volunteer: An individual parent, grandparent, other professional or skilled individual artist or crafts person at least 16 years of age infrequently assisting with the daily activities for children in a child care center who provides services without compensation and who is supervised by staff at all times when providing direct care to children. An individual meeting this definition is not required to undergo a fingerprint background check or health screening and is not counted in staff:child ratios.

**HISTORY: Added by State Register Volume 17, Issue No. 4, eff April 23, 1993. Amended by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114-522. Procedures.**

### **A. Pre-application consultation**

(1) A potential operator may secure information about important items to consider before starting a child care facility by contacting staff of the State or Regional Child Care Licensing Office.

(2) Facilities owned and operated by a local church congregation, established religious denomination, religious college or university which does not receive state or federal financial assistance for child care services may secure information about the registration and inspection process for a child care facility by contacting staff of the State or Regional Child Care Licensing Office.

(3) Facilities owned and operated by a local church congregation, established religious denomination, religious college or university which receive funds through the state or federal government or which voluntarily elect to be licensed, may secure information about the licensing process by contacting staff of the State or Regional Child Care Licensing Office.

### **B. Registration**

(1) An application for a registration shall be completed on appropriate Department forms and shall be signed by the director. The Department representative shall provide the applicant with the required number of forms, a copy of current regulations, a copy of Section 20-7-2700 et seq., Code of Laws of South Carolina (1976), and a copy of Sections of the Children's Code related to child abuse and neglect with an explanation of procedures and information required by the Department. The Department representative shall request in writing that health and fire officials make inspections of the facility.

(2) After giving the applicant at least two working days notice, Department staff shall arrange a registration study during an on-site visit to the proposed facility for determining compliance with applicable regulations.

(3) Upon request of the Department, health and fire officials shall inspect the facility to determine compliance with appropriate regulations and shall put in writing on appropriate forms the results of their inspections.

(4) The Department shall review the completed application form, completed inspection report, completed health and fire inspection reports, current child abuse and criminal history background records checks, written policies and other information specified by the Department to make a determination of issuance or non-issuance of a registration and shall take one of the following actions:

(a) Issue a regular registration if all the provisions of the regulations and statute for the operation of a child care center have been met;

(b) Issue a provisional registration with an accompanying correction notice if one or more violations have been cited which do not seriously threaten the health, safety or well-being of children; or

(c) Deny the issuance of a registration if one or more violations seriously threaten the health, safety or well being of the children.

(5) Failure of Department staff, except as provided by statute, to approve or deny any complete application within ninety days shall result in the granting of a provisional registration.

(6) If a registration is issued, the Department staff shall mail the registration directly to the director.

(7) The registration shall state clearly the name of the director; the address and type of child care facility, the date on which the registration was issued and will expire, and the maximum number of children to be present in the center at any one time.

(8) Department staff shall notify the director as follows if a provisional registration is issued or an application for a registration is denied:

(a) If a provisional registration is issued, the Department shall notify the director in writing of violations to be corrected. The violations shall be cited by regulation number and shall include a form issued by the Department for the director to complete a written plan to correct each violation as approved by the Department; or

(b) If a registration is denied or suspended, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial or suspension and inform the operator of the right to appeal the decision through administrative channels to the department and according to established appeals procedure for the department. Upon appeal, the decision of the department is final unless appealed by a party pursuant to an Administrative Law Judge.

(9) If a facility is found to be in operation after the Department has denied the application for the registration and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel.

#### C. Provisions of the registration

(1) A regular registration issued by the Department to the child care center shall be valid for two years from date of issuance, unless suspended by the Department or voluntarily surrendered by the director; provided however, that a change in location, ownership or sponsorship of the facility shall automatically void the registration.

(2) A provisional registration issued by the Department to a child care center shall be issued for a period within which the deficiencies shall be corrected, and within the conditions permitted by statute.

(3) A provisional registration shall be amended from a provisional to a regular registration when all deficiencies have been verified as corrected.

(4) An application for a registration may be denied or suspended by the Department if the director, any staff member, volunteer(s) or emergency person(s) has been determined to have abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

#### D. Inspection and consultation

(1) Department staff may visit and inspect a child care center operated by religious bodies at anytime during the hours of operation without prior notice to verify regulatory compliance with staff:child ratios.

(2) Department staff may also visit the facility under the following conditions:

(a) The facility requests in writing that a Department representative visit to discuss problems related to the applicable regulations or other matters of concern;

(b) The facility has not applied for registration to the Department as mandated by law; or

(c) There has been a report of child abuse or child neglect involving the facility.

(3) Upon receipt of a regulatory complaint on staff:child ratios, the Department shall conduct an unannounced inspection of the center to investigate the complaint. If the complaint is written, the Department shall provide a copy to the director upon request.

(4) Fire and health officials may visit the facility under the following conditions:

(a) When there is a complaint against the facility citing health and fire regulations violations that threaten serious harm to the children;

(b) When inspections have been requested by Department staff for registration; or

(c) When verification is needed that deficiencies cited by fire and/or health officials have been corrected.

E. Reasons for registration denial, suspension or non-renewal

(1) A registration may be denied, withdrawn or not renewed by the Department if the owner, director or staff member has been determined to have abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

(2) A registration may be denied, withdrawn, or non-renewed by the Department if cited deficiencies threaten serious harm to the health and/or safety of the children.

F. Reporting of changes affecting registration

(1) The director shall immediately report to the Department when an occurrence takes place that may affect the status of the registration including the following:

(a) Change in director, ownership, or sponsorship;

(b) Change in center location; and

(c) Major renovations or alterations to the building.

G. Registration renewal

(1) One hundred and twenty (120) days prior to the expiration date of the current registration, Department staff shall notify the director in writing of the time and requirements for renewal and shall request health and fire inspections.

(2) The same Department actions cited in 114-522B(1-9) above are applicable to the renewal process, except that the Department shall initiate the registration renewal process one hundred and twenty (120) days in advance.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114-523. Management.**

A. Display of registration

(1) The center shall display the current registration, as well as any violations in a prominent public place in the center. The back of the registration shall be displayed if deficiencies are listed.

(2) When advertising or issuing other public notifications of the service provided, the official registration number issued by the Department shall be included.

B. Capacity

(1) No child care center operated by religious bodies shall have present at any one time children in excess of the number for which it is registered.

(2) Exception: In the event of a natural disaster or unscheduled closing of a child care center, the capacity may be exceeded temporarily for a maximum of 90 days to accommodate the displaced children. The director shall notify the Department of the situation and maintain appropriate staff:child ratios at all times. Required records shall be kept on file for the new enrollees.

C. Child abuse

(1) The center shall immediately report suspected child abuse or child neglect to the Department's Office of Child Protective and Preventive Services (CPS) or to local law enforcement in accordance with South Carolina Code Annotated Section 20-7-510.

(2) The director and staff shall cooperate with Department staff during an investigation of child abuse or neglect. Cooperation shall include the following:

(a) Participate in informational conferences with CPS staff;

- (b) Release records as appropriate, of children and staff upon request; and
- (c) Allow access to the center premises for inspection and investigation of the child abuse allegation by the Department and other officials as permitted by statute.

#### D. Reporting of incidents

(1) The center shall report the following incidents to the parents/guardians immediately and provide written notification to the Department within 48 hours after the occurrence:

(a) Accidents or injuries involving any child occurring at the center requiring professional medical treatment; and

(b) Child or staff occurrences of communicable diseases that the Department of Health and Environmental Control (DHEC) requires to be reported in its Exclusion List.

(2) The following incidents shall be reported to the Department immediately:

(a) A child who is missing from the premises, or who is left unattended in a vehicle operated by the child care center;

(b) Major structural damage to center;

(c) Charges or convictions of crimes against the director or any staff person;

(d) Reports of alleged child abuse involving the director or any staff person; and

(e) Death of a child while at the facility.

(i) In the event of the death of a child at the facility, the center shall also immediately notify emergency medical personnel, the child's parents, and law enforcement; and

(ii) Provide information for children and parents as appropriate.

(3) A follow-up report shall be submitted to the Department as soon as an investigation by facility is completed and corrective action is taken.

#### E. Child records

(1) The facility shall keep a separate record for each child.

(2) The file shall be kept in a confidential manner.

(3) A child's record shall be maintained on file at the child care center and made available for review on-site by the Department only in the event of a CPS investigation, and it shall contain the following:

(a) Child's full legal name, nickname, birth date, date of enrollment, current home address and home telephone number;

(b) Full name of parent(s)/guardian(s), work and home telephone numbers, or telephone number(s) where they can be reached during the time the child is in the center;

(c) Name(s), address(es) and telephone number(s) of person(s) who can assume responsibility for the child in an emergency if the parent(s)/guardian(s) cannot be reached;

(d) Name, address and telephone number of family physician or health resource;

(e) Name(s), address(es) and verification of identification, such as valid driver's license, other picture identification or personal family code word of person(s) authorized to take the child from the child care center;

(f) Accurate records of daily attendance for each child;

(g) Authorization from parent(s)/guardian(s) for child to obtain emergency medical treatment;

(h) Authorization from parent(s)/guardian(s) for child to be transported to and from the center during field trips and other away from the center activities; and

(i) Authorization from parent(s)/guardian(s) for child to participate in swimming activities.

(4) A health record shall be maintained in the center for each child enrolled, and it shall include all of the following information:

(a) A signed statement of the child's health prior to admission to the child care center;

(b) A current South Carolina Certificate of Immunization which shall be made available for review on-site; and



(c) Other health information if deemed necessary by the director of the center and/or by parent(s)/guardian(s).

F. Staff records shall include the following:

- (1) Names, positions and hours of duty of staff members;
- (2) Criminal history background records check forms for the director, staff, emergency person(s), and any volunteer(s) not meeting the definition at 114-521A(33);
- (3) Record of training for director and staff;
- (4) Health records for the director, staff, and emergency person(s) in accordance with 114-525G(1)(a-c).

G. Communication

(1) The center shall have an operable telephone with an outside line that is accessible to staff persons in emergencies.

(2) Emergency telephone numbers for the police, fire department, ambulance service and poison control center shall be posted by each telephone.

H. Staffing

(1) Child abuse checks.

(a) The director or staff shall not have been determined to have committed an act of child abuse or neglect or have been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person, any crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency or for the Crime of Contributing to the Delinquency of a Minor in Section 16-17-490.

(b) A check of the South Carolina Central Registry of Child Abuse and Neglect shall be requested by the director(s) on each staff person, except for volunteers in accordance with the following time lines:

- (i) For the director(s) and at least two staff persons prior to the initial issuance of a regular or provisional registration;
- (ii) For the director(s) and staff prior to employment;
- (iii) For all other staff persons (including the emergency person) prior to employment; and
- (iv) For all persons hired by the child care facility at each registration renewal.

(c) No child care center shall employ or retain an individual who has been determined to have committed an act of child abuse or neglect.

(2) Background criminal history checks.

(a) To be employed by or to provide teacher/caregiver services at a child care facility, a person shall first undergo a State fingerprint review from SLED.

(b) A person may be provisionally employed or may provisionally provide teacher/caregiver services after the favorable completion of the state fingerprint review. The Federal Bureau of Investigation (FBI) fingerprints shall be submitted for review within 14 business days upon receiving the SLED results. Upon the completed FBI review, the results will be forwarded to the appropriate Department for distribution.

(c) No child care facility may employ a person, engage the services of or knowingly allow a person in the child care facility during normal hours of operation who is required to register under the sex offender registry act pursuant to SC Code of Laws Section 23-3-430 or who has been convicted of:

- (i) A crime listed in SC Code of Laws Chapter 3 of Title 16, Offenses Against the Person;
- (ii) A crime listed in SC Code of Laws Chapter 15 of Title 16, Offenses Against Morality and Decency;
- (iii) The crime of contributing to the delinquency of a minor, contained in SC Code of Laws Chapter 17 of Title 16 at Section 16-17-490;
- (iv) The felonies classified A through F in SC Code of Laws Chapter 1 of Title 16 at Section 16-1-10A;
- (v) The offenses enumerated in Chapter 1 of Title 16 at Section 16-1-10D; or

(vi) A criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

(d) The results of the fingerprint reviews are valid and reviews are not required to be repeated as long as the person remains employed by or continues providing teacher/caregiver services in a child care facility; however, if a person has a break in service of one year or longer, the fingerprint reviews shall be repeated.

(e) Copies of State and Federal fingerprint results shall be retained in the staff file and available for review by Department staff, upon request.

(3) Center director and/or center co-director(s).

(a) There shall be a center director and/or center co-director(s), who, operating within the organization's chain of command, is responsible for the following:

- (i) Administration and management of the center;
- (ii) Safety and protection of the children;
- (iii) Development and implementation of policies and procedures;
- (iv) Communication with parents about the policies and procedures of the center;
- (v) Staff hiring, supervision and ongoing professional development; and
- (vi) Compliance with all applicable laws and regulations of the child care center.

(b) The center director(s) or a designee shall be physically present on-site during the hours of the center's operation. A center co-director is required when the program operates more than 12 hours per day.

(c) The center director and center co-director(s) shall be at least 21 years of age and meet one of the following qualifications:

(i) A college or university degree in early childhood education, child development, child psychology or a related field that includes at least eighteen credit hours in child development and/or early childhood education;

(ii) A bachelor's degree from a college or university in any subject area and six months experience working with children in a licensed, approved or registered child care facility;

(iii) An associate's degree from a college or university in early childhood education, child development and/or child psychology or a related field, that includes at least eighteen credit hours in child development and/or early childhood education with six months work experience in a licensed, approved or registered child care facility;

(iv) A diploma in child development/early childhood education from an institution of higher learning or a child development associate (CDA) credential, and one year work experience in a licensed, approved or registered child care facility; or

(v) A high school diploma or General Educational Development (GED) certificate with at least one year of work experience in a licensed, approved or registered child care facility. That year shall have included supervision of child care staff. A director/co-director who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the position, must have at least a high school Certificate of Completion with at least one year of work experience in a licensed, approved or registered child care facility. That year shall have included supervision of child care staff.

(4) Teacher(s)/caregiver(s)

(a) Teacher(s)/caregiver(s) shall meet the following qualifications:

(i) Be at least 18 years of age, and able to read and write.

(ii) A teacher/caregiver who began employment in a licensed, approved, or registered child care center in South Carolina after June 30, 1994, must have at least a high school diploma or GED and at least six months experience as a teacher/caregiver in a licensed, approved or registered child care facility.

(iii) A teacher/caregiver who is prevented from obtaining a high school diploma or GED because of a disability, and who otherwise is qualified to perform the essential functions of the

position of teacher/caregiver, must have at least a high school Certificate of Completion and at least six months experience as a teacher/caregiver in a licensed, approved, or registered child care facility.

(iv) If a teacher/caregiver does not meet the experience requirements, the teacher/caregiver must be directly supervised for six months by a staff person with at least one-year experience as a teacher/caregiver in a licensed, approved, or registered child care facility.

(v) Within six months of being employed, a teacher/caregiver must have six clock hours of training in child growth and development and early childhood education or shall continue to be under the direct supervision of a teacher/caregiver who has at least one year of experience as a teacher/caregiver in a licensed, approved, or registered child care facility.

(vi) A teacher/caregiver who has two years experience as a teacher/caregiver in a licensed, approved facility and was employed as of July 1, 1994, in a licensed or approved child care center in South Carolina is exempt from the high school diploma, GED, and Certificate of Completion requirements of (ii and iii) above.

(vii) A teacher/caregiver with an undergraduate college or university degree in early childhood, child development, or a related field may begin working with the children immediately without additional supervision.

(b) Exception: A teacher/caregiver may be 16 or 17 years of age if he/she is continuously supervised by a qualified teacher/caregiver who is in the room at all times.

(c) Exception: Staff persons who were employed prior to the effective date of these revised regulations are not required to meet the staff qualifications specified in this chapter if the staff qualifications required in the prior regulations are met. If a teacher/caregiver has had more than a twelve-month break in service, the new guidelines shall be met for re-employment as a teacher/caregiver.

(5) Professional development.

(a) The director shall participate in at least twenty clock hours of training annually. Training shall be age appropriate for the child population served by the child care center and at least five hours shall be related to program administration and at least five hours shall be in child growth and development and health and safety excluding first aid and CPR training. The remaining hours may come from, but not be limited to, the following areas: Safety, Health, Nutrition, Guidance, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(b) All staff, with the exception of emergency person(s) and volunteer(s), providing direct care to the children shall participate in at least fifteen clock hours annually. At least five clock hours shall be in child growth and development and at least five clock hours shall be in curriculum activities for children excluding first aid and CPR training. The remaining hours may come from, but not be limited to, the following areas: Guidance, Curriculum Activities, Nutrition, or Professional Development and must include blood-borne pathogens training as required by OSHA.

(c) When children with special needs are enrolled, the director and staff members shall receive orientation and/or training in understanding the child's special needs and ways of working in group settings when children with special needs are enrolled.

(d) All staff shall receive information regarding the developmental abilities of the age group(s) with whom the teacher/caregiver will be working.

(e) Records of training received shall be kept on the premises and include the name of the person trained, the person or persons conducting the training, date, number of hours, location, and the competency area of the training.

(f) At least one person who is certified in pediatric first aid, including rescue breathing, CPR, and management of a blocked airway shall be present in the center at all times when children are in care, and during group outings or field trips. Training shall be provided by an individual who is certified as a trainer by a recognized health care organization.

## 114–524. Application of Staff:Child Ratios.

A. Children shall be directly supervised at all times by qualified staff persons.

(1) Directly supervised shall be defined as:

(a) For infants and toddlers: staff persons shall be in the same room or area as the children and the children shall be within their sight at all times; and

(b) For preschool and school age children: staff persons are in the same room or area, readily accessible, aware and responsible for the ongoing activity of each child and able to intervene when needed.

(2) The center shall have a written procedure to account for the presence of each child as the child enters and exits the premise, enters and exits a vehicle or moves to a new location in or around the center.

(3) There shall be at least two staff persons in the center at all times.

(4) Children in feeding chairs shall be constantly supervised.

(5) Unsupervised isolation of a child shall not be allowed. The child shall be within sight of staff if isolation from the group is used.

(6) Children shall not be subjected to:

(a) Withholding, forcing, or threatening to withhold or force food, sleep or toileting;

(b) The use of children to discipline other children; and

(c) Restraining children through drugs or mechanical restraints.

B. Ratios

(1) The following staffing ratios apply at all times children are present on the premises and during activities away from the center and shall be prominently posted in all classrooms.

STAFF:CHILD RATIOS			
Child's Age	Staff:Child Ratio		
	Two years after	Three years after	Four years after
Birth to one year	1:5	1:5	1:5
One to two years	1:6	1:6	1:6
Two to three years	1:9	1:8	1:7
Three to four years	1:13	1:12	1:11
Four to five years	1:18	1:17	1:16
Five to six years	1:21	1:20	1:19
Six to twelve years	1:23	1:23	1:23

(2) When there are mixed age groups in the same room, the staff:child ratio shall be consistent with the age of the majority of the children when no infants or toddlers are in the mixed age group. When infants or toddlers are in the mixed age group, the staff:child ratio for infants and toddlers shall be maintained.

(3) For mixed age groups, with one or more infants or toddlers, the ratios applicable to the youngest child in the group apply.

C. Nap time staff:child ratios

(1) During nap times the following ratios apply as long as at least one other staff person is readily available for each group of children ages two and older:

NAP TIME STAFF:CHILD RATIOS			
Child's Age	Staff:Child Ratio		
	Two years after	Three years after	Four years after
Birth to one year	1:5	1:5	1:5
One to two years	1:6	1:6	1:6
Two to three years	1:18	1:16	1:14
Three to four years	1:26	1:24	1:22

#### D. Water safety staffing

(1) The following staffing ratios apply at all times while children are swimming, wading or near a water source. The staffing ratios shall also apply at all times while children are near a water body that poses a potential risk based upon the age of the child.

WATER SAFETY STAFF:CHILD RATIOS	
Child Age	Staff:Child Ratio
Birth to two years	1:1
Two to three years	1:2
Three to four years	1:3
Four to five years	1:6
Five years and older	2:25

(2) All swimming activities shall be supervised by a person with current lifeguard training certification. If this is a staff person who has current lifeguard training certification, they may be included in the staff:child ratio. In instances in which all staff members can, without the ability to swim, quickly reach any child, a certified lifeguard is unnecessary.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## 114–525. Health, Sanitation and Safety.

### A. Child health

(1) There shall be a statement from a parent/guardian attesting to the health status of the child within 30 days prior to admission and utilizing the appropriate DSS Form.

(2) Children shall be excluded from child care when they exhibit the conditions listed in the DHEC Exclusion Policy.

(3) During hours of operation there shall be no smoking or consumption of alcoholic beverages in the areas used by children or in the food preparation or storage areas. Smoking shall be permitted only in designated areas, a safe distance from the center. Consumption of alcoholic beverages or use of other non-prescription narcotic or illegal substances is prohibited on the center premises. People who appear to be under the influence of alcohol or other drugs shall not be in the center when children are present.

### B. Sanitation

(1) Staff shall ensure that children's faces and hands are clean.

(2) Furniture, toys, and equipment that come into contact with children's mouths shall be washed, rinsed, and sanitized daily and more often if necessary.

(3) Furniture, toys and equipment soiled by secretion or excretion shall be sanitized before reuse.

(4) Linens and blankets as well as cribs, cots, and mats shall be cleaned at least weekly.

(5) If playpens are used, they shall have waterproof, washable, comfortable pads.

(6) If children brush their teeth at the center, each child shall have a separate, labeled toothbrush, stored with bristles exposed to circulating air, and not in contact with another toothbrush.

### C. Emergency medical plan

(1) The center shall have an emergency medical plan to address the following:

- (a) Medical conditions under which emergency care and treatment is warranted;
- (b) Steps to be followed in a medical emergency;
- (c) The hospital or source of health care to be used;
- (d) The method of transportation to be used; and
- (e) An emergency staffing plan.

(2) Emergency information for the child shall be taken with the child to the hospital or emergency location.

(3) A staff person shall remain with the child at the hospital or emergency location until the parent arrives.

#### D. Medications or medical procedures

(1) Written, signed and dated parental consent is required prior to the administration of any prescription or over the counter medication or administration of special medical procedures.

(a) All medications shall be used only for the child for whom the medication is labeled;

(b) Medications shall not be given in excess of the recommended dose; and

(c) Prescribed special medical procedures ordered for a specific child shall be written, signed and dated by a physician or other legally authorized healthcare provider.

(2) Storage of medications.

(a) All medications shall be kept in their original labeled containers. The child's first and last name shall be on all medications.

(b) All medications shall be stored in a separate locked container under proper conditions of sanitation, temperature, light, and moisture.

(c) Discontinued and expired medications shall not be used and shall be returned to the parent or disposed of in a safe manner.

(3) Medication log.

(a) For each medication that is administered by a staff person, a log shall be kept including the child's name, the name of the medication, dosage, date, time and name of person administering the medication. This information shall be logged immediately following the administration of the medication and a copy provided to the child's parent(s)/guardian(s).

(4) Medication errors.

(a) Medication errors, e.g. failure to administer a medication at the prescribed time, administering an incorrect dosage of medication or administering the wrong medication; shall be recorded in the child's record.

(b) The parent shall be immediately notified and notified in writing of a medication error or a suspected adverse reaction to a medication.

#### E. First aid kit

(1) A first aid kit shall be available for the treatment of minor cuts and abrasions and shall be stored in a location inaccessible to children.

#### F. Diapering

(1) Each room in which children who wear diapers are cared for shall have its own diaper-changing area adjacent to the hand-washing sink.

(2) Facilities caring for infants shall provide a diaper changing area located within clear view.

(3) Diaper changing procedures shall be consistent with those recommended by the Center for Disease Control and Prevention.

(4) Diapering surfaces shall be sanitizable.

(5) Diapering surfaces shall be clean, seamless, waterproof and sanitary.

(6) Diapering surfaces shall be cleaned and sanitized after each use by washing to remove visible soil followed by wiping with an approved sanitizing solution (e.g. 1 tablespoon liquid chlorine bleach per one quart of water) and/or disposable, non absorbent paper sheets approved for this purpose and shall be discarded immediately after each diapering.

(7) Blood contaminated materials and diapers shall be discarded in a plastic bag with a secure tie, or in a manner approved by OSHA or the county in which the center is operating. Surfaces contaminated with blood or blood-containing body fluids shall be cleaned with a solution of chlorine bleach and water, or in a manner approved by OSHA or the county in which the center is operating.

(8) Diapering shall occur only at a diapering changing area or in a bathroom.

(9) Diapering changing areas shall not be used for any purpose other than for diapering.

(10) Individual disposable wipes shall be used at each diaper change and shall be placed in a plastic-lined, covered container and disposed of properly, and kept out the reach of children.

(11) Each waste and diaper container shall be labeled and clean and free of build-up of soil and odor. Wastewater from such cleaning operations shall be disposed of as sewage.

(12) Soiled disposable diapers and disposable wipes shall be kept in a closed, labeled hands-free operated, plastic lined receptacle within arm's reach of diaper changing area separate from other trash. Soiled non-disposable items shall be kept in a sealed plastic bag after feces shall be disposed of through the sewage.

(13) Disposable non-absorbent paper sheets shall be disposed of immediately after diapering is completed.

(14) Soiled disposable diapers shall be disposed outside the building daily. Soiled non-disposable diapers shall be kept in a sealed plastic bag and returned to the parent daily.

(15) Staff shall check diapers and clothing at a frequency that ensures prompt changing of diapers and clothing.

(16) No child shall be left unattended while being diapered.

#### G. Staff health

(1) The director shall maintain the following records in the center for herself/himself, staff, and emergency person(s):

(a) Medical statements required by the Department and completed by the staff person verifying whether his/her health is satisfactory. Medical statements shall be updated as necessary;

(b) A health assessment from a health care provider assessing the ability of the staff person to work with children. The health assessment shall be completed within three months prior to employment or within the first month of employment and shall include health history, physical exam, vision and hearing screening, tuberculosis screening, and a review of immunization status. A new health assessment shall be obtained by the director and staff at least every four years after the initial assessment or as necessary; and

(c) Written evidence from a physician or health resource attesting that each staff person is free from communicable tuberculosis at the time of employment and subsequently according to state statute.

(2) No person who is known to be afflicted with any disease in a communicable form, or who is a known carrier of such a disease, or who is afflicted with boils, infected wounds, or sores or acute respiratory infection, shall work in any capacity in a child care center in which there is likelihood of such person transmitting disease or infection to other individuals.

(3) Any staff member, including the director, emergency person(s) and volunteer(s) who, upon examination or as a result of tests, shows a condition that could be detrimental to the children or staff, or which would prevent satisfactory performance of duties, shall not continue work at the child care center until the healthcare provider indicates that the condition no longer presents a threat to children or staff.

(4) Staff persons shall wash their hands with soap and warm running water upon arrival at the center, before preparing or serving food, before assisting a child with eating, after assisting a child with toileting or diapering, before and after toileting, after administering medication, after cleaning, after assisting with wiping noses, after contact with body fluids, after contact with animals and after using cleaning materials. Hands shall be washed even if gloves are worn to perform these tasks.

(5) Staff shall be excluded when they exhibit the conditions listed in the DHEC Exclusion Policy.

#### H. Fire safety and emergency preparedness

(1) Private and public child care centers shall comply with the regulations and codes of the State Fire Marshal.

(2) In the event of a natural disaster or unscheduled closing of a child care center, the capacity may be exceeded temporarily to accommodate the displaced children. The director shall notify the Department of the situation and maintain appropriate staff:child ratios at all times. Required records shall be kept on file for the new enrollees.

(3) The facility shall have an up to date written plan for evacuating in case of a fire, natural disaster or other threatening situation that may pose a health or safety hazard. The facility shall also include procedures for staff training in this emergency plan.

#### I. Transportation

(1) If the center provides or arranges for transportation through contract, the following transportation requirements apply:

(a) The staffing ratios specified in 114-524B(1-3) apply. The driver of the vehicle shall not be counted in the ratios for infants or toddlers;

(b) Each child shall be secured in an individual, age-appropriate safety restraint at all times the vehicle is in motion;

(c) Safety restraints shall be used in accordance with the manufacturer's instructions;

(d) A child shall not be left unattended in a vehicle;

(e) Placement of children in the vehicle shall be in accordance with all applicable state and federal laws;

(f) The driver shall have a valid regular or commercial driver's license and shall be in compliance with Section 20-7-2725A(4) of the Code of Laws of 1976;

(g) There shall be a first aid kit and emergency information on each child in the vehicle;

(h) Use of tobacco products is prohibited in the vehicle;

(i) Written consent from the parent is required prior to transportation;

(j) When the facility provides transportation to and from the child's home, the facility staff shall be responsible for picking the child up and returning the child to a designated location; and

(k) The director and/or staff of the center shall provide the driver of the vehicle with a record that lists the name, address, and telephone number of the center, as well as names of children being transported.

(2) The following requirements apply for safe pick-up and drop-off:

(a) The center shall have safe crossways and pick-up and drop-off locations and communicate these locations to the parents;

(b) Children shall be directly supervised during boarding and exiting vehicles;

(c) The director and/or staff shall have on file, in the facility, written permission from parent(s)/guardian(s) for transporting children to and from the home, school, or other designated places, including center-planned field trips and activities; and

(d) Written transportation plans for routine travel shall be on file. Plans shall include a checklist to account for the loading and unloading of children at every location.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114-526. Physical Site.**

#### A. Indoor space and conditions

(1) The director shall provide at least thirty-five (35) square feet of indoor play space per child, measured by Department staff from wall to wall. Department staff shall determine the total number of children to be cared for in each room by measuring and computing the rooms separately. Bathrooms, reception areas, isolation rooms, halls and space occupied by cupboards, shelves, furniture and equipment which are accessible to children for their use shall be allowable space. Kitchens, storage rooms and storage cabinets used solely for or by staff shall be excluded. Halls, although included in total indoor space, shall not be used for activities or storage of furniture and equipment.

(2) Ventilation.

(a) Child care areas, dining areas, kitchens and bathrooms shall be ventilated by mechanical ventilation, such as fans or air conditioning, or at least one operable window.

(b) If freestanding fans are used, fans shall have a stable base, be equipped with protective guards and be placed in a safe location.



(c) Windows, including windows in doors, when utilized for ventilation purposes shall be securely screened to prevent the entrance of insects.

(d) Windows accessible to children under 5 years of age that are above ground level of the building shall be adjusted to limit the opening to less than 6 inches or protected with guards that do not block outdoor light.

(3) Safety glass shall be used on clear glass windows and doors that are within thirty-two inches above floor level and that are accessible to children. Decals shall be applied to all glass or sliding patio doors and placed at eye level of the children being cared for at the facility.

(4) Lighting.

(a) Rooms, hallways, interior stairs, outside steps, outside doorways, porches, ramps and fire escapes shall be lighted.

(b) At least twenty foot candles of light shall be required on all work surfaces in food preparation, equipment washing, utensil washing, hand-washing areas, and toilet rooms.

(c) Adequate, safe lighting for individual activities, for corridors, and for bathrooms shall be provided.

(5) Environmental hazards.

(a) Safety barriers shall be placed around all heating and cooling sources, such as hot water pipes, fixed space heaters, wood- and coal-burning stoves, hot water heaters, and radiators, that are accessible to children to prevent accidents or injuries upon contact by the child.

(b) Knives, lighters, matches, projectile toys, tobacco products, microwave ovens and other items that could be hazardous to children shall not be accessible to children.

(c) To prevent lead poisoning in children, child care centers shall meet applicable lead base paint requirements, as established by the DHEC.

(d) Floors, walls, ceilings, windows, doors and other surfaces shall be free from hazards such as peeling paint, broken or loose parts, loose or torn flooring or carpeting, pinch and crush points, sharp edges, splinters, exposed bolts and openings that could cause head or limb entrapment.

(e) The use of sinks, equipment and utensil-washing sinks, or food preparation sinks for the cleaning of garbage and refuse containers and the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water or similar liquid waters is prohibited.

(f) Children shall not be present in the area during construction or remodeling and not in the immediate area during cleaning or in such a manner as not to create a condition that might result in an accident or cause harm to the health and safety of the children.

(g) The following items shall be secured or inaccessible to children for whom they are not age appropriate:

(i) Items that may cause strangulation such as blind cords, plastic bags, necklaces, drawstrings on clothing and string;

(ii) Items that may cause suffocation such as sand, beanbag chairs, pillows, soft bedding and stuffed animals; and

(iii) Items that may cause choking such as materials smaller than 1 ¼ inch in diameter, items with removable parts smaller than 1 ¼ inch in diameter, Styrofoam objects and latex balloons.

(6) Water supply.

(a) The water supply shall meet applicable requirements for water quality and testing in accordance with the DHEC.

(b) The center shall have hot and cold water under pressure. (Forty PSI recommended) If an individual private well water supply is used, the director shall obtain approval pursuant to DHEC to ensure safe location, construction, and proper maintenance and operation of the system.

(c) Hot water shall be between 100 and 120 degrees Fahrenheit.

(d) Safe drinking water shall be available to children at all times and there shall be no use of common drinking cups.

(e) If a water fountain is available, it shall be of an angle-jet design, maintained in good repair and kept sanitary. There shall be no possibility of mouth or nose submersion.

(f) Ice used for any purpose shall be made from water from an approved source. The ice shall be handled and stored in a sanitary manner.

(7) Temperature.

(a) Temperature shall be maintained between 68 and 80 degrees Fahrenheit as appropriate to the season while children are present in the center.

(b) When outdoor temperature exceeds 90 degrees Fahrenheit, caution shall be used when children are involved in outdoor physical activities.

(8) Sanitation.

(a) Clean and sanitary conditions shall be maintained indoors and outdoors, including indoor and outdoor recreational equipment and furnishings.

(b) Measures to control insects, rodents, and other vermin shall be taken to prevent harborage, breeding, and infestation of the premises.

(c) All solid wastes shall be disposed of at sufficient frequencies and in such a manner not to create a rodent, insect, or vermin problem.

(d) Trash in diapering areas shall be kept in closed, hands-free operated, plastic lined receptacles in good repair.

(e) Trash in kitchen areas shall be kept in closed, plastic lined receptacles.

(f) Trash in children's restrooms, classrooms, and eating areas shall be kept in plastic lined receptacles.

(g) Trash receptacles outside the building, shall be watertight with firm fitting lids that prevent the penetration of insects and rodents.

(h) Trash disposal and sewage system construction and usage shall be in accordance with local standards and ordinances.

(i) The use of child care room, bathroom, or kitchen sinks for cleaning of trash receptacles or cleaning equipment is prohibited.

(9) Doors.

(a) Protective gates shall be of the type that do not block emergency entrances and exits and that prevent finger pinching and head or limb entrapment.

(10) Landings, stairs, handrails and railings.

(a) Children shall not have access to a door that swings open to a descending stairwell or outside steps, unless there is a landing that is at least as wide as the doorway at the top of the stairs.

(b) Each ramp and each interior stairway and outside steps exceeding two steps shall be equipped with a secure handrail at the height appropriate for the sizes of the children at the center.

(c) Stairs shall have a nonskid surface.

(d) Each porch and deck that has over an 18-inch drop shall have a well-secured railing.

(e) Interior stairs that are not enclosed shall have a barrier to prevent falls.

(11) Electrical sources.

(a) The center shall be connected with an electrical source.

(b) Electrical outlets and fixtures shall be connected to the electrical source in a manner that meets local electrical codes, as certified by an electrical code inspector.

(c) Electrical outlets shall be securely covered with childproof covers or safety plugs when not in use in all areas accessible to children.

(d) No electrical device accessible to children shall be located so that it could be plugged into the outlet while in contact with a water source, such as sinks, tubs, shower areas, or swimming/wading pools unless ground fault devices are utilized.

(12) Bathrooms.

(a) There shall be at least one flush toilet for every 20 children over two years of age. Staff shall be included when determining availability of toilets if there are no staff rest rooms.

(b) If seat adapters are used for toilet training, they shall be cleaned and sanitized after each use.

(c) Toilet training equipment shall be provided to children who are being toilet trained.

(d) There shall be at least one sink with hot and cold running water under pressure for every 20 children over two years of age. Sinks shall be located in or near each toilet area.

(e) Toilets and sinks shall be at heights accessible to the children using them or shall be equipped with safe and sturdy platforms or steps.

(f) Privacy shall be provided for toilets used by preschool and school age children.

(g) Floor and wall surfaces in the toilet area shall have smooth, washable surfaces. Carpeting is not permitted in the toilet area.

(h) Toilets, toilet seat adapters, sinks, and restrooms shall be cleaned at least daily and shall be in good repair.

(i) Liquid or granular soap and disposable towels shall be provided at each sink.

(j) Children shall not be left unattended in a bathtub or shower.

(k) Easily cleanable receptacles shall be provided for waste material. Toilet rooms used by women shall be provided with at least one covered waste receptacle.

(l) Bathroom facilities shall be completely enclosed.

#### B. Outdoor space

(1) The director shall provide at least seventy-five (75) square feet of outdoor play space per child. Where outdoor space is insufficient at the center, the director and/or staff may take the children outdoors in shifts or utilize parks or other outdoor play areas which meet safety requirements and which are easily accessible.

(2) The outdoor space shall be free from hazards and litter.

(3) Outdoor walkways shall be free from debris, leaves, ice, snow, and obstruction.

(4) Children shall be restricted from unsafe areas and conditions such as traffic, parking areas, ditches, and steep slopes by a fence or natural barrier that is at least four feet high.

#### C. Furniture, toys, and recreational equipment

(1) Shall be clean and free from hazards such as broken or loose parts, rust or peeling paint, pinch or crush points, unstable bases, sharp edges, exposed bolts, and openings that could cause head or limb entrapment.

(2) Shall meet the standards of the CPSC, if applicable. Recalled products listed by the CPSC shall not be accessible to children.

(3) Shall be developmentally and size appropriate, accommodating the maximum number of children involved in an activity at any one time.

(4) The sides of playpens shall remain latched as long as a child is using the playpen. If playpens are used they shall have waterproof, washable, comfortable pads.

(5) Outdoor recreational equipment shall be made of durable, non-rusting, non-poisonous materials, and shall be sturdy.

(6) Stationary outdoor equipment shall be firmly anchored and shall not be placed on a concrete or asphalt surface. Cushioning material such as mats, wood chips or sand shall be used under climbers, slides, swings, and large pieces of equipment.

(7) Swings shall be located to minimize accidents and shall have soft and flexible seats.

(8) Cushioning material shall extend at least six feet beyond the equipment and swings.

(9) Slides shall have secure guards along both sides of the ladder and placed in a shaded area.

(10) Outdoor metal equipment shall be located in shaded areas or otherwise protected from the sun.

(11) Outdoor equipment shall be arranged so that children can be seen at all times.

(12) The height of play equipment shall be developmentally and size appropriate.

(13) Sand in a sand box shall be securely covered when not in use and, if outdoors, constructed to provide for drainage.

(14) Indoor recreational equipment and furnishings shall be cleaned and disinfected when they are soiled or at least once weekly and shall be of safe construction and free of sharp edges and loose or rusty points. Indoor recreational equipment and furnishings shall be clean and shall be of safe construction and free of sharp edges and loose or rusty points.

(15) A properly fitting bicycle helmet that is approved by American National Standards Institute, Snell Memorial Foundation, or American Society for Testing and Materials, shall be worn by each child when riding a bicycle, skateboard, roller blades, or skates. Helmets are optional for use with tricycles.

#### D. Rest equipment

(1) Cribs shall meet the requirements of the CPSC.

(2) Individual, clean, developmentally appropriate cribs, cots, or mats shall be provided for each infant, toddler and preschool child, and used only by that child until they have been sanitized.

(3) Cribs, cots, and mats shall be made of easily cleanable material.

(4) Placement of sleeping and napping equipment shall allow ready access to each child by staff.

(5) Individual, clean, appropriate coverings shall be provided.

(6) Cots and mats shall be stored so that the surface on which a child lies does not touch the floor.

#### E. Environmental hazards

(1) Poisons or harmful agents.

(a) Poisons or harmful agents shall be kept locked, stored in the original containers, labeled and inaccessible to children.

(b) Poisons or harmful agents shall be purchased in childproof containers, if available.

(c) Play materials, including arts and crafts, shall be non-poisonous.

(d) Poisonous plants are not permitted.

(e) Pesticides shall be of a type applied by a licensed exterminator in a manner approved by the United States Environmental Protection Agency. Pesticides shall be used in strict compliance with label instructions and should not be used while children are present. Pesticide containers shall be prominently and distinctly marked or labeled for easy identification of contents and stored in a secure site accessible only to authorized staff.

(2) Water hazards.

(a) Swimming pools located at the center or used by the center shall conform to the regulations of DHEC for construction, use, and maintenance.

(b) Swimming pools, stationary wading pools and other water sources such as ditches, streams, ponds, and lakes shall be made inaccessible to children by a secure fence that is at least 4 feet high; exits and entrances shall have self-closing, positive latching gates with locking devices;

(c) Children shall not be permitted in hot tubs, spas, or saunas.

(d) Children shall not be permitted to play in areas where there are swimming pools or other water sources without constant supervision.

(3) Firearms, weapons, and ammunition are not permitted in the center or on the premises without the express permission of the authorities in charge of the premises or property. This does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science.

(4) Animals: The following requirements apply in regard to animals:

(a) Healthy animals which present no apparent threat to the health and safety of the children shall be permitted, provided they are cleaned properly housed, fed and cared for and have had required vaccinations, as appropriate. Live animals shall be excluded from areas where food for human consumption is stored, prepared or served;

(b) Animals shall not be permitted if a child in the room or area is allergic to the specific type of animal;

(c) Animal litter and waste shall not be accessible to children; and

(d) Reptiles and rodents shall not be accessible to children without adult supervision.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

## **114–527. Meal Requirements and Preparation, Serving, Storage and Protection of Food Supplies, Utensils and Equipment.**

### **A. Meal requirements**

(1) If food is provided by the facility, the following requirements shall be met:

(a) Daily menus shall be dated and posted in a conspicuous location in public view;

(b) Meals and snacks provided shall be in compliance with the USDA Child Care Food Program Guidelines. Centers that do not provide overnight care shall serve at least one meal and at least one snack that meet USDA Child Care Food Program Guidelines. Centers providing care between the hours of 6:00 p.m. and midnight shall additionally meet USDA Child Care Food Program Guidelines in serving dinner and at least one additional snack. Meal components and serving sizes shall be in accordance with these guidelines;

(c) Only Grade A pasteurized fluid milk and fluid milk products may be given to any child less than 24 months old, except with a written permission from the child's health provider;

(d) Whole milk may not be served to children less than 12 months of age, except with a written permission from the child's health provider; and

(e) Reconstituted milk shall not be served to any child, regardless of age.

(2) Food served shall be suited to the child's age and appetite. Second portions shall be available.

(3) Round, firm foods shall not be offered to children younger than four years old. Examples of such foods include: hot dogs, grapes, hard candy, nuts, peanuts, and popcorn. Hot dogs may be served if cut lengthwise and quartered; grapes may be served if cut in halves.

(4) All food in child care centers shall be from a source approved by the health authority and shall be clean, wholesome, unspoiled, free from contamination, properly labeled, and safe for human consumption.

(5) The use of food in hermetically sealed containers that was not prepared in an approved food-processing establishment is prohibited.

(6) The use of home-canned foods is not allowed.

(7) The following requirements shall be met when it is necessary to provide meals through a catering service:

(a) Catered meals shall be obtained from a food service establishment approved by the DHEC;

(b) If adequate cleaning and sanitizing equipment is not available, only disposable eating and drinking utensils shall be used to serve catered meals or food; and

(c) The procedures and equipment used to transport catered meals shall be approved by the DHEC.

(8) Meals and snacks may be provided by the center or the parent. The center shall have a small supply of nutritional food and beverages available in the event a parent neglects to bring the child's food on an unanticipated basis.

(9) Dietary alternatives shall be available for a child who has special health needs or religious beliefs.

(10) Written permission/instructions for dietary modifications signed by the child's health care provider or parent or legal guardian are required.

### **B. Food preparation**

(1) Adequate hand-washing facilities equipped with hot and cold water under pressure, supplied through a mixing faucet, shall be provided in the food preparation area. Hot water shall be between 100 and 120 degrees Fahrenheit. (Facilities shall not be required to install an additional

hand-washing sink in the food preparation area if, in the opinion of the health authority, the existing hand-washing facilities are adequate.)

(2) Sanitary soap and towels shall be provided.

(3) Utensils, such as forks, knives, tongs, spoons, and scoops shall be provided and used to minimize handling of food in all food preparation areas.

(4) Staff shall thoroughly wash their hands and exposed areas of arms with soap and warm water in an approved hand-washing sink before starting work, during work as often as is necessary to keep them clean, e.g., after smoking, eating, drinking, or using the toilet. Staff shall keep their fingernails clean and trimmed.

(5) The outer clothing of all staff shall be clean. The director shall ensure proper hair restraints are worn to protect from falling hair.

(6) Staff shall neither use tobacco in any form while preparing or serving food, nor while in areas used for equipment or utensil washing or for food preparation. Staff shall use tobacco only in approved, designated areas.

(7) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to an internal temperature of at least 140 degrees Fahrenheit, with the following exceptions:

(a) Hamburger shall be cooked to at least 155 degrees Fahrenheit;

(b) Poultry, poultry stuffing, stuffed meats, and stuffing-containing meat shall be cooked to heat all parts of the food to at least 165 degrees Fahrenheit with no interruption of the cooking process;

(c) Pork and any food containing pork shall be cooked to heat all parts of the food to at least 150 degrees Fahrenheit; and

(d) Rare roast beef and rare beefsteak shall be cooked to surface temperature of at least 130 degrees Fahrenheit.

(8) Potentially hazardous food such as meats, cooked rice, and cream-filled pastries shall be prepared (preferably from chilled products) with a minimum of manual contact and on surfaces with utensils that are clean and sanitized prior to use.

(9) Metal, stem-type, numerically-scaled indicating thermometers, accurate to plus or minus three degrees Fahrenheit, shall be provided and used to ensure that proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods are maintained.

(10) Potentially hazardous foods shall be thawed as follows:

(a) In refrigerated units at a temperature not to exceed 45 degrees Fahrenheit;

(b) Under potable running water from the cold water supply with sufficient water velocity to remove loose food particles;

(c) In a microwave oven only when food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or

(d) As part of the conventional cooking process.

(11) All raw fruits and vegetables shall be washed thoroughly before being cooked, served, or placed in refrigerators.

### C. Food service

(1) No child shall be deprived of a meal or snack if he/she is in attendance at the time the meal or snack is served.

(2) Easily breakable dinnerware shall not be used.

(3) Children shall not be forced to eat.

(4) Food shall not be used as a punishment.

(5) Children shall not be allowed in the kitchen except during supervised activities.

(6) Portions of food once served shall not be served again.

(7) Single-service articles shall be stored in closed cartons or containers to protect them from contamination.

- (8) Use of common drinking cups is prohibited.
- (9) Disposable cups, if used, shall be handled and stored properly to prevent contamination.
- (10) Reuse of single service articles is prohibited.

(11) If potentially hazardous foods that have been cooked and then refrigerated are to be served hot, they shall be reheated rapidly to 165 degrees Fahrenheit or higher throughout before being served or before being placed in a hot food-storage facility. Steam tables, double boilers, warmers, and similar hot food holding facilities are prohibited from use for the rapid reheating of potentially hazardous foods.

#### D. Storage

- (1) All food shall be properly labeled and stored, and shall be protected against contamination.
- (2) The director shall provide refrigeration units and insulated facilities, as needed, to ensure that all potentially hazardous foods are maintained at 45 degrees Fahrenheit or below or 130 degrees Fahrenheit or above, except during necessary periods of preparation.
- (3) Thermometers shall be accurate to plus or minus 3 degrees and conspicuously placed in the warmest area of all cooling and warming units to ensure proper temperatures.
- (4) Containers of food, food preparation equipment and single service articles shall be stored at least 6" above the floor, on clean surfaces, and in such a manner to be protected from splash and other contamination.
- (5) Food not subject to further washing or cooking before serving shall be stored in such a manner to be protected against contamination from food requiring washing or cooking.
- (6) The storage of food or food equipment, utensils, or single-service articles in toilet rooms and under exposed sewer lines is prohibited.
- (7) Custards, cream fillings, or similar products which are prepared by hot or cold processes shall be kept at safe temperatures except during necessary periods of preparation and service.
- (8) All cleaning supplies, detergents, and other potentially poisonous items shall be stored away from food items and shall be inaccessible to children.

#### E. Cleaning, storage, and handling of utensils and equipment

- (1) Tableware shall be washed, rinsed, and sanitized after each use.
- (2) All kitchenware and food-contact surfaces of equipment shall be washed, rinsed and sanitized.
- (3) The cooking surfaces of cooking devices shall be cleaned as often as necessary and shall be free of encrusted grease deposits and other soil.
- (4) Non-food contact surfaces of all equipment, including tables, counters, and shelves, shall be cleaned at such frequency as is necessary to be free of accumulation of dust, dirt, food particles, and other debris.
- (5) After sanitation, all equipment and utensils shall be air-dried.
- (6) Prior to washing, all equipment and utensils shall be rinsed or scraped, and when necessary, presoaked to remove gross food particles and soil.
- (7) When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent solution that is kept reasonably clean, be rinsed thoroughly of such solution, sanitized by one of the following methods:
  - (a) Complete immersion for at least 30 seconds in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and at a temperature of at least 75 degrees Fahrenheit;
  - (b) Complete immersion for at least 30 seconds in a clean solution containing at least 12.5 parts per million of available iodine and having a pH no higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit;
  - (c) Complete immersion for at least 30 seconds in a clean solution containing at least 200 parts per million of quaternary ammonium at a temperature of at least 75 degrees Fahrenheit; or
  - (d) Complete immersion in hot water at a temperature of 170 degrees Fahrenheit in a three-compartment sink.

(8) Other chemical sanitizing agents may be used which have been demonstrated to the satisfaction of the health authority to be effective and non-toxic under use conditions, and for which suitable field tests are available. Such sanitizing agents, in use solution, shall provide the equivalent bactericidal effect for a solution containing at least 50 parts per million of available chlorine at a temperature not less than 75 degrees Fahrenheit.

(9) A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

(10) All dishwashing machines shall be approved by DHEC and shall meet applicable installation requirements.

(11) Food-contact surfaces of cleaned and sanitized equipment and utensils shall be handled in such a manner as to be protected from contamination.

(12) Cleaned and sanitized utensils shall be stored above the floor in a clean, dry location so that food-contact surfaces are protected from contamination.

(13) Clean spoons, knives, and forks shall be picked up and touched only by their handles. Clean cups, glasses, and bowls shall be handled so that fingers and thumbs do not contact inside surfaces or lip-contact surfaces.

(14) Dish tables or drain boards of adequate size to properly handle soiled utensils prior to washing and for cleaned utensils following rinsing and sanitizing shall be provided.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

#### FAMILY DAY CARE HOMES

(PROVIDE CARE FOR NO MORE THAN SIX CHILDREN)

### **114–528. Definitions and Procedures.**

#### A. Definitions.

Terms used in South Carolina Regulations, Chapter 114, Article 5, Part A, shall be all definitions cited in Section 20-7-2700 et seq., Code of Laws of South Carolina in addition to the definitions which follow:

(1) Emergency Person. An individual not regularly employed by the facility who is immediately available to serve as staff in the facility during emergency situations.

(2) Judicially Determined. A criminal conviction in a court of law which is either the result of a jury trial, guilty plea, plea of no contest or forfeiture of bond in cases of misdemeanor or a determination of child abuse or neglect in any court of competent jurisdiction.

(3) Original and Renewal Application for a License/Approval. Completed Department of Social Services (DSS) application form, completed DSS inspection study, completed health and fire inspection reports, current criminal history background records checks, written policies, and other related information deemed necessary by the Department to make a determination of issuance or non-issuance of a license/approval.

(4) Overnight Care. Care provided to children by the facilities defined in these regulations from 1:00 a.m. to 6:00 a.m.

(5) Parent. Biological or legal guardian of the child or individual or agency with physical or legal custody.

(6) Staff. Full-time and part-time administrative, program, service and volunteer personnel, including emergency persons.

(7) Supervision. Care provided to an individual child or group of children. Adequate supervision requires awareness of and responsibility for the ongoing activity of each child, knowledge of activity requirements and children's needs and accountability for their care. Adequate supervision also requires the operator and/or staff being near and having ready access to children in order to intervene when needed.

(8) Training. Participation during the calendar year in workshops, conferences, support groups, educational or provider associations, formal schooling, in-service training or planned learning



opportunities provided by a child day care operator, director, other staff, or consultants. Training must be in subject areas related to child care, child development, and/or early childhood education and nutrition. Training for operators may also be in areas related to day care program administration and must include alternatives to corporal punishment.

(9) Volunteer. An individual whose services are involved in the operation of the family day care home without compensation on a daily, weekly or monthly basis, including parents, students, student teachers and other persons all of whom are subject to compliance with the same applicable regulations as paid family day care home staff.

#### B. Procedures for Pre-Application Consultation and Original Registration.

(1) A potential operator of a family day care home may secure information about the registration or licensure process by contacting the State or local county Department of Social Services.

(2) The family day care home applicant shall have a working, listed telephone in the facility and shall make the telephone number available to parent(s)/guardian(s) of children enrolled in the facility and to Department staff.

(3) The Department representative shall provide the applicant with the required number of forms, a copy of the current Suggested Standards and Regulations for Family Day Care Homes, a copy of Section 20-7-2700 et seq., Code of Laws of South Carolina (Child Day Care Statute) and a copy of sections of the Children's Code which are related to child abuse and neglect, with an explanation of procedures and information required by the Department.

(4) The applicant shall complete the following:

(a) Complete and sign the required number of application forms;

(b) Obtain and submit to Department staff current (less than one year old) South Carolina State Law Enforcement Division (SLED) criminal history background records checks for himself/herself, substitute caregiver(s), emergency person(s) and volunteer(s).

(c) Provide written references with names, addresses and telephone numbers of at least three persons unrelated to the applicant who shall be contacted by the Department as references;

(d) Read the Suggested Standards For Family Day Care Homes;

(e) Furnish or review with parent(s)/guardian(s) of each child to be enrolled in the facility, a copy of the Suggested Standards;

(f) Secure a signed statement from each parent/guardian verifying that they have reviewed the Suggested Standards;

(g) Send required copies of completed and signed applications, required information regarding references and all signed statements from parent(s)/guardian(s) to Department staff;

(5) Department staff shall review the registration materials and shall complete the following:

(a) Contact by telephone within thirty days of receipt, the persons listed as references by the applicant and document their comments;

(b) Issue regular registration if all regulatory requirements have been met;

(c) Issue provisional registration when regulations can and will be met within a reasonable time and the deviations do not seriously threaten the health or safety of the children; or

(d) Deny the application for registration.

(6) If registration is issued, Department staff shall mail the registration directly to the potential operator.

(7) If Department staff proposes to deny an application for registration, the applicant shall be given written notice by certified mail indicating the reason(s) for the proposed action and the right of the applicant to appeal the decision in accordance with Department fair hearing regulations.

(8) If no written appeal is made, the application shall be denied as of the termination of the thirty day period.

#### C. Procedures for Registration Renewal.

(1) Department staff shall advise the family day care home operator in writing of the time and requirements for renewal one hundred and twenty days prior to the expiration date of the current registration.

(2) The operator shall complete the following:

- (a) Complete and sign the required number of application forms;
- (b) Provide the name(s) of additional person(s) to be contacted as references if original references are no longer active;
- (c) Re-read the Suggested Standards for Family Day Care Homes;
- (d) Furnish a copy of or review with parent(s)/guardian(s) of any new children enrolled in the facility the Suggested Standards;
- (e) Secure a signed statement from each parent/guardian of new enrollees verifying he/she has reviewed a copy of the Suggested Standards;
- (f) Send the required copies of the completed and signed application, the names of any person(s) to be contacted as new references, and signed statements from parent(s)/guardian(s) to the Department.

(3) Department staff shall review the registration renewal materials and shall complete the following:

- (a) Contact by telephone within thirty days of receipt of references the person(s) listed as new references and document their comments;
- (b) Issue regular registration if all regulatory requirements have been met;
- (c) Issue provisional registration when regulations can and will be met within a reasonable time and the deviations do not seriously threaten the health and safety of the children; or
- (d) Deny the application for registration renewal.

(4) If the registration is renewed, Department staff shall mail the registration directly to the operator.

(5) If the application for registration renewal is denied, Department staff shall give the operator written notice by certified mail indicating the reason(s) for the proposed action and the right of the operator to appeal the decision in accordance with Department fair hearing regulations.

(6) If no written appeal is made, the Department shall deny the application for registration renewal at the termination of the thirty day period.

#### D. Provisions of the Registration.

(1) Registration issued by the Department to a family day care home operator shall be valid for one year from date of issuance, unless withdrawn by the Department or voluntarily surrendered by the operator. If the facility ceases operation, the registration shall be returned to the Department within thirty days of facility closure.

(2) The current registration shall be displayed in a prominent location in the home during the hours of operation.

(3) The number of children present in the facility at any given time shall not exceed the number specified on the registration.

(4) A change in location shall automatically void the registration.

(5) The Department shall withdraw registration if the health and safety of the children is determined to be at risk or in threat of harm; if the operator cares for more children than the number stated on the registration; or if the operator fails to comply with the registration procedures defined in statute and these regulations.

(6) An operator whose registration has been withdrawn by the Department shall be given written notice by certified mail. The notice shall contain the reason(s) for the proposed action and shall inform the operator of the right to appeal the decision to the Commissioner in writing within thirty calendar days after receipt of the notice.

(7) If no written appeal is made, the Department shall withdraw the registration at the termination of the thirty day period.

(8) The application for original registration or registration renewal may be denied or the registration may be withdrawn by the Department, if the operator, any staff including substitute caregiver(s), volunteer(s) and emergency person(s) or household member(s), abuses or neglects any child as defined in Section 20-7-490, (B), South Carolina Code of Laws, 1976, as amended.

#### E. Procedures for Securing An Original License/Approval.

(1) For the purpose of applying for a license/approval, the family day care home applicant shall comply with the South Carolina Department of Social Services Suggested Standards for Family Day Care Homes.

(2) An application for a family day care home license/approval must be completed on appropriate Department forms and shall be signed by the applicant. Department staff shall provide the applicant with the required number of forms, a copy of the current Suggested Standards and Regulations for Family Day Care Homes, a copy of Section 20-7-2700 et seq., Code of Laws of South Carolina (Child Day Care Statute), and a copy of sections of the Children's Code related to child abuse and neglect, with an explanation of procedures and information required by the Department.

(3) Department staff shall request in writing that health and fire officials make inspections of the facility.

(4) After giving the applicant prior notice, Department staff shall make an on-site visit to the proposed family day care home to determine compliance with appropriate regulations by completing a licensing/approval study.

(5) Health and fire officials shall inspect the facility to determine compliance with appropriate regulations and shall put their results in writing on the appropriate forms.

(6) Department staff shall review the findings of the complete application and shall take one of the following actions:

(a) Issue a regular license/regular approval if all provisions of the regulations, suggested standards and statute for the operation of a licensed/approved family day care home have been met;

(b) Issue a provisional license/provisional approval if deficiencies have been cited which would not place children at risk or in threat of harm; or

(c) Deny the application for a license/approval if cited deficiencies would place children at risk or in threat of harm.

(7) Failure of Department staff to approve or deny a complete application within ninety days shall result in the granting of a provisional license/provisional approval.

(8) If a regular license/regular approval is issued, Department staff shall mail the license/approval directly to the operator.

(9) The license/approval shall state the name of the operator, the address and type of child day care facility, the date on which the license/approval was issued and will expire, and the maximum number of children to be present in the facility at any one time.

(10) Department staff shall notify the operator as follows if a provisional license/provisional approval is issued or an application for a license/approval is denied:

(a) If a provisional license/provisional approval is issued, Department staff shall notify the operator in writing of deficiencies to be corrected. The deficiencies shall be cited on the back of the provisional license/approval and shall include the appropriate regulation number(s);

(b) If Department staff proposes to deny an application for a license/approval, the applicant shall be given written notice by certified mail indicating the reason(s) for the proposed action and the right of the applicant to request an appeal within thirty days after the receipt of the notice of denial.

(11) If a facility is found to be in operation after the Department has denied the application for a license/approval and the administrative appeal/review procedure has been completed, Department staff shall request that the circuit solicitor initiate injunctive action.

#### F. Procedures for License/Approval Renewal.

(1) For the purpose of applying for renewal of a license/approval, the family day care home operator shall comply with the South Carolina Department of Social Services Suggested Standards for Family Day Care Homes.

(2) One hundred and twenty days prior to the expiration date of the current license/approval, Department staff shall notify the operator in writing of the time and requirements for renewal and request health and fire inspections.

(3) The same Department actions cited above in E.(2) through (11), are applicable to the renewal process, except that Department staff shall initiate the license/approval renewal process one hundred and twenty days in advance.

#### G. Provisions of the License/Approval.

(1) A regular license/regular approval issued by the Department to the family day care home shall be valid for two years from date of issuance, unless revoked by the Department or voluntarily surrendered by the operator; provided, however, that a change in location, ownership or sponsorship of the facility shall automatically void the license/approval.

(2) A provisional license/provisional approval shall be issued for a period within which the deficiencies must be corrected and within the conditions stated in statute.

(3) A provisional license/provisional approval shall be amended to a regular license/regular approval when all deficiencies have been verified as corrected.

(4) An application for a license/approval shall be denied or the license/approval revoked by the Department if the operator, any staff, including substitute caregiver(s), emergency person(s), volunteer(s) or household member(s), abuses or neglects any child as defined in Section 20-7-490, (B), South Carolina Code of Laws, 1976, as amended.

(5) No family day care home shall have present at any time children in excess of the number for which it is licensed/approved.

#### H. Inspections, Consultation and Reporting for Registered and Licensed/Approved Family Day Care Homes.

(1) Upon receipt of a regulatory complaint, Department staff shall conduct an unannounced visit to the family day care home to investigate the complaint. If the complaint is written, Department staff shall provide a copy to the operator upon request.

(2) The operator may request consultative visits of Department staff or other qualified persons regarding suggested standards, regulations or other related matters. Department staff shall provide technical assistance to an operator as requested.

(3) The family day care home operator shall display the current registration or license/approval in a prominent location in the family day care home.

(4) The operator shall report to the Department when an occurrence takes place which may affect the status of the registration or license/approval.

(5) The operator shall notify Department staff of a change in location and/or major alterations to the building prior to the occurrence.

(6) The operator shall report the following information to Department staff:

(a) Accidents or injuries requiring professional medical treatment of any child or staff person while at the family day care home, or any death;

(b) Major damage to the facility;

(c) Charges or convictions of crimes against the operator, household member(s), substitute caregiver(s), emergency person(s) or volunteer(s);

(d) Any child protective services reports involving the operator, household member(s), substitute caregiver(s), emergency person(s) or volunteer(s).

(7) The operator shall cooperate with Department staff, law enforcement and other involved agencies during an investigation of child abuse or neglect. Cooperation shall include but not be limited to the following:

(a) Participate in informational conference(s) with Child Protective and Preventive Services staff;

(b) Release records of children and staff as requested;

(c) Allow access to facility premises for inspection upon request.

**HISTORY: Amended by State Register Volume 17, Issue No. 4, eff April 23, 1993.**

## **114–529. Infant and Toddler Care, Care for Mildly Ill Children, and Night Care.**

### **A. Infant and toddler care**

#### **(1) Feeding, eating and drinking.**

(a) Cups and bottles shall be labeled with the child's name and used only by that child.

(b) Infants shall be fed in accordance with the time schedule, specific food and beverage items and quantities as specified by the parent.

(c) Infants shall be held while being bottle fed until they are able to hold their own bottles. Bottles shall not be propped or given in cribs or on mats.

(d) Due to nutritional concerns, the microwaving of breast milk is prohibited. The microwaving of formula and other beverages is strongly discouraged due to the possibility of a burn injury to the child. However, if the facility plans to use this method of heating formula and other beverages, they must notify all parents in writing as part of the enrollment or orientation process.

(e) All warmed bottles shall be shaken well and the temperature tested before feeding to a child.

(f) Baby formula, juice, and food served in a bottle shall be prepared, ready to feed, identified, and packaged for single use for the appropriate user. Any excess formula, juice or food shall be discarded after each feeding. Formula, juice and food requiring refrigeration shall be maintained at 45 degrees Fahrenheit or below.

(g) Infants and toddlers shall not sleep with bottles in their mouths.

(h) Toddlers shall be offered water routinely throughout the day.

(i) Breast milk and formula shall be dated and labeled with the child's name and refrigerated until ready to use. Prepared formula and breast milk that is not frozen should not be saved for another day.

(j) Food for infants shall be cut in pieces one-quarter inch or less.

(k) Food for toddlers shall be cut in pieces one-half inch or less.

#### **(2) Feeding chairs.**

(a) Feeding chairs shall have a stable base.

(b) Feeding chairs shall have a safety strap that prevents the child from slipping or climbing out of the chair. The safety strap shall be used at all times the child is in the chair.

(c) Feeding chair trays shall be in good repair and made of an easily cleanable surface and shall not have chips or cracks.

(d) Feeding chairs shall be used only for eating or a specific, short time-limited tabletop play activity.

(e) Seat heights of feeding chairs shall be appropriate to the age and development of the child. Feeding chairs shall be in good repair and children shall be constantly supervised.

#### **(3) Sleeping.**

(a) Infants shall be placed on their backs to sleep unless the parent provides a note from a physician specifying otherwise.

(b) Crib mobiles shall not be permitted for infants or toddlers who can sit.

(c) Cribs shall not be placed next to each other so that one child may reach into the other child's crib.

(d) Two years from the effective date of these regulations, stacked cribs will no longer be permitted.

#### **(4) Equipment and materials.**

(a) The infant and toddler room shall have chairs for staff persons to sit while holding and feeding children; and

(b) Indoor space shall be protected from general walkways where crawling children may be on the floor.

(c) Mobile walkers are not permitted.

**B. Care for mildly ill children**

(1) Parent notification and instructions.

(a) If a child becomes ill while in care, the center shall notify the parent or responsible party immediately;

(b) If a child may have been exposed to a serious communicable disease that is spread through casual contact, the center shall notify the parents of all potentially exposed children about the nature of the illness and the potential exposure to the illness, and recommend consultation with the child's physician; and

(c) If a center chooses to provide care to a mildly ill child, the center shall receive instructions from the parent for any special care needs of the child.

(2) Policies and procedures.

(a) If a center chooses to provide care to a mildly ill child, the center shall have written policies and procedures specifying inclusion and exclusion from the group, communication with parents, recording of illness and care provided, specific types of illnesses and symptoms which prohibit care from being provided, special staff training required and emergency health procedures.

(b) Children shall be excluded when they exhibit the conditions listed in the DHEC Exclusion Policy.

(c) If a child is in a rest area due to illness, the child shall be directly supervised at all times.

(d) A hand-washing sink shall be in close proximity to the area designated for mildly ill children.

**C. Night care**

(1) Requirements for staffing ratios.

(a) Staff counted in the staffing ratios shall be awake, alert and attentive to the children at all times; and

(b) The supervision and ratio requirements for sleeping hours are the same as specified for napping in 114-524C.

(2) An unannounced emergency drill shall be held during sleeping hours at least every 60 days.

(3) Sleeping equipment.

(a) Each child shall have a bed with a solid foundation, a fire retardant mattress, a pillow, and bedding appropriate for the temperature of the center.

(b) Cots and portable beds are not permitted.

(4) Special bedtime routines as specified by the parent shall be followed to the extent feasible.

(5) Bathing.

(a) If children bathe at the center, there shall be one bathtub or shower with a slip resistant surface for every ten children.

(b) Each child shall have his or her own clean towel and washcloth.

(6) The center shall make arrangements with the parent to provide clean appropriate nightclothes.

**HISTORY: Added by State Register Volume 29, Issue No. 6, eff June 24, 2005.**

**SUBARTICLE 5  
FOSTER CARE**

(Statutory Authority: 1976 Code § 43-1-80)

## **114–550. Licensure for Foster Care.**

### **A. Definitions.**

(1) Foster Care—This is care for children in the custody of the South Carolina Department of Social Services who must be separated from their parents or guardians. It is a temporary living arrangement within the structure and atmosphere of a private family home (kin and non relative), or a group home, emergency shelter, residential facility, child care institution, or pre adoptive home, and is utilized while permanent placement plans are being formulated for the involved children.

(2) Board Payments—These are monthly funds appropriated for daily care and maintenance for eligible children in foster care.

(3) The Foster Family—A family that is generally composed of a father and mother, but may be widowed, divorced or single adults, who are licensed by SCDSS, and who are mutually interested in and evidence a capability to care for foster children.

(4) Kinship Care Foster Family—This is a relative family that has been identified and licensed to provide foster care for a specified child or children. Unless otherwise stated, the term foster parent or foster family includes kinship foster care parents and families.

(5) Assessment Study—This is the actual documentation of the assessment study of a family or related family applying to provide foster care services, completed by designated agency staff of the South Carolina Department of Social Services or designated staff of a child placing agency.

(6) Child Placing Agency—For the purposes of these regulations, any person or entity who holds legal or physical custody of a child for the purpose of placement for foster care or adoption or a private placement, or a person or entity who facilitates the placement of children for the purpose of foster care or adoption or a private placement and, which for the purpose of these regulations, retain their own system of foster homes, is a child placing agency. Homes assessed by child placing agencies are licensed in accordance with the Department of Social Services licensing regulations and issued a license by SCDSS.

(7) Agency—South Carolina Department of Social Services.

(8) Foster child—for the purposes of these regulations, a child in the custody of SCDSS.

(9) Household member—for the purposes of licensing interviews and assessment, an individual who spends significant amounts of time (as defined by SCDSS or the child placing agency) in an applicant's household, can be considered a household member.

### **B. Applications.**

(1) An application form shall be completed by all foster families desiring to be licensed and relicensed.

(2) Applicants must supply thorough, complete and accurate information. Incomplete or erroneous information or violation of regulations can be grounds for denial of an application, revocation of a current license or denial of a renewal.

(3) SCDSS or a licensed child placing agency reserves the right to request and consider additional information if needed during the licensing or renewal process. This additional information may be considered during the licensing or renewal decision-making process.

### **C. Licensing Procedure.**

(1) Any application for licensure pursuant to these regulations shall be studied by SCDSS or a licensed child placing agency.

(2) A decision regarding each application for a license shall be made within 120 days subsequent to the date the standard application is completed by the applicant(s) and is received by SCDSS or the child placing agency. If SCDSS or the child placing agency has requested information that has not been received within 120 days, then the decision is stayed pending receipt of all information.

(3) An initial Standard license shall be issued or denied by the director of SCDSS or his/her designee based on the result of the assessment study and recommendation of SCDSS or child placing agency.

### **D. Licenses.**

(1) The issued license shall not be transferable from either the address or foster family specified on the license.

(2) A Standard license shall be issued when all requirements of these regulations are met. A Standard license is valid for two years from the date of issuance.

(3) A Standard with Temporary Waiver license may be issued for up to 90 days. The utilization of this type of license is warranted when SCDSS or the child placing agency is acting in the best interest of children already in placement and for whom stability is necessary. The Standard with Temporary Waiver license shall include language that reflects the expiration period and the reason for the temporary waiver. No additional children may be placed during temporary waiver periods. Standard with Temporary Waiver licenses can be issued under the following circumstances:

(a) A standard licensed foster parent moves to a new home and SCDSS or child placing agency is waiting to receive written documentation that the fire and health inspections have been completed and any noted deficiencies have been corrected; or

(b) A standard license has previously been issued to a foster family and subsequently a household member reaches the age of eighteen years, or a new adult household member has entered the home since licensure, and SCDSS or child placing agency is waiting to receive written clearance on all background checks for that individual.

(4) A Standard-Exceeds Maximum Number Allowed license may be issued when a standard licensed foster parent receives placement of more children than allowed under requirements due to SCDSS or child placing agency trying to preserve unity of a sibling group or making an adoptive placement. This license can continue until the number of children again satisfies licensing requirements.

(5) No license issued shall be effective for more than two years from the date of issuance. Subsequent relicensure studies must be completed prior to the expiration of the last license.

(6) A foster home shall not be licensed for more than five (5) children, including the foster parents' own children and/or other children who are household members unless SCDSS or child placing agency is keeping siblings together or the placement has been court ordered.

(7) Foster Home licensure by more than one agency, or by more than one division within an agency, is not permitted.

#### E. Assessment Study.

(1) Each prospective foster family shall be assessed by designated staff of SCDSS or by designated staff of a licensed child placing agency.

(2) Such assessment shall be conducted in order to determine:

- (a) Whether the applicant(s) complies with licensing requirements and standards;
- (b) For which gender and age range of children the home can be licensed;
- (c) Whether the prospective foster parents fully understand the purpose of foster care; and
- (d) Applicant(s) and other household members ability to provide quality foster care.

(3) All members of the household over six years of age shall be assessed and interviewed in order to determine their willingness to accept a child and to evaluate the stability of the family unit.

(a) A minimum of one family interview, and one interview per individual, shall be conducted in the home with the prospective applicant, spouse, their children and other household members.

(b) The applicant and spouse shall provide information to SCDSS or the child placing agency staff that enables the licensing staff to interview adult children of the applicant and spouse.

(4) Documentation for the assessment summary at a minimum includes the following issues:

- (a) motivations to foster parent;
- (b) preferences related to placements;
- (c) family history, relationships, parenting experiences, and coping ability;
- (d) educational, health, and work history of family members;
- (e) information on other household members, adult children, and related children not in the physical custody of the applicant or spouse;



- (f) home environment and community resources;
- (g) completion of preparation training;
- (h) results of CPS/Sex Offender/SLED and FBI background checks;
- (i) compliance with all requirements;
- (j) income is reasonably secure and not dependent on board payments;
- (k) appropriateness of day care arrangements for foster children; and
- (l) family's overall understanding of the purpose of foster care and ability to provide quality foster care.

(5) The assessment summary and the SCDSS or child placing agency's recommendation shall be explained to the applicant. If SCDSS or the child placing agency is not recommending licensure, the applicant family should be offered the opportunity to elect to withdraw their application. If the applicant elects to continue their request to be licensed and if the application is denied, the reason(s) for the denial shall be provided in writing. The applicant shall be advised regarding the right to appeal.

#### F. Working Foster Parents.

(1) If foster parents are employed outside the home, a written statement outlining a total plan of care, including plans for any necessary emergency care for the child, shall be submitted by the foster family.

(2) Individuals who are to provide child care on behalf of employed foster parents must be interviewed by SCDSS or child placing agency staff prior to the issuance of a Standard license to a foster home.

#### G. The Requirements for Licensing of a Foster Family.

(1) The following requirements shall be met prior to the issuance of a Standard license to provide foster care:

(a) Background checks shall be documented including a review of abuse and neglect history, criminal history found with SLED and the FBI, and the Sex Offender Registry.

(i) The applicant(s) cannot be considered for licensure if an applicant and/or any household member over age eighteen has a substantiated history of child abuse and/or neglect and/or convictions of those crimes listed in SC Code 20-7-1642 and/or is listed on the SC Sex Offender Registry.

(ii) The applicant(s) may be considered for licensure if an applicant and/or any household member over age eighteen has a conviction, or has been pardoned for a conviction of an offense other than those offenses listed in SC Code 20-7-1642. The Director of SCDSS or his/her designee shall review the conviction or pardoned conviction taking into account the nature of the offense(s), any implications of the offense which have bearing on the individual having access to foster children; the length of time that has elapsed since the conviction(s); the applicant's life experiences indicating reform or rehabilitation during the ensuing period of time; and the fitness and ability to perform as a caregiver or the degree of risk which an individual may pose to children placed in the home. The Director of SCDSS or his/her designee shall document the basis of the decision to approve applicant in light of applicant's and/or household member's criminal record.

(2) The applicant(s) shall be able to access community services and activities.

(3) The applicant's home and property shall be inspected by licensing or child placing agency staff, State Fire Marshal authorities, and health authorities.

(a) A fire inspection by State Fire Marshal authorities who are required or permitted to inspect and enforce fire regulations must be conducted prior to the initial standard licensure.

(b) Annual fire inspections are required thereafter.

(c) A health inspection by such health authorities who are required or permitted to inspect and enforce health and sanitation regulations must be conducted prior to the initial licensure and as needed thereafter.

(d) Additional fire and health inspections are required if there is a change in residence.

(e) Additional fire and health inspections may be required if there are structural changes made to a residence or if such an inspection is deemed necessary by SCDSS or the licensed child placing agency.

(f) Any deficiencies must be corrected prior to initial licensure and/or relicensure.

(4) The applicants/foster parents shall:

(a) Be at least twenty one years of age or older. Age of foster parents should be considered only as it affects their ability to care for children within the age group applicant has expressed an interest in, and in relation to the probable duration of placement of a particular child.

(b) Have knowledge of the needs of children, be capable of meeting the needs of foster children and provide adequate foster care services;

(c) Be capable of handling an emergency situation;

(d) Be cooperative with SCDSS or child placing agency staff in furthering the best interest of the child; and

(e) Provide all relevant and factual information to SCDSS or the child placing agency.

(5) Foster parents must each have a minimum of fourteen (14) hours of appropriate foster care pre service training and which includes training on licensing requirements and expected standards of care prior to licensure commencing January 1, 2003.

(a) The foster parents will each subsequently be required to complete a minimum of fourteen (14) hours training each year, or twenty (28) hours prior to each subsequent relicensure commencing January 1, 2003.

(b) Viewing standard television programs or reading popular news or magazine articles will not be accepted for training hours and the training shall be provided by SCDSS or via another source which is approved by SCDSS.

(6) The applicant's or current foster family's income shall be reasonably secure and not dependent upon foster care boarding payments. The family shall supply verifiable information on family income and expenditures whenever requested to do so by SCDSS or the child placing agency.

(7) All applicants and household members shall submit an initial medical report by a duly licensed physician or licensed nurse practitioner verifying that such individuals are in reasonably good health, including an evaluation as to any communicable or contagious diseases. If deemed necessary by SCDSS or the child placing agency, additional medical reports may be required.

(a) If applicant/household member has sought treatment for issues related to mental health or drug or alcohol abuse, such information must be disclosed to SCDSS or the child placing agency during the assessment. Applicants shall only be licensed after consultation between SCDSS or the child placing agency staff and appropriate therapist, counselor or physician, if applicable, of the applicant/household member to obtain a history of rehabilitation and to assess the potential effects on their ability to care for children placed in the home.

(b) SCDSS or the child placing agency has the authority to request a psychological report on an applicant or household member, at the expense of the applicant, pursuant to securing information during the assessment study process that could indicate a need for professional consultation.

(c) Applicants/household members will execute the necessary releases to allow SCDSS or the child placing agency to access this information.

(8) A minimum of three written letters of reference shall be initially obtained in regard to foster parent applicants.

(a) If deemed necessary by SCDSS or the child placing agency, additional references may be required.

(b) References should have known the applicants three years prior to the application and, unless specifically requested, should not be related to the applicants.

H. The following standards of care shall be maintained by foster families. Failure to comply with one or more of these standards of care may result in removal of foster children from the home and revocation of the foster home license:

(1) The child's daily routine shall be planned to promote the development of good health habits.

- (2) Each child shall be provided with adequate health and hygiene aids.
- (3) Space for a child's possessions shall be provided.
- (4) The foster family home shall be able to comfortably accommodate a foster child as well as their own family.
  - (a) Each child in care shall be provided with his or her own bed and storage space, however same sex siblings may be allowed to share a bed or storage.
  - (b) No child may routinely share a bed or a bedroom with an adult and except for a child under one year of age, a child must not share a bedroom with an adult unless SCDSS or the child placing agency staff document extenuating circumstances exist.
  - (c) Children of opposite sex sleeping in the same bed must be limited to siblings under the age of four years. Children of opposite sex sleeping in the same room must be limited to children under the age of four years.
  - (d) Children shall sleep within calling distance of an adult member of the family, with no child sleeping in a detached building, unfinished attic or basement, stairway, hall, or room commonly used for other than bedroom purposes.
  - (e) No biological children of the foster family shall be displaced and made to occupy sleeping quarters prohibited in (b), (c) and (d) above because of a foster child being placed in the home.
  - (f) The top level of bunk beds shall not be used for children under the age of six years.
- (5) If deemed appropriate by SCDSS or the child placing agency, the foster family will cooperate in assuring that foster children are able to maintain regular contact with their birth parents, siblings, and other significant relatives.
- (6) Unless advised otherwise by the responsible agency, each foster child shall be prepared by foster parents to eventually leave the home.
- (7) Foster parents shall follow instructions and suggestions of providers of medical and health related services. If receiving medication, a child's prescription shall be filled on a timely basis and medications will be administered as prescribed, and otherwise be kept secured.
- (8) Foster parents shall obtain emergency medical treatment immediately as need arises, and shall notify SCDSS and child placing agency staff, no later than 24 hours of receiving such care.
  - (a) If the primary source of payment for medical care is medicaid, foster parents must insure that the child's card is accessible at all times.
  - (b) Foster parents should contact SCDSS for coordination of any elective or non-emergency surgical procedures as far in advance of the procedure(s) as possible.
  - (c) Any injuries sustained by a foster child must be reported as they occur and no later than 24 hours of incident.
- (9) Foster parents are responsible for notifying SCDSS and child placing agency staff as soon as possible when a critical incident has occurred such as:
  - (a) Death of any child in the home;
  - (b) Attempted suicide by the child;
  - (c) Child is caught with a weapon or illegal substance;
  - (d) Child is charged with a juvenile or adult offense;
  - (e) Child is placed on homebound schooling or is suspended or expelled from school;
  - (f) Child has left the home without permission and has not returned.
- (10) School attendance shall be in accordance with State law requirements and be in accordance with the ability and in the best interest of the child.
  - (a) The foster parents will assure that each foster child has access to education, educational opportunities and related services. Foster parents must emphasize the value of education and encourage and support children in their care to fully participate in educational activities;
  - (b) SCDSS will choose school foster child attends.
  - (c) SCDSS will not pay for costs associated with private tuition.

(d) Unless extenuating circumstances exist, foster parents shall not home school foster children. SCDSS must approve any such plan.

(11) Religious education shall be in accordance with the expressed wishes of the natural parents, if such wishes are expressed.

(12) All discipline must be reasonable in manner, moderate in degree and responsibly related to the child's understanding and need.

(a) Discipline should be constructive or educational in nature (e.g. withdrawal of privileges).

(b) Cruel, inhumane and inappropriate discipline is prohibited. This would include but not necessarily be limited to the following: head shaving or any other dehumanizing or degrading act; prolonged/frequent deprivation of food or serving foster children meals which are not as nutritionally adequate as those served to other family members or requiring children to be isolated from other family members when eating, deprivation of mail, slapping or shaking; a pattern of threats of removal from the home as punishment; disciplining a child for a medical or psychological problem over which he/she has no control (e.g. bedwetting, stuttering, etc.).

(c) All foster homes are subject to South Carolina laws relating to child abuse and neglect.

(d) The use of corporal punishment as a form of discipline is prohibited.

(13) Tasks which are assigned to foster children shall be appropriate to the ability of the child, similar to responsibilities assigned to other children, and geared toward teaching personal responsibility.

(14) Foster parents must assist older foster adolescents in their care in learning skills that are necessary for successful independent living.

(15) Varied recreational activities shall be available to each child.

(16) Infants and children shall not be left without competent supervision.

(17) Foster parents, in conjunction with SCDSS, shall keep a life book/scrapbook on each foster child placed in their home. Children's records and reports shall be kept confidential and shall be returned to SCDSS when a foster child leaves the foster home.

(18) Firearms and any ammunition shall be kept in a locked storage container except when being legally carried upon the foster parent's person; being used for educational, recreational, or defense of self or property purposes by the foster parent; or being cleaned by the foster parent.

(19) Applicant must be able to secure/supervise access to in ground or above ground swimming pools and maintain adequate supervision during periods of swimming.

(20) Fire escape plans must be developed, posted and routine drills conducted.

(21) A plan for how the family will respond and travel in the event of a disaster (e.g., a hurricane evacuation) must be developed and shared with SCDSS or child placing agency.

(22) All pets must be kept current with rabies vaccinations and proof of such provided. Pets must not pose a safety concern. SCDSS or the child placing agency will determine what constitutes a safety concern.

(23) Applicants and current licensed families must make themselves reasonably available on an ongoing basis to SCDSS or the child placing agency for statutorily required contacts or other contacts SCDSS or the child placing agency deems necessary. SCDSS or the child placing agency has the right to make unannounced visits, and talk to any foster child on an as needed basis.

(24) Board payments shall be utilized but not limited to reimbursement for a foster child's board, school expenses, food, clothing, incidentals, minor medical needs and other expenses.

(25) A foster home shall not provide full time care for more than five (5) children, including the foster parents' own children and/or other children who are household members unless SCDSS or the child placing agency is keeping siblings together or making an adoptive placement or the placement has been court ordered.

(a) No more than two (2) infants (age birth to one year) shall be placed in the same foster home without prior approval from SCDSS or child placing agency management staff.

(b) No foster home shall exceed the number of children stipulated on their issued license without permission from SCDSS or child placing agency staff.

(c) No foster home shall accept children referred by another public or private source without obtaining the permission of SCDSS or child placing agency staff prior to the actual placement.

(26) When a home is licensed to provide care for an unmarried mother, a plan for medical and hospital care, as well as appropriate protection from community stresses associated with pregnancy, must be made.

(27) A foster family is required to notify SCDSS or child placing agency staff of any significant change in the family/home including, but not limited to, any structural changes in the home; plans involving a change of residence; any major changes in the health of anyone living in the home; change in marital status and the addition of any occupants to the home; significant changes in finances; and criminal and/or child abuse allegation charges and/or investigations.

(28) No unrelated lodger or boarder shall be allowed to move into a foster home without the agency's concurrence. Foster children may be placed or remain in a foster home where there is an unrelated lodger or boarder or room mate after necessary safety checks have been made and written concurrence obtained by SCDSS or the child placing agency. Anyone over the age of eighteen years and living in the home must undergo a fingerprinting, SLED, Sex Offender, and CPS check. If children are already in placement, an affidavit must be submitted by the household member confirming there is no record. The license must be amended to a Standard with Temporary Waiver until the results of the submitted checks have been received.

(29) Applicants or current foster families must advise SCDSS or the child placing agency staff prior to opening a day care or other home based business in the home.

(30) Foster parents shall transport children in accordance with state public safety laws.

#### I. Records Documentation Required for Child Placing Agencies.

(1) All child placing agencies in the State shall keep records regarding each of their foster children containing the following information:

- (a) The child's name;
- (b) The child's birth date;
- (c) The date of his admission and discharge from each foster care placement;
- (d) Name, address and telephone number of relatives;
- (e) Place and hours of employment of child's relatives; and
- (f) Name, address and telephone number of available physician.

(2) All child placing agencies in the State shall keep records regarding each of their foster homes and said records shall contain documentation of compliance with these regulations and SCDSS procedures related to foster home licensing.

#### J. Adoption of Foster Children by Foster Parents.

(1) Foster parents may apply to adopt a foster child.

(2) Foster families who have been approved for adoption will be given first consideration for the adoption of a foster child under the following conditions:

- (a) The child has been in the same foster home for a consecutive six months period of time or more; and
- (b) The child is legally free for adoption; and
- (c) Placement for adoption with the foster family is deemed to be in the best interest of the child by SCDSS or the child placing agency.

#### K. Initial Licensing, Renewal, Denial, Revocation, and Termination of License.

(1) Foster family licenses shall be studied for renewal every two years and prior to the expiration of the last license.

(2) Renewal process requirements include documentation of annual fire inspection, additional training hours, background checks through CPS, SLED, and Sex Offender Registry, home visit, assessment of ongoing compliance with requirements and standards of care, and any additional requirements as SCDSS or the child placing agency staff may deem necessary.

(3) A license will not be issued or renewed if licensing requirements are not met, or standards of care have not been maintained as prescribed within these regulations or if, in the opinion of SCDSS, it would be detrimental for children to be placed in the home. Written notification of the denial, signed by the director of SCDSS or his/her designee will be mailed via certified mail from SCDSS to the applicant(s) or license holder. The notification will inform the applicant(s) or license holder of any right to appeal this decision pursuant to established SCDSS procedure.

(4) A foster home license may be revoked by SCDSS if minimum licensing requirements or standards within these regulations are not met, or, if in the opinion of SCDSS or child placing agency staff, it would be detrimental for additional children to be placed in the home. Written notification of the revocation, signed by the director of SCDSS or his/her designee will be mailed via certified mail from SCDSS to the license holder. The notification will inform the license holder of any right to appeal this decision pursuant to established SCDSS procedure.

(5) A foster family license shall be terminated when:

(a) The time specified on the license has elapsed; or

(b) The foster family has moved to a new location without applying for a change in license; or

(c) The license has been revoked or renewal denied and the time frame for appeal has elapsed;  
or

(d) A foster family voluntarily returns the current license to SCDSS of the child placing agency for cancellation or otherwise informs SCDSS or the child placing agency that they no longer desire to be licensed.

#### L. Kinship Foster Parents.

(1) Per federal policy, relatives being licensed must be licensed in accordance with the same requirements as non-relative applicants. SCDSS may waive, on a case by case basis, for relatives or non-relatives, non-safety elements as SCDSS deems appropriate. Safety elements such as history of child abuse/neglect, state and/or federal criminal history checks must not be waived. SCDSS must note on the standard license if there was a waiver of non-safety element and identify the element being waived.

(2) Relatives are given preference in placement options provided such placement is in the best interest of the child(ren).

#### M. Confidentiality.

(1) No foster family shall directly or indirectly disclose any information regarding foster children, their biological families/relatives or other individuals who have had control of the foster children, other than to professionals treating, caring and providing services for the child or others as SCDSS or the licensed child placing agency deems appropriate.

(2) Information that is disclosed shall be limited to information that is necessary to provide for the child's needs and in their best interest.

#### N. Prior Regulations Repealed.

All regulations concerning foster family homes previously promulgated by the agency are hereby repealed, including: Regulations 114-550 (Vol. 27).

#### O. Regulations Review.

These regulations are to be evaluated at a minimum, every five (5) years from the date of initiation, to assess the need for revision.

**HISTORY: Amended by State Register Volume 27, Issue No. 3, eff March 28, 2003.**

## SUBARTICLE 9 RESIDENTIAL GROUP CARE FACILITIES FOR CHILDREN

(Statutory Authority: 1976 Code § 43-1-80)

## **114–590. Licensing of Residential Group Care Organizations for Children.**

A. Definitions. Terms used in South Carolina Regulations, Chapter 114, Subarticle 9, shall be all definitions cited in the following regulations.

(1) Agency—Refers to the South Carolina Department of Social Services.

(2) Chemical restraints—Are drugs administered to temporarily restrain a child who poses a threat to harm themselves or others.

(3) Child—For the purposes of these regulations, a person under the age of twenty one.

(4) Child Care Staff—A paid professional who works at a child caring organization who helps serve children.

(5) Child Caring Institution—Any facility that provides residential care and maintenance to ten (10) or more children.

(6) Corporal punishment—Physical punishment inflicted directly upon the body.

(7) Facility—For the purposes of these regulations, the term facility includes those organizations which provide temporary or long term, full time residential care for children on a year round basis such as child caring institutions, emergency shelters, group homes and organizations with supervised individual living facilities. Child caring institutions and group homes may also be further categorized as low management facilities, moderate management facilities, and high management facilities. Boarding schools that do not operate year round or do not offer services beyond those associated with school programming are not encompassed within these regulations. All facilities are considered “residential institutions” for purposes of SC Code Section 20–7–670, governing institutional abuse and neglect.

(8) Facility Director—The person responsible for coordinating the general management, administration, and care of the children of a facility in accordance with licensing requirements and policies established by the advisory board.

(9) Group home—any facility that provides residential care and maintenance to fewer than ten (10) children.

(10) Group care—refers to the care and services provided by facilities.

(11) Isolation—Defined as the involuntary confinement of a person in a room where the person is physically prevented from leaving.

(12) Licensing Agency—South Carolina Department of Social Services.

(13) Restraint—Defined as any manual method, physical or mechanical device, material, or equipment attached or adjacent to the resident’s body, that the individual cannot remove easily which restricts freedom of movement or normal access to one’s body.

(14) Standard License—Issued when a facility meets all the requirements to obtain a license.

(15) Time Out—Defined as the temporary restriction of an individual for a period of time to a designated area from which the person is not physically prevented from leaving, for the purpose of providing the individual an opportunity to regain self-control. Time-out will last only for the shortest amount of time needed.

(16) Volunteers—Are persons, who of their own free will, provide goods or services to a facility with no monetary or material compensation.

B. General.

(1) Purpose of Licensing—The South Carolina Department of Social Services is legally mandated to license facilities for children (Code of Laws of South Carolina, 1981 Code Sections 20–7–2250). In carrying out that mandate, the overall purpose of licensing by the South Carolina Department of Social Services is to assure that residential group care organizations for children provide well rounded programs of care which include adequate protection, supervision and maintenance of children in care; safe physical facilities; and opportunities for appropriate learning experiences which allow for the healthy physical and mental growth of the children in care and are directed toward maximizing the potential of each individual to be well-adjusted, independent, and responsible.

(2) Compliance with Other Laws—All residential group care organizations must comply with all other applicable requirements of State and Federal laws.

C. Organization and Administration.

(1) Purpose and Need.

(a) At the time of application for licensing of a new facility, a facility shall submit a concise written statement addressing the following:

(i) Definitive statement of purpose and objectives with respect to type of residential child care to be provided;

(ii) Description of services offered;

(iii) Ages and genders of children accepted;

(iv) Types of children accepted (e.g., abused/neglected, emotionally disturbed, dependent/neglected, status offenders, etc.);

(v) The geographical areas from which children are accepted.

(vi) The facility shall reevaluate its functions periodically and redefine them as changing community needs necessitate. A copy of the revised statement shall be submitted to the agency when changes occur.

(2) Organization.

(a) Board of Directors.

(i) A for-profit organization may elect to have a board which functions in accordance with the organization's articles of incorporation or bylaws, complies with these licensing regulations and with applicable state and federal laws. A list must be submitted annually or whenever there is a change outlining the chain of command and the appropriate contact person(s) including names, addresses, and related phone numbers.

(ii) A not-for-profit organization shall be chartered by the Secretary of State and shall have a board which functions in accordance with the organization's constitution and bylaws. Facilities operated by a state agency are exempt from this requirement.

(iii) The bylaws of a board of a not-for-profit organization must provide for the following: at least one annual meeting held at the facility, a limitation of the number of consecutive terms a member may serve, an orientation for new board members, that board members not receive financial compensation for their services, and that board members are not employees of the organization.

(iv) Responsibilities of a board of a not-for-profit organization shall include: selecting the director to whom administrative responsibility is to be delegated, assuring that adequate funds are available; formulating or approving policies, accounting for the expenditure of funds, evaluating on an annual basis the performance of the director, ensuring that the Agency is informed of changes in administration, establishing and periodically reviewing policies on fund raising. The board of a facility shall have an opportunity to review and make recommendations on the items listed above.

(b) Finances.

(i) The facility shall have a sound plan of financing which assures adequate funds to carry out its defined purpose and to provide proper care for children.

(ii) A new facility shall have a predictable source of funds to finance its first year of operation and reserve funds or documentation of available credit equal to the operating costs of the first three months.

(iii) The facility shall prepare a budget each year for its facility showing anticipated income (including sources thereof) and expenditures. A copy shall be submitted to the licensing Agency.

(iv) All board-administered accounts shall be reviewed at least annually by a certified public accountant who does not serve on the board nor is otherwise employed by the facility. The report shall be made a part of the facility's record and a copy of the balance sheet submitted to the licensing Agency at the time of relicensing.



(v) In the event financial stability is questionable, the Agency may require a financial audit to be conducted by a certified public accountant.

(vi) Existing licensed facilities that are in good standing with the agency, and increasing the capacity by no more than twenty five (25) percent are exempt from the requirements to submit evidence of reserve funds or available credit.

(c) Procedural Manual.

(i) The facility shall develop and implement (and update as appropriate) a procedural manual to include, but not be limited to policies in the areas of: finance, procedures for appeals, complaints and grievances, emergency care in the event of a placement disruption, routine and emergency medical care, hospitalization, dental care, control of and administering medications, restraints, management of children's money, religion, community involvement for children, confidentiality, disaster plans, independent living services (if applicable), personnel, admission, discharge, discipline and firearms.

(ii) The staff of the facility shall be familiar with the procedural manual and a copy shall be made available to staff and the licensing agency.

(iii) The facility shall develop and implement personnel policies to include, but not be limited to: written job descriptions, orientation for new employees, training and staff development, role of staff as mandated reporters, written organizational plans/chart, routine or universal health precautions and infection control, work schedule requirements, volunteers, disciplinary actions, grievances and procedures for revisions of personnel policies.

(d) Administration.

(i) Executive Directors shall have qualifications consistent with the responsibilities of the position as determined by the governing board.

(ii) Facility Directors are responsible for the day to day operations of a facility and shall have the following qualifications: a Master's or Doctorate degree in social work or other related areas of study and one year of experience in the management or supervision of child care personnel, a child care program and/or a closely related field; or a Bachelor's degree and two years of experience in the management or supervision of child care personnel, a child care program or a closely related field; or an Associate degree and four years of experience in child care or a closely related field, including one year of experience in the management or supervision of child care personnel and program. Closely related fields acceptable in meeting these qualifications include social work, counseling, teaching, psychology, sociology, criminal justice, nursing, and recreational therapy.

(iii) Documentation of qualifications (e.g., a resume) shall be on file at the facility and shall be reviewed at the time of licensing/relicensing.

(iv) Facility Directors employed prior to July 1, 2002 will have a transition period of six years to meet the educational requirements.

(e) Staff.

(i) At a minimum, child care staff shall be responsible for the care, nurture, monitoring and supervision of children; supporting and promoting parental involvement when appropriate; reporting suspected child abuse and neglect to the Out of Home Abuse and Neglect Unit of the South Carolina Department of Social Services or to a law enforcement agency in the county where the child resides or is found; and guidance on independent living services, as appropriate.

(ii) Child care staff shall have a minimum of a high school diploma, certificate or equivalent, and shall be at least twenty-one (21) years of age. However, staff eighteen (18) to twenty-one (21) years of age, may serve children while being directly supervised by someone over twenty-one (21) years of age.

(iii) Documentation of qualifications (application) shall be on file at the facility and shall be reviewed at the time of licensing/relicensing.

(f) Training.

(i) Staff who work directly with the children must have a minimum of fourteen (14) hours of training related to child care annually.

(ii) The director shall submit an outline of the training to the licensing agency prior to implementation of the training to ascertain that the planned training will comply with this requirement.

(iii) Documentation of completed training shall be on file at the facility and shall be reviewed at the time of licensing/relicensing.

(iv) Prior to working with children, staff must have undergone a general orientation of the facility.

(v) A facility shall ensure at least one staff member per working shift is certified in first aid and cardiopulmonary resuscitation.

(vi) Within the first year of employment, staff must have fourteen (14) hours of training (not including first aid and cardiopulmonary resuscitation). Training topics should include but not be limited to: skill training in specific methods employed by the program, crisis management protocol, significance and value of birth and extended family, identifying and reporting child abuse and neglect, role of staff as mandated reporters, basic communication, interviewing skills, HIV/AIDS, information relating to transmission and prevention of infection, group dynamics, fire life safety, history and development of the service being provided (from the facility) and its current status, grief and loss issues for children in care, specific organizational policies and procedures, supervision and teaching skills, other education and/or training required by the state.

(vii) Training topics for annual continuing education (14 hours of training) may include but not be limited to: working with children who may have emotional, behavioral, physical problems, developmental delays, treatment care specific to the needs of the population served, individualized education and development plans, developmental needs of children, discipline, de-escalation and behavior management techniques, and suicide prevention.

(g) Volunteers.

(i) If volunteers are used as part of a facility's program of services, the facility shall have written policies to screen and select volunteers. Those volunteers who have opportunity for unsupervised contact with children must supply: a written application, must have an interview with the staff who is responsible for the supervision of volunteers, must have annual background screenings including a South Carolina Central Registry Check, SLED (South Carolina Law Enforcement Division) Check, Sexual Offenders Registry Check, and documentation of freedom of communicable or contagious diseases (annually) for all volunteers who work with children.

(ii) Documentation of the volunteer screening and orientation processes and appropriate notification procedures to the referral agency regarding the use of volunteers must be on file at the facility to be reviewed at the time of licensing/relicensing.

(iii) An orientation must include a review of the facility's program, policies and procedures, review of the duties of the volunteer, and a tour of the physical facilities.

(iv) Volunteers shall not substitute for staff and there must be a defined line of supervision with clear written expectations of the supervisor and volunteer.

(v) Volunteers shall be invited to participate in annual training required of other child care staff.

(vi) Individuals or groups who offer to provide a one-time or occasional voluntary service (parties, trainings, entertainment, etc.) and do not have unsupervised access to children, will only be required to undergo a brief orientation by the facility. At least one facility staff person must be available to supervise the activity.

(h) Staff to Child Ratio.

(i) Facilities are expected to maintain staffing levels to ensure that children are receiving quality services and are being adequately supervised. Different facilities will have different needs based on the population of children served. The needs of the children shall dictate the numbers of staff members needed.

(ii) Facilities providing therapeutic services (individual, group, recreational, psychiatric, counseling, etc.) requires a minimum staffing ratio of one (1) staff for every eight (8) children during the day and a staffing ratio of one (1) staff for every ten (10) children during the night.

(iii) A minimum of two (2) staff shall be available at all times.

(iv) Any children of live-in staff shall be included in the staff/child ratio.

(v) The Agency may require a higher staff/child ratio if an on-site review indicates that a child is at risk of abuse, and more supervision is needed to maintain control, discipline and adequate care.

(vi) All facilities must have a responsive system to provide for back-up staff in the event of an emergency or disruption.

(i) Staff Medicals.

(i) Staff shall have medical examinations at the time of employment and shall at least annually thereafter obtain documentation of freedom from communicable or contagious diseases.

(ii) Any staff member who is hospitalized or who contracts a disease or illness which may present a threat to the health of the children must have a satisfactory medical report prior to returning to his/her duties at the facility.

(j) Time Off for Residential Staff—Each full-time residential staff member shall have at least one weekend off each month (or equivalent) in addition to one day off each week.

(k) Criminal Activity—No person shall be employed, volunteer, or live on the premises of a facility who has been convicted, pled guilty or nolo contendere to:

(i) a substantiated history of abuse or neglect; or

(ii) an “Offense Against the Person” as provided for in Chapter 3, Title 16; or

(iii) an “Offense Against Morality or Decency” as provided for in Chapter 15, Title 16; or

(iv) contributing to the delinquency of a minor as provided for in Section 16–17–490; or

(v) the common law offense of assault and battery of a high and aggravated nature when the victim was a person seventeen years of age or younger; or

(vi) criminal domestic violence, as defined in Section 16–25–20; or

(vii) a felony drug-related offense under the laws of this state; or

(viii) a person who has been convicted of a criminal offense similar in nature to a crime previously enumerated when the crime was committed in another jurisdiction or under federal law.

#### D. Buildings, Grounds and Equipment.

(1) Condition.

(a) Routine maintenance must be performed as needed to ensure buildings and equipment are safe and in good working order.

(b) A facility will be kept clean, orderly, and free of debris and trash, both indoors and out.

(c) A facility shall be effectively safeguarded against insects and rodents.

(d) Fences must be in good repair.

(e) Swimming and wading pools must be enclosed with protective fencing to restrict children’s access and must be well maintained as mandated by DHEC (South Carolina Department of Health and Environmental Control).

(2) Fire Inspection.

(a) There shall be an annual inspection by the State Fire Marshal’s Office or by a legally authorized local fire authority at the request of the State Fire Marshal.

(b) Based on the recommendations of the fire authorities, the Agency will make a determination as to whether or not the facility meets standards of fire safety for child caring purposes.

(c) A facility is responsible for any fees or related expenses for the fire inspection.

(d) A fire escape plan shall be posted in the facility in areas accessible to staff and children.

(3) Health Inspection.

(a) Each facility shall have an annual health and sanitation inspection.

(b) Based on the recommendations of the health authorities, the Agency will make a determination as to whether or not the facility meets standards of health and sanitation for child caring purposes.

(c) A facility is responsible for any fees or related expenses for the health inspection.

(4) Heating/Cooling.

(a) There shall be proper equipment for adequately heating and cooling in living, sleeping, sanitary, and working areas.

(b) Heating equipment shall be capable of maintaining a room temperature of not less than 68 degrees Fahrenheit. Cooling equipment shall be capable of maintaining a room temperature of not more than seventy-five (75) degrees Fahrenheit.

(c) Fireplaces, hot water/steam radiators and pipes, or any other heating device capable of causing a burn shall be protected by a screen or otherwise effectively shielded.

(d) Rooms with toilets, bathrooms, and bedrooms without operable windows must have adequate ventilation.

(5) Sleeping Rooms.

(a) Sleeping rooms for children shall be suitable and comfortably furnished with beds that are placed at least two feet apart. The rooms shall have outside window exposure or auxiliary means of ventilation, both intake and exhaust.

(b) Bedrooms shall provide a minimum of fifty square feet of space per resident.

(c) Bunk beds shall not be used without written permission from the licensing agency.

(i) Bunk beds must be limited to no more than one (1) bed above the other bed.

(ii) Children sleeping in the top bunk of a bunk bed must be at least six (6) years of age or older.

(iii) All bunk beds will be inspected by an Agency licensing representative.

(d) Children of the opposite sex who are five years of age or older shall not share a bedroom.

(e) Children over one year of age shall not share a bedroom with an adult unless:

(i) The infant has a physician documented illness; or

(ii) The infant's parent is a resident of the facility, the parent is requesting this arrangement, there is adequate space for both, and Agency approval is obtained.

(f) Each child shall have a separate bed with a level mattress long enough to accommodate him/her. Sufficient bed coverings to include linens shall be provided.

(g) Waterproof mattresses and pillow coverings shall be provided as needed.

(h) Children shall not sleep in a bed with an adult under any circumstances.

(i) No child shall sleep in a detached unsafe building, an unfinished attic or basement, a stairway, hall, or room designated or commonly used for other than bedroom purposes.

(j) Cribs and playpens shall have slats spaced no more than two and three-eighths inches apart from the inside of each slat and shall have secure latching devices.

(k) Mattresses shall be fitted in cribs so that no more than two fingers can fit between the mattress and crib sides.

(6) Bathroom Facilities.

(a) There shall be at least one lavatory with adequate hot and cold water for every six children, a tub or shower and one indoor flush toilet for every eight children. Multiple toilets in one area shall be in separate compartments.

(b) Separate bathroom facilities shall be provided for girls and boys over five years of age.

(c) Ventilation shall be provided with either an open screened window or functioning exhaust fan.

(d) Mirrors or non-breakable reflective surfaces shall be provided in the bathrooms at levels easily accessible to children.

(7) Personal Effects.

(a) Personal effects, towels, wash cloths, toothbrushes, combs and other toilet articles shall be supplied for each child's use.

(b) Each child shall have a place separate from that of other children to keep his/her own personal effects (toys, books, pictures, etc.) as well as his/her clothing.

(c) Each child shall be permitted to bring safe and appropriate personal possessions with him/her and to acquire belongings of his/her own.

(8) Activities.

(a) Provision shall be made for space and suitable equipment for both indoor and outdoor recreation activities.

(i) Equipment shall be age appropriate, in good working condition, and well maintained.

(ii) Stationary equipment such as swings and slides shall be securely anchored and located to avoid accidents.

(b) Children shall be provided with opportunities for interaction in the community through age and developmentally appropriate activities that are educational, recreational, cultural, and social in nature.

(c) Appropriate activities for children's participation shall include school events, church activities, utilization of community recreation facilities, participation in community affairs, and attendance at cultural events.

(d) Documentation of recreational activities that were implemented and were appropriate to the developmental needs, and interests of children shall be on file in the facility and available for review by the Agency licensing representative.

(e) Off-Campus Activities—Facilities may make decisions regarding a child's participation in routine, in-state activities that involve a child spending the night (or several nights) away from the facility for activities such as: camping trips, school related activity, church activity, or an overnight stay with a friend. Facilities must obtain consent from the legal guardian or parent(s) to allow such activities. The following must be taken into consideration when deciding the appropriateness of a child's participation in any off-campus event:

(i) Stipulations of a court order;

(ii) The child's background, presenting problems, abilities and interests;

(iii) If the activity is suitable, positive, and if it will contribute the child's development; and

(iv) The maturity and responsibility of the adults supervising the activity.

(9) Staff Facilities—Staff who reside on campus shall be provided with sleeping and bathroom facilities separate from the children. An exception for sleeping areas will be provided for facilities with staff awake during the night.

(10) Power or Vocational Tools.

(a) Staff must supervise children (on campus) while using equipment or tools.

(b) All equipment must be well maintained and in good working order.

(c) Power tools shall have intact safety devices.

(d) Power tools must be stored in a locked area not accessible to children.

(11) Zoning Compliance and Building Codes.

(a) The construction of a new facility, the conversion of an existing building for residential child care purposes, or the remodeling of a facility must comply with all applicable local zoning regulations and local and state building and fire codes.

(b) Architectural plans for new construction or structural changes must be approved by the State Fire Marshal's Office.

E. Services to Children.

(1) Admissions.

(a) Intake policies shall be clearly defined, and admission shall be in keeping with the intake policies and limited to those children who fall within the scope of the facility's purpose.

(b) Decisions about admissions shall be based upon an assessment (made prior to admission) of the total situation of the needs of the child and their family. If an emergency admission is made, the study shall be made immediately upon the reception of the child.

(c) Decisions regarding admissions shall be the responsibility of either the director and/or a Case Committee (which may include the director, the facility's social worker, the child care worker/houseparent, etc.) and shall be limited to those persons to whom this responsibility is assigned.

(2) Clothing.

(a) The facility shall request that the parent, legal guardian or placing agency provides each child with clothing and shoes individually selected, properly fitted, clean, and in good repair.

(b) Clothing shall be appropriate to the season and comparable to that worn by other reasonably dressed children in the community.

(c) Whenever possible, children shall be involved in the purchase and selection of new or donated clothing. Donated clothing may be used if in good condition.

(d) Clothing belonging to child shall be taken with them upon discharge.

(e) Children will be provided with the necessary equipment and supplies for outdoor activities at the facility.

(3) Nutrition.

(a) Meals with nutritional content that conforms to USDA recommendations shall be provided three times per day.

(b) Adults shall be present during the preparation and serving of meals.

(c) Menus shall be submitted initially by the facility for analysis by a qualified nutritionist or dietician (i.e., degreed or certified in the area of nutrition). Documentation of the analysis shall be on file for review at the time of licensing/relicensing.

(d) The same meal shall be provided for staff and children with the exception of the beverage.

(4) Discipline.

(a) The facility shall adopt (and revise as appropriate) a written discipline code which shall include all policies, procedures and practices on disciplinary actions which are to be utilized by staff and procedures to be followed in administering and reporting discipline. The discipline code shall be submitted at the time of licensing/relicensing and when revisions occur.

(b) The written discipline code shall be shared (initially and when changes occur) with all staff members, school aged children, parents, guardians and referral sources.

(c) The facility is subject to South Carolina laws relating to child abuse and neglect. The facility must immediately report incidents of suspected abuse or neglect to the South Carolina Department of Social Services. Staff shall be apprised of their role as a mandated reporter.

(d) Cruel, inhumane and inappropriate punishment is prohibited. This includes but is not limited to the following: head shaving or any other dehumanizing or degrading act; deprivation of food or family visits; deprivation of mail; slapping or shaking; the use of handcuffs; a pattern of threats of removal from the facility as a punishment; disciplining a child for a medical or psychological problem over which he/she has no control (e.g., bedwetting, stuttering, etc.); denial of communication and visits with family members; demeaning acts designed to embarrass children (i.e., pushing a peanut with your nose, dressing boys in girl's clothing, etc.); denial of essential program services; denial of shelter, clothing, or personal needs; excessive physical exercise; excessive work tasks; verbal abuse.

(e) Efforts will be made to ensure the language of the discipline procedures shall be within each child's cognitive ability.

(f) All discipline techniques must begin with the least restrictive methods. Children who have been placed by a public agency or who are in the custody of the state shall not be subjected to

corporal punishment. Otherwise, written concurrence must be obtained by the parent or legal guardian.

(g) Isolation or time-out shall not be used for a child who is in danger of harming themselves.

(h) Isolation must not be used as a means of coercion, discipline, convenience, or retaliation, and must be discontinued as soon as the child demonstrates compliance.

(i) Isolation rooms must have appropriate lighting, remain unlocked, be well ventilated and must comply with the safety requirements as required by the State Fire Marshal.

(j) Isolation in excess of thirty (30) minutes, must be approved by the facility director and shall not exceed four (4) hours for child seventeen (17) years and older; two (2) hours for child between the ages of nine (9) and sixteen (16) years; or one (1) hour for child eight (8) years and under; unless approved by a physician, physician's assistant or nurse practitioner with prescriptive authority.

(k) An isolation monitoring log must be maintained which shall include, but not be limited to; the reasons for isolation, the length of time, and the name and signature of the staff member who monitored the child during the time the child was in isolation.

(5) Restraints—Facilities that use restraints shall have a written restraint policy that complies with the following:

(a) All child caring staff must be trained and certified through a nationally accredited restraint-training curriculum. If such training is not available, then a facility is to develop an internal training program.

(b) Restraints shall only be used in circumstances in which the child poses a significant threat to himself or others, when less restrictive interventions have already been attempted or are not appropriate, and when the client's condition has been taken into consideration.

(c) Chemical restraints may be implemented only under the supervision of a physician, physician's assistant or nurse practitioner with prescriptive authority.

(d) Restraints must be discontinued as soon as the child demonstrates compliance or is no longer deemed dangerous.

(6) Family Relationships/Visitation.

(a) Unless a child has been removed from the custody of his/her own family and visitation is specifically prohibited by a court order or other legal document, every effort shall be made (in coordination with the referral agency when one is involved) to strengthen family relationships and to help the parent(s) make a responsible plan for the permanent care of their child(ren). This shall include encouraging the parents/relatives to visit on campus and to have the child visit with them off campus as appropriate.

(b) Plans for family visitation shall be included in the written plan of care for the child.

(c) Correspondence between the child and the family shall not be censored, except in extreme circumstances (e.g., sending/receipt of contraband, dangerous materials, sexually explicit, etc.) with those involved being advised that their correspondence is being censored. The reason for censorship shall be documented in the child's record.

(7) Exploitation.

(a) A facility shall not use a child for solicitation of funds, without the written permission of the parent or legal guardian and the child (if more than ten years of age). This shall include the child making or giving public statements pertaining to his/her history or dependency on or gratitude to the facility; the facility making such public statements about a particular child; or having a child collect or solicit donations on behalf of the facility.

(b) A facility shall obtain the written consent of the child's parent(s), or legal custodian before using the child's name, photograph or other identifying information in any form of written, visual or verbal communication which will be made public (e.g., newspaper, television or radio articles/publicity materials; materials mailed or otherwise distributed by the facility to the public, etc.).

(8) Medical Care.

(a) Health Care.

(i) There shall be adequate provision for health care, with services available at all times. A child's general health care shall be under the direction of one specific doctor, clinic, or other licensed health facility.

(ii) Within six months prior to or within seventy-two hours after admission to a facility, the parent, legal guardian, or placing Agency shall ensure a child has a recorded medical examination conducted by a licensed physician or a licensed nurse practitioner.

(iii) A facility must be apprised of a child's physical condition, physical disability, or communicable diseases.

(iv) Each child shall be provided with appropriate inoculations. All necessary medical care with respect to treatment of illness and correction of physical disabilities shall be carried out promptly.

(v) Annual health examinations by a licensed physician or a licensed nurse practitioner shall be provided for each child except those less than three years of age who shall have an examination every six months.

(b) Hospitalization—The facility shall make provision and establish procedures for hospitalization when needed for children under its care.

(i) If a child is in need of hospitalization or medical treatment, the child's legal guardian, parent or caseworker must be notified as soon as possible.

(ii) Medical consent for planned hospitalization or a medical treatment must be obtained from the child's legal guardian, parent or an appropriate Agency representative.

(c) Illness and First Aid.

(i) Each member of the child care staff shall be able to recognize the common symptoms of illness of children and to note any obvious physical disability.

(ii) A facility shall ensure at least one staff member per working shift is certified in first aid and cardiopulmonary resuscitation.

(iii) A written first aid plan and a first aid kit shall be available to child care staff.

(d) Dental Care.

Each facility shall have a specific plan for dental care and dental health that shall be consistently followed. The plan shall provide for, at a minimum, annual checkups by a licensed practitioner.

(e) Health Records.

A continuous medical record reflecting each child's growth and development, illnesses, treatments, inoculations, dental care, etc., shall be kept at the facility.

(f) Medications.

(i) All medications shall be kept in a double locked secure area, accessible only to staff.

(ii) All prescription medication shall be labeled for the individual child including the dosage and frequency of the dose.

(iii) A log must be maintained to document when the medication was given, who administered the medication, and to record any changes in medication or treatment.

(iv) If medications are discontinued, the remaining medications shall be destroyed.

(g) Medical Costs—The person or entity with custody shall be responsible for payment of any medical services received.

(9) Academic and Vocational Training.

(a) Each facility shall be responsible for providing an opportunity for academic training and/or vocational training in accordance with the abilities and needs of the children.

(b) Facilities providing on-campus educational programs must meet compulsory education requirements as defined by the South Carolina Department of Education.

(c) Children who are eligible (based on federal standards) shall have independent living goals and strategies as part of their service plan.



(d) Children shall be permitted and encouraged to participate in extracurricular activities such as sports, art, and music to the extent of their interests.

(e) School attendance shall be in accordance with state law requirements and be in accordance with the ability and best interests of the child.

(10) Religion—Each facility shall have clearly defined policies regarding the availability of religious training for the information of those considering the placement of a child. This information shall be made available to parents, legal guardians and children.

(11) Disaster Plans.

(a) A written disaster plan must be included as part of the policy and procedure manual. The plans must be reviewed annually and resubmitted as part of annual relicensing requirements.

(b) In the event of a mandatory evacuation order due to a disaster, children are to be evacuated to a designated shelter or a safe location that is not threatened by the disaster.

(12) Discharge and Aftercare.

(a) The governing board shall adopt and update, as appropriate, written policies concerning discharge and aftercare.

(b) Careful evaluation shall be made on an ongoing basis in order to assess when and if a child may be returned to his/her own home, placed in a foster home or with relatives, or transferred to another facility better suited to meet his/her needs.

(c) A facility shall provide sufficient notice to the child and the referral source prior to discharge to allow arrangements for an appropriate alternative placement to be made.

(d) A facility will complete a discharge report for child residing in a facility for ninety (90) or more days. The discharge report shall include major recommendations and outcomes, list records to be transferred, and be available to the Agency or legal guardian within ten (10) days of discharge.

(13) Foster Home Care—Children placed in a facility of a particular organization may not be moved by that facility to one of its foster homes unless the facility is licensed as a Child Placing Agency and has the permission of the placing entity.

(14) Records—Every facility shall maintain a confidential (see South Carolina Code, 1976, 20–7–2280) case record stored in a locked or secure area, which may not be disclosed except for purposes directly connected with the administration of the facility or for the care and well being of a child. The file shall contain the following:

(a) Application for services.

(b) A study of the child in context of their family, provided by the referring party, including a statement regarding custody and legal responsibility for the child.

(c) A copy of the birth certificate provided by the placing entity.

(d) Authorization for medical treatment signed by parent or guardian.

(e) Reports on medical care, inoculations, dental care, and psychological and psychiatric reports, if any are available.

(f) Current record of the child's physical, emotional, social and academic progress in residential group care, and relationships with the family while the child is under care.

(g) Discharge information and plan for return to the community.

(h) A full report of the foster family and of the child in foster care shall be provided if foster home care has been given.

(i) Documentation that the legal guardian or parent has been informed whenever a child has been involved in a major behavior incident.

(j) Documentation of major behavior incidents.

(15) Transportation.

(a) Vehicles transporting children will comply with all state and federal laws.

(b) Transportation of children shall comply with "Jacob's Law" (Section 56–5–195).

- (c) No vehicle shall transport more children than the manufacturer's rated seating capacity.
- (d) The bed of an open body or stake bed vehicle must not be used for transporting children.
- (e) Each facility must have a policy and tentative plan for transporting children in the event of an emergency or disaster.

(16) Tasks.

- (i) Assigned tasks shall be appropriate to the age and abilities of the child and assigned for the purpose of training in skills and attitudes and in the proper assumption of personal responsibility.
- (ii) The facility shall differentiate between tasks of daily living, jobs to earn spending money, and jobs to gain vocational training.
- (iii) Daily living tasks shall be made known to the child during orientation and the child shall be given some choice in chores with duties that provide a variety of experiences.
- (iv) The rules on jobs to earn spending money or gain vocational training shall be made known to all age appropriate children. Opportunities to participate shall be made available in accordance with the child's age and abilities and so as not to interfere with other educational activities.
- (v) Children shall not substitute for staff nor regularly perform tasks more appropriately assigned to staff.
- (vi) The facility shall comply with all Child Labor laws.

F. Licensing.

(1) Inquiries.

- (a) Requests for information regarding an application for a license shall be sent to the South Carolina Department of Social Services (SCDSS). SCDSS will then send a copy of the rules and regulations governing the license. Consultation will be available upon request.
- (b) If the facility is already in operation, a visit will be made by a representative of the Agency as soon as it can be arranged.

(2) Procedure for Licensing.

- (a) With the initial application for a license, the following information shall be sent to the South Carolina Department of Social Services:
  - (i) Completed Application for License form.
  - (ii) A copy of the charter or law establishing the facility.
  - (iii) A copy of the constitution or bylaws, and operating procedures.
  - (iv) A statement of the purpose, scope of services to be provided, intake policy specifying age, sex, type of children to be accepted for care, and the area of the state in which it plans to operate and serve.
  - (v) A list of Officers and Governing Board members and other pertinent information regarding its facility which will show who has responsibility for policy making and administration.
  - (vi) A financial statement showing assets, income and sources thereof, verification of a minimum of three (3) months operating capital on hand, and expenditures for the past year. (For a new facility, the estimated income and expenditures for the first year shall be given).
  - (vii) Names and job classification of staff, education and work experience requirements.
  - (viii) The number of buildings and a statement regarding the general condition of the facility.
  - (ix) A current fire inspection report.
  - (x) A current health inspection report.
  - (xi) A copy of the current procedural manual.
  - (xii) Verification of local building and zoning compliance.
  - (xiii) Menus approved by a qualified nutritionist or dietician.
  - (xiv) Medical examination reports for all staff.

(xv) South Carolina Child Abuse and Neglect Central Registry checks for all staff and volunteers who have unsupervised contact with children.

(xvi) South Carolina State Law Enforcement Division (SLED) criminal records checks for all staff and volunteers who have unsupervised contact with children.

(xvii) Memorandum of Agreement on Criminal Record Checks.

(xviii) South Carolina Sex Offender Registry Check verification for all staff and volunteers who have unsupervised contact with children.

(xix) Documentation of training completed by each staff member for facilities being relicensed.

(xx) Tuberculosis screening for all staff.

(b) As soon as possible after the receipt of the application for a license, a representative of the South Carolina Department of Social Services will visit the facility and will secure information on which to evaluate the program in relation to licensing standards.

(c) If the facility wishes to operate a foster home or adoptive home program in addition to caring for children in residential group care; it will be necessary to submit additional information as required for a license to operate a Child Placing Agency.

(3) License.

(a) The terms of the license, the number, age and sex of children to be maintained will be stated in the license issued.

(b) A Standard License will be issued when a facility meets all applicable regulations. A Standard License is effective for twelve months from the date of issuance.

(c) Standard with Temporary Waiver License.

(i) A Standard with Temporary Waiver License may be granted at the discretion of the State Director of the South Carolina Department of Social Services when a facility temporarily lacks a requirement that does not affect the health and safety of children.

(ii) To change the status of the license to a Standard License, the facility shall submit written notification that the deficiency has been corrected to the South Carolina Department of Social Services, (subject to verification and at the discretion of the Agency).

(d) The license shall be displayed at all times.

(e) The facility shall not deviate from the provisions specified in the license issued.

(f) The license is not transferable, is specific to the location, owner, and existing buildings at the time of licensure.

(4) Denial or Revocation of a License.

(a) The Agency may refuse to issue or revoke a license to a facility/applicant who:

(i) Fails to comply with residential group care licensing regulations;

(ii) Violates state or federal laws;

(iii) Abuses or neglects children as defined in Section 20-7-490(B), S.C. Code of Laws, 1976 as amended (also refer to Discipline, E(4));

(iv) Knowingly employs a person with a past/current history of child abuse or is on the South Carolina Central Registry of Child Abuse and Neglect or fails to terminate their employment once the record is known;

(v) Makes a false statement or a misrepresentation to the Department of Social Services that adversely impacts the care and safety of children;

(vi) Refuses to submit licensing or child specific information or reports to the Agency as it relates to care and safety of children;

(vii) Fails to cooperate, withholds information, or impedes an investigation of child abuse or neglect;

(viii) Fails to provide, maintain, equip, and keep safe and sanitary the facility to care for children;

- (ix) Fails to provide adequate financial resources to maintain the facility;
- (x) Fails to notify the Agency of any structural improvements or new construction within three (3) working days;
- (b) The Agency is empowered to seek an injunction against the continuing operation of a facility as provided in Section 20-7-670.
  - (i) When a facility is operating without a license;
  - (ii) When the Agency determines threat of harm to children in the facility.
- (c) Notification—Written notice will be given to an applicant or facility by certified mail or hand delivered by an Agency representative, if the license is revoked or denied.
- (d) Appeals—Any facility whose application has been denied or revoked, may request a hearing within thirty (30) days of receipt of notification of the Agency’s decision. Requests for appeals must be forwarded to the South Carolina Department of Social Services, Office of Administrative Appeals.

(5) Termination of License.

- (a) Expiration of License.
  - (i) A Standard License expires automatically at the end of twelve months from the date of the issuance of the license unless renewed or cancelled prior to that date.
  - (ii) Standard License with Waivers may be granted for non-safety related items.
- (b) Cancellation of License—A license shall be cancelled if there is a deviation from the provisions of the license or if the location of the facility or the facility operating the business changes.

(6) Annual Review and Relicensing.

Annually, all licensed facilities must submit the material listed below to the South Carolina Department of Social Services. Continued licensing will be based on a review of this material and a visit(s) by a representative of the Agency to tour the facility, review the program, and interview staff as appropriate.

- (a) A formal application.
- (b) An annual population report.
- (c) A copy of the facility’s most recent financial statement.
- (d) An estimated budget for the facility’s current fiscal year.
- (e) A current list of governing board members and committees.
- (f) The names and job titles of current staff and completed applications or resumes for staff who have been employed since the last license was issued.
- (g) A report of any major changes in program or the physical facility planned for the coming year.
- (h) A report of a fire inspection that was completed within the past licensing period.
- (i) A report of a health and sanitation inspection that was completed within the past licensing period.
- (j) A copy of a menu approved by a nutritionist or dietitian.
- (k) Current South Carolina Law Enforcement Division (SLED) criminal records checks for staff and volunteers.
- (l) South Carolina Sex Offender Registry Checks for staff and volunteers.
- (m) South Carolina Child Abuse and Neglect Central Registry checks for all staff and volunteers.
- (n) Reports of medical examinations for each new child care staff employed after the date of the previously issued license and a statement of freedom from contagious disease for all other child care staff.
- (o) Tuberculosis screening for all staff.

(p) Documentation of at least fourteen (14) hours of training within the last year for all child care staff.

(q) Record of monthly fire drills for fire and emergency evacuation that are held at different times.

(r) Documentation from a county building inspector may be required if the Agency suspects a new or existing building or structure poses a risk of harm to children.

(7) Authorized actions by the Agency.

(a) Licensing staff from the agency may make visits to the facility without prior notice to ascertain continued compliance with these requirements.

(b) The Agency shall investigate complaints to determine if the facility is meeting licensing requirements and shall take appropriate and necessary actions based on its findings.

(c) The Agency shall inform the director of the facility of any complaints and shall submit a written report of the results of the investigation within ten (10) days upon the completion of an investigation. If the director is the subject of the complaint, the chairman of the board will be notified.

**HISTORY: Amended by State Register Volume 27, Issue No. 5, eff May 23, 2003.**

## **114–595. Standards for Supervised Independent Living.**

(Statutory Authority: S.C. Code § 20–7–2250)

### **A. Program Framework**

(1) The goal of an independent living program is to prepare youths, ages sixteen to twenty-one, for successful adult living through the provision of services related to daily living, problem-solving, and other skills that maximize the youth's potential to be a self-supporting, productive adult. A continuum of services shall be available and provided in accordance with the developmental readiness of youths served, in addition to their chronological age.

(2) There are three levels of independent living programs which may be offered by the group home, child caring institution, or child placing agency: on campus or in-home supervised services (Level 1); off campus or out-of-home supervised services (Level 2); and in-community, monitored services (Level 3). No program shall be licensed for Level 3, the community living, monitored component.

(3) Program Framework -REQUIRED.

(a) On campus or in-home supervised services (Level 1) provides twenty-four hour supervision by staff or foster parents who have separate quarters (i.e., bedroom and bathroom) within the facility or home with the youths in care. These services are used to initiate independent living concepts and to teach basic skills under immediate supervision.

(b) Off campus or out-of-home services (Level 2) are offered for youths who have some basic knowledge and skills and are ready for limited practice of those skills with some supervision. This level shall be limited to youths who are at least eighteen years of age (or for non-DSS placements at least seventeen if the placement agency defines seventeen as the age of adulthood) and who are employed or are in some type of post-secondary vocational preparation program. Level 2 services provide the youths with some opportunity for independent living through the availability of an apartment or other living arrangement which is separate from, but supervised by staff located on-site (e.g., youths share an apartment and staff has a separate apartment in the same building). The youths assume primary responsibility for daily living (e.g., cooking, shopping, money management, etc.) and staff supervision is supportive, less intensive, and available on-site twenty-four hours a day.

(c) Community, monitored living (Level 3) must be limited to youths who are eighteen years old and above, who have successfully completed at least one other level (1 or 2) of an independent living program, and are in a post-discharge status. No foster care board payments through DSS are available for a youth in a Level 3 program.

(4) Program Framework -RECOMMENDED -Community housing may be owned by the agency or organization licensed to provide the independent living program or rented by the agency,

organization, or youth. The agency should provide regular (at least weekly) face-to-face contact for monitoring, twenty-four hour telephone access to staff, and pre-discharge services for the youth. In-home or on-site supervision is not required.

#### B. Administration and Staff

(1) Staff -REQUIRED -Independent living services shall be provided using staff specifically assigned to the independent living program with the definition of roles and responsibilities clearly defined. Staff designated for independent living services can be specialists in more than one program area, e.g., independent living and therapeutic foster care.

(2) Staff -RECOMMENDED -A team approach should be used for program coordination and staff assignments.

(3) Training -REQUIRED.

(a) Personnel (direct care, social work, other staff and foster parents) who deliver the independent living services must receive specialized training to develop skills and knowledge.

(b) Personnel who deliver the independent living services shall each receive a minimum of ten hours of specialized training initially and five hours of specialized training annually thereafter.

(4) Training -RECOMMENDED -Training areas should include

(a) helping adolescents learn psychological coping;

(b) self-sufficiency as a long term learning process;

(c) the effects of family separation and the impact of placement on children and adolescents;

(d) helping adolescents form appropriate and meaningful adult relationships

(e) identification and utilization of helping networks in the community; and

(f) experiential learning techniques, formal and informal instruction, and other opportunities to help the youth learn skills needed to live independently and self-sufficiently.

(5) Case Coordination -REQUIRED -Staff shall be identified to assume case coordination services including

(a) making a full assessment of each youth admitted including any special diagnostic and treatment services that may be needed;

(b) coordination and integration of services from a variety of public and private sources;

(c) developing an independent living plan with the youth;

(d) developing and implementing an advocacy plan to engage community resources to support the adolescents' progress toward independent living.

(6) Staff Qualifications -REQUIRED-All professional staff shall meet the requirements which correspond to their responsibilities and role, such as college or graduate degree, professional licensure, relevant training, and/or experience. Direct service staff must have at least a high school diploma or the equivalent (e.g., GED).

(7) Staff-Child Ratio -REQUIRED.

(a) For levels 1 and 2, the staff-child ratio shall be at least one to eight for group care programs and one to ten at night. Each staff who assume social work or case management responsibility for the licensed facility or agency shall have responsibility for no more than sixteen youths in the independent living program.

(b) No more than two youths should be placed in a foster home licensed for independent living.

#### C. Preadmission Activities -REQUIRED.

(1) An admission packet outlining the program and expectations shall be sent to the youth and/or the legal custodian prior to a preplacement visit and shall be completed prior to placement. The legal custodian will ensure that the admission application and other required information are completed and returned to the facility or agency providing the independent living service.

(2) Admission shall be considered on the basis of

(a) a preplacement visit to the program by the youth and the legal custodian;

(b) the youth's willingness to enter the program;

(c) the youth's readiness for independent living, including self-control and ability to work through a crisis (e.g., youth is behaviorally appropriate; not running, emotionally disturbed, substance abuser, etc.) but allowing for some late adolescent issues and testing;

(d) a completed application for admission;

(e) a current/recent psychological evaluation if indicated; and

(f) other available documentation, e.g., current school report, that provides information on the youth's readiness and needs.

(3) Youths with a history of emotional disturbance, criminal activities, or mental illness shall not be admitted to any level of an independent living program directly from a hospital or residential treatment facility setting unless the preplacement assessment documents their readiness for the level of responsibility and behavioral management necessary for successful participation in an independent living program. Emergency admissions to the independent living program are not acceptable.

(4) Documents, such as a current medical and a copy of the youth's birth certificate, required by basic standards for licensure or required by the child caring institution, group home, or child placing agency must be submitted to the facility or agency operating the independent living program.

#### D. Admissions Activities

##### (1) Participation -REQUIRED.

(a) In all situations of young people in an independent living program, contact must be made with the legal guardian.

(b) Records must include documentation of the custody status of the youth and authorization to provide care.

(c) Independent living staff in partnership with the youth (and the legal custodian when possible) shall develop and implement a plan.

(2) Participation -RECOMMENDED -As appropriate, key family and extended family members and significant others (e.g., former residential program staff or foster parents and other involved service providers in the community) should be involved in assessment, planning and implementation activities. The youth shall be asked for input on who to include in the assessment and planning, e.g., who is important in your life.

##### (3) Assessment of Skills -REQUIRED.

(a) Service plans shall be individualized and shall include group and individualized activities based on tailor-made goals.

(b) The post-admission assessment or skills inventory shall identify strengths and needs and define problems.

(c) The assessment or inventory of competencies in personal and life skills must be developed with the youth. The written inventory shall be used for ongoing review and monitoring of progress.

##### (4) Assessment of Skills -RECOMMENDED.

(a) Assessment areas should include the following:

(i) evaluation of possible life options/goals and development of plans to achieve those goals;

(ii) developing a framework for understanding consequences and processing outcomes;

(iii) developing skills in stress management, dealing effectively with authority figures, and personal decision-making;

(iv) understanding and coping appropriately with anger, losses, and rejections, including the circumstances that led to out-of-home care;

(v) understanding issues related to discrimination (e.g., racial, cultural, ethnic, gender, age, sexual orientation) including sensitivity, appropriate behavior, and legal rights and responsibilities;

(vi) understanding issues of substance abuse;

(vii) responsible sexual behavior;

(viii) establishing and maintaining healthy relationships with family, peers, and other adults;

(ix) obtaining factual information about health needs, personal and family history, medical and social history;

(x) developing basic survival skills, including money management skills, locating/arranging and maintaining housing, personal care, locating and using community resources; and

(xi) the need for educational and vocational remediation.

(b) A copy should be provided to the youth and a copy placed in the case record.

(5) Service Plan -REQUIRED -The written plan must be

(a) based on the assessment/skills inventory;

(b) developed in partnership with the youth and significant others;

(c) include all items which are appropriate for the individual adolescent;

(d) considered as a contract and include specific measurable goals;

(e) a mutual agreement between the adolescent (e.g., why I want to be here) and the program staff (e.g., we think you are an appropriate candidate); and

(f) completed within thirty days of the youth's admission to the independent living program.

(6) Education Assessment -REQUIRED -Educational services shall begin with informal and formal assessments of skills, learning styles, aptitudes, and abilities and should lead to the appropriate resource, e.g., public or private secondary or post secondary education, remedial classes, other vocational education/training.

(7) Health Assessment -REQUIRED -A sense of the youth's physical well-being and health needs shall be established through the provision of a health assessment and appropriate intervention.

(8) Evaluation and Revision of Service Plan -REQUIRED -All evaluations and revisions of the plan shall include the youth as a partner, reflect documentation of the assessment, include mutual responsibilities, and whenever appropriate include the family and significant others.

#### E. Services During Placement

(1) Services -REQUIRED.

(a) A continuum of services shall be available and include at a minimum social work services, educational services, employment services, medical services, community involvement (e.g., social, recreational, leisure-time, religious, and cultural activities), and case management services.

(b) Services shall be provided in accord with developmental readiness and stages of independence, not chronological age, i.e., services are individualized on the basis of the youth's needs and are well-matched to the range of stages and developmental readiness exhibited by youth.

(2) Services -RECOMMENDED.

(a) Practical strategies addressed in the program should include

(i) obtaining factual information about the current status of personal, family and medical histories;

(ii) developing basic survival and money management skills;

(iii) acquiring educational, vocational, and medical services;

(iv) locating and maintaining housing; and

(v) using community resources.

(b) The plan of services should recognize whether needs are the result of motivation or ability and whether intervention or compensation will be the focus of services.

(c) Social work services should be offered directly and include case coordination, case advocacy, counseling, and referral for treatment by a cooperating professional, when indicated.

(d) Educational services should include

(i) the use of formal, informal and experiential teaching methods in accordance with the adolescent's learning style, aptitude, and ability; and

(ii) education or training on life skills, self-care, the activities of daily living, human sexuality, vocational/technical training, employment, housing, legal issues, and substance abuse.



(e) Employment services should include

(i) an assessment of the adolescent's ability to find a job on their own and their strengths and weaknesses (abilities and limitations) related to work;

(ii) sharing this information with the youth;

(iii) making use of available community employment and training resources and helping the youth access them;

(iv) helping hard-to-employ youths develop the work habits and other skills (e.g., social and self awareness) necessary to obtain and keep a job; and

(v) developing job leads and working with employers who may employ youths.

(e) Social, recreational, leisure-time, religious, and cultural activities provided or arranged by the agency should expand the range of life experiences and should be designed with sensitivity to the needs of indigenous special populations.

(f) Opportunities should be made for youth to participate and take responsibility in peer support and community service programs.

(g) There should be opportunities for community involvement to help the youth establish a sense of "community" and to include daily events that take the youth into the community, e.g., grocery store, post office, Highway Department, employment agency, etc.

(h) Individual, group, and family counseling services should be provided for all adolescents to help them better understand their past and present and prepare for their future. Counseling services may be offered by qualified program staff or through an appropriate outside resource.

(i) Case management services should include individual assessment of the youth's skills and needs, including using special diagnostic services when appropriate; the development of a plan incorporating those services required from a variety of public and voluntary sources; follow-up and assessment of the effectiveness of services provided, with appropriate modifications in the plan; advocacy; and monitoring of the plan's implementation.

(3) Monitoring -REQUIRED.

(a) Progress on goals must be monitored and recorded through written weekly progress notes. A copy of the weekly progress notes shall be filed in the youth's case record at the facility.

(b) Monitoring of progress on the independent living plan/contract must occur at least every three months. The assessment and plan shall be the basis for review. A progress summary shall be prepared with a copy sent to the legal custodian and a copy placed in the youth's case record at the facility.

(4) Monitoring -RECOMMENDED.

(a) The assessment and plan should be modified to include steps in preparation for transition as the time for exit from the system approaches.

(b) Both staff and the youth should have input into when success has been achieved on a goal.

(c) As many people as appropriate should be included in reviews, i.e., the youth, program staff, the family, school personnel, etc. All who participate should sign the review.

(d) The program should allow for increased assumption of adult role and reduction in dependency on the agency, including when possible, an opportunity for independent living with a subsidized safety net prior to discharge from the program.

F. Predischarge Activities

(1) Planning -REQUIRED.

(a) Youths who successfully complete the program shall enter predischarge status, including receiving advance notice of the discharge plan and date and an opportunity to participate in transition planning.

(b) When a youth successfully completes the program, the facility or agency shall plan for successful transition by a youth.

(2) Planning -RECOMMENDED.

(a) Predischarge activities should occur preferably six months prior to the youth's exit from the program and should include the youth's preparation for cessation of any benefits and the provision of aftercare and follow-up services.

(b) All youths who successfully complete the program should be helped with location of suitable, safe, affordable housing including education and evaluation regarding key factors in housing choices, such as the following

(i) income, financial management, access to employment, education and health resources;

(ii) the youth's personal needs, level of maturity and functioning, and budget;

(iii) education regarding tenants' rights and responsibilities;

(iv) health and safety standards; and

(v) exploration of a range of housing options and a joint evaluation of the risks and benefits of each option.

(3) Discharge Prior to Program Completion -REQUIRED -The agency shall work with the youth and the legal custodian to make an alternate placement plan when discharge is necessary in such situations.

(4) Discharge Prior to Program Completion -RECOMMENDED -For youths who do not successfully complete the program, discharge may be requested by the licensed facility or agency, the legal custodian, or the youth.

(5) Predischarge Activities -RECOMMENDED -Predischarge activities should include

(a) arranging for transfer/termination of custody, as appropriate;

(b) providing the youth with relevant information on rights and benefits to which he/she may be entitled;

(c) providing the youth with basic documents;

(d) making certain basic resources (e.g., housing, employment, etc.) are in place;

(e) providing information on community resources including social services, health care, law enforcement, courts, recreation, etc.; and

(f) providing supportive linkages through the agency and community resources.

(6) Documents -REQUIRED.

(a) Basic documents shall be provided to the youth who has successfully completed the program.

(b) Staff shall help the youth gather documentation, identify where other needed documents are and prepare a lifebook or other album of photos, etc.

(7) Documents -RECOMMENDED -These documents should include

(a) a birth certificate;

(b) a driver's license and/or an identification card;

(c) a Social Security card;

(d) compilation of family history (which may include names/location of relatives and siblings, copies of parents' death certificates if either/both are deceased);

(e) complete medical records (including immunization card, doctors, clinics, hospitals, and dentists where services have been received) and information about eligibility for medical insurance

(f) list of schools attended and previous placements, educational records (i.e., high school, GED and/or post secondary diplomas).

(g) other basic data which should be provided include

(i) job resume and letters of reference;

(ii) a list of resources for counseling and crisis management;

(iii) a copy of the transition plan including emergency contacts;

(iv) a list of health care resources;

(v) a list of legal rights/responsibilities and legal resources;

- (vi) a list of contact persons to help with employment and vocational training;
- (vii) how and who to contact in the agency for follow up services; and
- (viii) a transition plan summary that includes the options available if the original plan fails.

(8) Transition Planning -REQUIRED.

(a) When the youth successfully completes the program, the staff and the youth shall jointly complete a transition plan.

(b) Staff shall help the youth collect basic supplies or identify resources through which supplies can be obtained.

(9) Transition Planning -RECOMMENDED.

(a) Elements of the plan should include the following information

- (i) new address;
- (ii) rent and utility costs;
- (iii) estimated expenses (phone, food, transportation, etc.) and estimated weekly or monthly income;
- (iv) current debts and plan to pay them;
- (v) money saved to date (savings/checking account);
- (vi) names and addresses of employer, health care provider(s), and recreational facilities;
- (vii) religious affiliation;
- (viii) emergency preparations;
- (ix) checklist of personal and family information;
- (x) identification, name(s) of adults for advice/assistance;
- (xi) plans for continuing education; and
- (xii) items to be completed before discharge.

(b) Basic resources which should be available before discharge are

- (i) a living arrangement;
- (ii) a job/income;
- (iii) affordable health care;
- (iv) a positive relationship with at least one adult committed to helping the youth's transition;
- (v) affordable transportation and information on how to use it;
- (vi) low-cost sources for purchase of basic items;
- (vii) personal and family information and identification;
- (viii) names of potential religious resources;
- (ix) sources for low/no cost leisure time activities;
- (x) knowledge of what to do in emergencies;
- (xi) access to positive peer support group;
- (xii) knowledge of adult court and welfare systems;
- (xiii) access to a means of recreation; and
- (xiv) linkages to other appropriate community resources.

G. Post-Discharge Activities -RECOMMENDED.

(1) Aftercare services should be made available to youths who successfully complete the program for at least six months after discharge to maintain contact and to provide support as they leave out-of-home care.

(2) Services may be offered directly by the agency or through referral to an appropriate cooperating community resource.

(3) A client tracking system should be used to follow up and assess the youth's status and the provision of services by cooperating community agencies involved in aftercare services.

(4) Aftercare services should include financial assistance, employment counseling and support, crisis counseling, emergency shelter, housing assistance, information and referral, community service opportunities, peer support programs, and advocacy.

#### H. Documentation -REQUIRED.

(1) Documentation for each youth shall be maintained in individual case records for the youth in care and shall include an initial written assessment, a written plan/contract based on the assessment, weekly progress notes based on goals, and summaries of the three months reviews/evaluations of the plan.

(2) For youths in predischarge status, the case record must also include the discharge plan, the plan for transition and aftercare services, evidence that basic documents have been obtained or requested for the youth, and evidence that basic resources and supplies are available to the youth.

#### I. Licensure -REQUIRED.

(1) An application for licensure and other materials required for licensure and relicensure based on minimum licensing requirements must be completed for an independent living program seeking licensure.

(2) For a new institution, group home, or child placing agency established to provide an independent living program, information required for basic licensing must be provided in addition to specific information about the independent living program.

(3) For a licensed institution, group home, or child placing agency that adds independent living services to an existing program of services, details must be submitted to licensing staff on how the independent living services will be incorporated into the existing program.

(4) For group homes and institutions, at least one on-site visit to the independent living program by licensing staff will be required to ascertain whether the independent living program meets minimum standards for independent living in addition to basic licensing requirements.

(5) The agency's license shall be amended or a separate license issued to include the independent living program. The license shall be either a Temporary license if any deficiencies noted in the basic requirements, the independent living requirements, or both or a Standard license if no deficiencies are found.

**HISTORY:** Added by South Carolina State Register Volume 20, Issue No. 4, eff April 26, 1996.

## ARTICLE 7 TRAINING GRANTS AND CONTRACTS

(Statutory Authority: 1976 Code §§ 43-1-80, 8-15-60)

### **114-710. Training Grants and Contracts.**

#### **A. Definitions**

(1) Grant—the term used to describe the method of funding an educational or training program to be carried out by an educational institution on behalf of the agency. Such grants are actually formula grants; that is, they consist of seventy-five percent federal funds and twenty-five percent matching funds supplied by the grantee, and are awarded on a reimbursable basis as costs are incurred.

(2) Educational Institution—an accredited school, college, or university of the post-secondary, undergraduate, or graduate level.

(3) Expert—an individual, firm, or agency that possesses by virtue of training, education, or experience the ability to develop or implement any or all portions of a training or educational program needed by the agency.

#### **B. Educational Grants.**

(1) The agency, to the extent feasible and practical under existing federal and state regulations and manpower and funding resources, provides for long-and short-range staff development pro-

grams through the funding of grants to educational institutions. Such educational grants are for the purpose of providing a needed training or educational program for agency staff or eligible staff of providers. The grant may be for an in-service training program or for an educational program which may include curriculum development, classroom instruction, or field instruction.

(2) The following criteria shall be utilized by the agency in determining whether an educational grant will be funded:

(a) The proposed program must meet an agency determined manpower training and development need;

(b) The proposed program must be directly related to the administration and provision of agency services.

(c) The program must be directed at an appropriate target group within the agency and provider staff.

#### **C. Provider Training Contracts.**

(1) The agency may provide funding in support of training for employees of providers under contract with the agency. Such funding may be utilized for certain costs of training, as specified in 45 CFR Part 228, Subpart H. Any such funding shall be in support of training which is directly related to the provision of services under the provider's contract with the agency.

(2) The following criteria shall be utilized by the agency in determining whether training proposed by a provider will be funded:

(a) A service contract between the agency and the provider must be in effect;

(b) The proposed training must be directly related to the provision of services as provided in the service contract;

(c) The provider trainee must fulfill an appropriate work Commitment within the period of the related service contract.

#### **D. Use of Experts.**

(1) The agency may utilize qualified experts from outside the agency to develop or conduct special training programs in support of agency needs.

#### **E. Initiating Proposals for Training Grants and Contracts.**

(1) General inquiries concerning training grants and contracts must be directed to the Staff Development & Training Division (SD&T), S. C. Department of Social Services, P. O. Box 1520, Columbia, South Carolina 29202.

(2) Forms, guidelines, and applicable federal regulations (45 CFR Part 228 and Part 74) concerning training and contracts are available from SD&T.

(3) Educational institutions, providers, and experts interested in developing a proposal for a training grant or contract should contact SD&T. SD&T will explore with interested parties agency manpower and training needs and coordinate appropriate involvement of agency program and operating staff. In addition, SD&T will provide technical assistance on the interpretation of applicable state and federal regulations.

(4) Written proposals for training and educational programs may be submitted to SD&T in the appropriate format at least two months prior to the proposed funding date. An original and three copies of the proposal are required.

#### **F. General Criteria for Funding Training Grants and Contracts.**

The following general criteria shall be utilized by the agency in determining whether to fund training grants and contracts.

(1) The proposal must be soundly based on a training needs assessment.

(2) The proposal must present a sound design or method of design and plan for implementation.

(3) The program shall have objectives against which progress can be measured and success or failure determined.

(4) Programs funded by the agency with educational institutions and providers shall include an evaluation component to measure effectiveness of the program. The institution or provider shall be

responsible for the design and implementation of the evaluation, subject to approval by the agency. An evaluation component may be required by the agency in contracts with experts.

(5) The program shall be administered and implemented by qualified staff.

(6) The provider, institution, or expert shall agree to abide by these regulations.

**G. General Requirements and Conditions.**

(1) Funds in support of the above activities consist of seventy-five percent federal money. The twenty five percent matching funds for grants and contracts will normally come from grantee sources. The matching funds shall be from a non-federal source and shall not be used as match for any other federal programs.

(2) If the agency determines to fund an education or training program, a written legally-binding contract shall be signed by both parties.

(3) Programs may be initiated at any time during the fiscal year; however, no contracts will extend beyond the close of the agency fiscal year, or in the case of providers, beyond the expiration date of their service contract.

(4) Providers, educational institutions, and experts with whom the agency contracts shall agree to furnish all required reports, forms and data on a timely basis and shall make their program-related records available for fiscal and programmatic monitoring and review and fiscal audits upon request of the agency.

(5) All contracts for educational and training programs under these regulations shall be established on a reimbursable basis; that is, the provider, educational institution, or expert shall be reimbursed for approved costs as they are incurred, claimed, and processed.

**H. Prior Regulations Repealed.**

South Carolina regulation 114-70.1 is hereby repealed.

**ARTICLE 9  
INTERAGENCY MERIT SYSTEM**

(Statutory Authority: 1976 Code § 43-1-80)

**114–910. Interagency Merit System.**

The Department of Social Services adopts the rule of the South Carolina Interagency Merit System.

**ARTICLE 10  
GENERAL PROVISIONS FOR ARTICLES 15 AND 19**

(Statutory Authority: 1976 Code § 43-1-80)

**114–1010. Definitions and General Requirements.**

**A. Definitions.**

(1) Applicant—a person who has, directly, or through his authorized representative, made application for public assistance to the County Department of Social Services and whose application has not been terminated or disposed of by appropriate County Department action.

(2) Authorized Representative—someone who is acting for another individual with his knowledge and consent and who has knowledge of the other individual's circumstances.

(3) Application—the action taken by a person or his duly authorized representative by signing a completed application form requesting financial or medical assistance.

(4) Effective Date of Application—the date on which the application form is completed and signed by the applicant or his authorized representative.

(5) Inquiry—a request for information about eligibility requirements for public assistance.

(6) Referral—request for information, service, or aid in behalf of an individual by an agency, institution, or another person.

(7) Application Process—all activities from the time an application is accepted until the receipt of payment or other disposition of the application.

## **B. General Requirements.**

### (1) Accrual Rights.

(a) For all assistance payments programs except those specified below, an applicant's right to a money payment accrues on the earlier of the following dates, provided he was alive on such date and eligible insofar as is known:

(i) The first day of the month in which the award is authorized by the County Department;  
or

(ii) The thirtieth day from the date on which a properly signed application form is received.

(b) For the General Disability Assistance (GDA) and General Assistance-Ineligible Spouse (GA-IS) programs an eligible applicant accrues the right to a money payment under the GDA and GA-IS Programs beginning with the first day of the month of certification for payment.

(c) For the Optional Supplementation (OS) program, an eligible applicant accrues the right to an OS payment beginning with the later of the following dates:

(i) The day of application if he has already entered a residential care facility; or

(ii) The day of entry into a residential care facility if he makes application for assistance prior to entry.

(d) A recipient's right to a money payment accrues on the first day of each month, provided he is alive and eligible on that day.

(e) If a recipient receives an underpayment due to agency error a supplemental payment may be authorized to compensate the recipient for the loss of benefits to which he was entitled. Correction of underpayments shall be limited to the three months prior to discovery of the underpayment. The amount of a supplemental payment shall not be considered as income or as a resource of the recipient in the month paid nor in the next following month. However, any amount remaining after this time period shall be considered as a resource. Underpayments which occur due to client error may be adjusted only through the Fair Hearings procedure in Article 3 of these regulations.

(f) When a recipient of public assistance dies on or after the first day of the month for which an assistance check is issued, such check may be endorsed to the recipient's spouse or nearest relative by the County Director.

(2) Applicants or recipients may request a fair hearing in accordance with Article 3 of these regulations.

(3) Overpayments. An overpayment occurs when an assistance payment is made in an amount greater than that to which the recipient is entitled, or when an assistance payment is made to an ineligible recipient. An overpayment may result from any one of the following circumstances.

(a) Agency error, as defined below:

(i) Failure of the agency to take case action immediately when the agency had knowledge of a change in circumstances.

(ii) Failure of the agency to follow up on information when there is an indication in the case record that a change in circumstances could be anticipated and it is later found that such change took place.

(iii) Failure of the agency to make a redetermination as scheduled.

(iv) Failure of the agency to apply policy or procedures correctly although timely action was taken.

(b) Client error where the client withheld information because of misunderstanding or incapacity of understanding agency program eligibility requirements.

(c) It is the responsibility of the agency to inform the applicant or recipient that he shall furnish to the agency accurate information concerning changes in income, resources or other circumstances which may affect his eligibility to receive assistance within ten days after such change occurs and that the agency may collect from him any assistance received ineligibly.

(d) The recipient of assistance carries the responsibility for the repayment of overpayments received in the form of financial and medical assistance during a period of ineligibility resulting from the failure of the recipient to report changes of circumstances or from giving incorrect information; or pending the outcome of an appeal decision in which appeal the decision of the county department was upheld.

(e) The agency waives collection of overpayments from a recipient when the overpayment was caused wholly or partially by agency error.

(f) The agency waives collection of overpayments resulting from client error, where fraud does not exist, and the overpayment does not result in the recipient's becoming ineligible for financial assistance.

(4) The assistance payments case record shall consist of, but not be limited to, the following documents:

(a) The application and subsequent redetermination forms signed by the individual as a statement of his financial situation;

(b) The agency's documentation of all eligibility factors;

(c) The forms authorizing or discontinuing payment of the assistance grant or medical assistance benefits and all subsequent status change forms; and

(d) All correspondence, including letters of complaint and appeal requests relating to the individual's eligibility to receive assistance.

## **114-1020. Application and Redetermination Procedures.**

A. **Applications for public assistance** shall be filed at the County Department of Social Services Office located in the county in which the applicant actually resides at the time of application. For children in Regular foster care, the application shall be filed in the county where the court order was issued, if different from the county of current residence.

(1) An application shall be taken without delay and the individual may apply for whatever category of assistance he chooses.

(2) The county department shall make every reasonable effort to help the applicant establish his eligibility.

B. **If an application** is made for an individual without his knowledge, the county department may take no action without first obtaining his knowledge and consent, unless such individual is incompetent or incapacitated. In this latter case, assistance payments may be made only to the individual's duly appointed legal guardian or authorized representative.

C. **Application shall be by agency** form and shall be signed, except for SSI recipients. The application form shall:

(1) Clearly signify the intent of the individual to apply and the effective date of such application;

(2) Advise the applicant of his rights and responsibilities;

(3) Put the applicant on notice that he is liable for the truthfulness of the information he includes on the application;

(4) Provide the agency with sufficient information to begin an accurate determination of eligibility or ineligibility.

D. **The applicant or recipient shall:**

(1) Provide complete and accurate information about his circumstances, and shall be told that State Law provides a penalty for making false statements, for willful misrepresentation of facts, or for impersonation;



(2) Report any changes in circumstances which may affect his eligibility or entitlement for assistance within ten days of such change;

(3) Repay funds received during a period of ineligibility resulting from failure to report changes of circumstances or from giving incorrect information.

E. **An applicant may be assisted** by any individual of his choice in the various aspects of the application process and may be accompanied by such individual in contacts with the agency and, when so accompanied, may also be represented by such individual.

F. **Application interviews shall include:**

(1) An explanation of eligibility requirements, the agency's standard of promptness in acting on applications, the applicant's right to a fair hearing, the procedure for requesting a hearing, and the applicant's rights under Title VI of the Civil Rights Act of 1964.

(2) An explanation of the applicant's responsibilities to give complete and accurate information, to report any changes in his circumstances, and to repay funds received ineligibly.

(3) An explanation of the need for a home visit.

(4) An explanation of the methods of establishing eligibility, including the need for making collateral contacts and the use of documentary and other records for verifying pertinent information.

(5) In AFDC cases, an explanation of the availability of family planning and Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services and the means for obtaining these services.

(6) The information that the public assistance payroll is open to public inspection in each county office.

(7) The signing of the proper application form by the applicant, his legal guardian, or an authorized representative.

G. **An individual's basic rights** shall be respected and protected during the eligibility determination process.

(1) The determination of a person's initial or continued eligibility for public assistance shall be conducted in a manner consistent with his rights under the United States Constitution, the Social Security Act, and Title VI of the Civil Rights Act of 1964.

(2) Any person wishing to apply for any form of public assistance shall have the right to do so.

(3) The applicant or recipient's use of public assistance payments shall not be limited or restricted by agency policies.

(4) All information obtained during interviews with and by the verification of information about applicants or recipients of financial or medical assistance shall be confidential. The use of or disclosure of information shall be limited to the following situations:

(a) Pertinent information regarding an applicant or recipient may be disclosed to any official government or agency representative, on the basis of need, and for purposes directly relating to the administration of the agency's programs, such as establishing eligibility, determining amount of assistance and providing services for applicants and recipients.

(b) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of federal programs administered by the agency.

(c) Information other than confidential medical reports may be disclosed to any individual or agency with the written consent of the applicant or recipient or his authorized representative.

(d) The names of recipients receiving public assistance payments and the amount of such payments are public records and open to public inspection. However, the publication of lists of such names for commercial or political purposes is unlawful.

(e) Information regarding applications or recipients of financial assistance, including names and addresses, may be disclosed to a legislative body or designated audit committee when such body or committee certifies that the information is needed for purposes, including audits, specified in subparagraphs a and b above.

(5) Any person who is dissatisfied as the result of an action taken or not taken by the County or State Department of Social Services with respect to his application or his grant may appeal for an

impartial review of his circumstances through the fair hearing procedure in Article 3 of these regulations.

(6) The State and County Departments of Social Services shall maintain agency program procedures and policies and shall make them available for examination by the public upon request.

**H. An application may be approved when all eligibility criteria are met.** Once eligibility is established, for programs other than GDA and GA-IS, assistance shall continue regularly until such time as eligibility no longer exists. For GDA and GA-IS grants, eligibility shall terminate at the end of the grant period, and shall continue only if a new application has been completed and approved.

(1) An application shall be denied when the applicant or family group fails to meet one or more eligibility criteria or when the applicant fails to furnish necessary data within the standard of promptness, unless the delay is due to circumstances beyond the applicant's control.

(2) An application may be denied because of the death of an applicant inability to locate an applicant, or at the applicant's request.

**I. A County Board of Social Services** may review, approve, disapprove, or amend an award of assistance made by the County Department of Social Services. The State Department of Social Services may review applications for public aid, disapprovals, or modifications of awards made by the county departments and may make decisions as to the granting and the amount of payment.

**J. Determination of Eligibility and Continued Eligibility.**

(1) No more than forty-five days (sixty days for Medical Assistance Only -Disability) shall elapse between the date of application and the date that either the first assistance grant, or the notice of denial of assistance, is mailed to the individual or family, unless:

(a) The applicant or the agency, after repeated attempts, has failed to secure the necessary facts regarding eligibility and further processing time is necessary;

(b) An applicant or physician has failed to provide needed information or an administrative or other emergency which could not be prevented causes a delay;

(c) The applicant requests that an imminent negative action be delayed until additional information concerning eligibility can be secured.

(2) Continued eligibility for financial or medical assistance shall be redetermined or reviewed in each of the following instances, whichever occurs earliest.

(a) Immediately after the agency receives a report that a change has occurred in the recipient's circumstances which may affect eligibility or the amount of the assistance grant;

(b) When required on the basis of information the agency has obtained previously about anticipated changes in the recipient's situation;

(c) Every six months in Aid to Families with Dependent Children -Foster Care, Regular Foster Care, and Mandatory State Supplementation, and every twelve months for Aid to Families with Dependent Children, Medical Assistance Only and Optional Supplementation.

(3) A home visit prior to certification shall be made on each AFDC application and review. A home visit shall be made before certification for General Disability Assistance, General Assistance-Ineligible Spouse and Optional Supplementation, but a home visit is not required for subsequent redeterminations in these assistance categories. Home visits are not required on Medical Assistance Only applications and reviews. Applicants and recipients shall be given oral or written notice of the intended date and purpose of any home visit.

(4) The applicant or recipient shall provide necessary information and documentation of his eligibility for assistance, unless he is unable to do so because of age, physical or mental disability, language barriers, or other pertinent reason.

(a) If the individual is physically or mentally incapable of providing complete or accurate information, the agency may take the initiative to secure such information.

(b) An individual other than the applicant or recipient may be used as a collateral source of information as long as he:

(i) Has definite knowledge of facts which relate to the applicant's or recipient's eligibility; and

(ii) Is willing to have his identity revealed to the applicant or recipient, upon request, should the information provided result in an adverse action.

(c) If an applicant refuses to provide information necessary to establish eligibility, which is within his capacity to provide, assistance shall be denied or terminated because eligibility cannot be established.

(5) The agency shall give prompt written notification to an applicant or recipient of any decision concerning an application for financial or medical assistance.

(a) If assistance is authorized the notice shall include the amount of the financial assistance grant, if applicable.

(b) If assistance is denied the notice shall contain:

(i) A written explanation of the reason for denial,

(ii) The citation of the specific manual section or circular letter supporting the reason for denial; and

(iii) A written explanation of the individual's right to request a fair hearing pursuant to Article 3 of these regulations.

### **114–1090. Termination, Suspension or Reduction of Benefits.**

A. In cases where assistance is to be terminated, suspended, or reduced the agency shall give timely and adequate notice.

(1) "Timely" means that the notice is mailed at least ten days before the date of action, that is, the date upon which the action is to become effective.

(2) "Adequate" means a written notice that includes a statement of the action the agency intends to take, the reasons for the intended action, the specific regulations supporting such action, explanation of the individual's right to request a fair hearing, and the circumstances under which assistance will be continued if a hearing is requested.

B. In cases where assistance is to be terminated, suspended, or reduced because of the probable fraud of the recipient, notification of such grant adjustment shall be timely if mailed at least five days before action is to become effective.

C. The agency may dispense with timely notice but shall send adequate notice not later than the date of action when:

(1) The agency has factual information confirming the death of the recipient or AFDC payee and there is no relative available to serve as the new payee;

(2) The county department receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he understands that this must be the consequence of supplying such information;

(3) The recipient has been admitted or committed to a public institution;

(4) The recipient has been placed in skilled or intermediate nursing care or hospitalized for a full calendar month or more;

(5) The recipient's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The recipient's check shall, however, be made available to him if his whereabouts become known before the last day of the month covered by the returned check;

(6) The recipient has been accepted for assistance in another county or state and that fact has been established by the county department previously providing assistance;

(7) An AFDC child has been removed from the home as a result of a judicial determination or voluntarily placed in foster care by his legal guardian;

(8) A change in level of medical care is certified by the Professional Standards Review Organization; D. The agency may dispense with both timely and adequate notice for financial assistance that is granted as a special allowance for a specific period of time, provided the recipient has been informed in writing at the time of initiation of the grant that the allowance shall automatically terminate at the end of a specified time period.

**ARTICLE 11**  
**FAMILY INDEPENDENCE PROGRAM**

(Statutory Authority: 1976 Code § 43-1-80)

**114-1100. General.**

A. The Family Independence Program is operated by the State in accordance with Title IV-A of the Social Security Act. The Department of Social Services is the designated Single State Agency to operate the Temporary Assistance for Needy Families Program funded under Title IV-A of the Social Security Act.

B. The Department shall specify the groups of individuals, based on reasonable classifications, that will be included in the Program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the State Plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups.

C. Eligibility conditions must be applied on a consistent and equitable basis throughout the State.

D. Eligibility conditions or Department procedures or methods must not prevent an individual from applying and obtaining a determination of eligibility or ineligibility.

E. Methods of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.

**HISTORY: Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.**

**114-1110. Definitions.**

A. "Department" means the South Carolina Department of Social Services.

B. "Program" means Family Independence Program.

C. "Benefit or assistance" means the monetary award paid by check, electronic benefits transfer or direct deposit to the Family Independence benefit group.

D. "FI" means Family Independence Program.

E. "Applicant" means a person who has directly, or through his authorized representative, or where incompetent or incapacitated, through someone acting responsibly for him, made application for Family Independence (FI) benefits at the County Department of Social Services (CDSS) and whose application has not been denied by appropriate CDSS action.

F. "Application" is the action by which an individual indicates in writing on a form prescribed by the Department his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for FI.

G. "Authorized Representative" means someone who is acting for another individual with his knowledge and consent and who has knowledge of the other individual's circumstances.

H. "Benefit Group" means all of the persons whose needs must be included in the computation of the FI benefit.

I. "Date of Application" means the date on which an application that includes the applicant's name, address and signature or authorized representative's signature is filed at the CDSS.

J. "Protective Payment" means the FI benefit is paid to a third party, who assumes responsibility for spending the benefit for the welfare of the family.

K. "Vendor Payment" means a payment made to a third party by a non-benefit group member on behalf of the benefit group.

L. "Temporary Assistance for Needy Families (TANF) Block Grant State Plan" means the document submitted to the Regional Office of the Administration for Children and Families, Department of

Health and Human Services setting forth the program for needy families developed by the Department under Title IV-A of the Social Security Act (the TANF Block Grant). Submission and updating of the State Plan is required for receipt of federal funds.

M. "Job Club" means a group or individual job readiness training session where participants learn job finding and job retention skills.

N. "Individualized Self-Sufficiency Plan" means the document signed by each adult FI recipient stating the actions the recipient will take to become employed and the time frames for those actions. It also states the services the Department will provide and coordinate to assist the recipient to become employed.

O. "Redetermination" is a review of factors affecting eligibility and payment amount.

P. "State Office" means the central office of the South Carolina Department of Social Services.

Q. "Regional Office" means an office having oversight of a group of local departmental offices.

R. "Local Department" means an office located in any one of the counties of the State.

S. "Stepparent" is a person living in the home of the opposite sex ceremonially married to the parent of the children in the FI budget group.

**HISTORY: Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.**

**Editor's Note**

This regulation, as amended in State Register Volume 21, Issue No. 6, Part 2, effective June 25, 1997, contained two paragraphs designated "I". Pursuant to the direction of the Code Commissioner, the second paragraph "I" was redesignated as "K" and paragraphs "K" through "R" were redesignated as "L" through "S" respectively.

## **114-1120. Application and Application Processing.**

A. Application for Assistance. Each individual wishing to do so shall have the opportunity to apply for assistance without delay. Under this requirement:

(1) The Department shall require a written application, signed under a penalty of perjury, on a form prescribed by the Department (including those items in Section 43-5-65(a) of the 1976 South Carolina Code), from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him.

(2) An applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility and may be accompanied by such individual(s) in contacts with the Department and when so accompanied may also be represented by them.

B. Beginning Date of Assistance. Provided the eligible applicant is alive on the date the application is approved, assistance begins on the earlier of the two following dates:

(1) The date the award is authorized if that date is in the same month as the month of application; or

(2) The first day of the month in which the thirtieth day from date of receipt of a completed and signed application falls.

C. Standard of Promptness. A decision shall be made promptly on applications, not in excess of thirty days, except for a benefit group in sanctioned status. A benefit group in sanctioned status which must demonstrate compliance with a work requirement will have its application acted upon within five working days after the end of the thirty-day compliance period. Under this requirement, the applicant is informed of the time standard in acting on applications which covers the time from date of application to the date that the notification of approval for an assistance benefit or notification of denial of assistance is mailed to the applicant or recipient. The standard of promptness for acting on applications or redetermining eligibility shall not be used as a waiting period before granting assistance or as a basis for denial of an application or for terminating assistance.

D. Applicants' Rights and Responsibilities. Applicants shall be informed about the eligibility requirements and their rights and responsibilities and the responsibilities of the Department under the FI Program. Under this requirement, individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services

available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms shall be available.

E. **Income and Eligibility Verification System.** All applicants for and recipients of assistance shall be notified in writing at the time of application and on redetermination that income information will be regularly requested from agencies specified by the federal government in the Income Eligibility Verification System (IEVS) and that it will be used to aid in determining their eligibility for and amount of assistance. Assistance will not be denied, delayed, or discontinued pending receipt of income or other information requested under IEVS, if other evidence establishes the individual's eligibility for assistance.

F. **Adequate Notice.** Adequate notice shall be sent to applicants to indicate that assistance has been authorized, including the amount of financial assistance or that it has been denied.

G. **Prompt Furnishing of Assistance.** Financial assistance and services shall be furnished promptly to eligible individuals without any delay attributable to administrative process, and shall be continued regularly to all eligible individuals.

H. **Eligibility Decision.** Each decision regarding eligibility or ineligibility will be supported by facts in the applicant's or recipient's case record. Under this requirement, each application is disposed of by a finding of eligibility or ineligibility unless:

(1) The applicant voluntarily withdraws his application, and there is an entry in the case record that a notice has been sent to confirm the applicant's notification to the Department that he does not desire to pursue his application; or

(2) There is an entry in the case record that the application has been disposed of because the applicant died or could not be located.

I. **Redetermination of Eligibility.** Where an individual has been determined to be eligible; eligibility will be reconsidered or redetermined:

(1) When required on the basis of information the Department has obtained previously about anticipated changes in the individual's situation;

(2) Promptly, after a report is obtained which indicates changes in the individual's circumstances that may affect the assistance to which he is entitled and that may make him ineligible; and

(3) At least one redetermination must be made in each case once in every 12 months.

J. **Timely and Adequate Notice.** In cases of proposed action to terminate, discontinue, suspend or reduce assistance, the Department shall give timely and adequate notice. Timely notice means a notice mailed at least ten calendar days before the change would become effective. The change in benefit would take effect on the first day of the month following the month in which the tenth day falls. Adequate notice means a notice which is mailed not later than the date of action. Both timely and adequate notices must contain a statement of the action taken, the reasons for it, and an explanation of the individual's right to request a hearing.

K. **Individual's Rights.** Standards and methods for determination of eligibility shall be consistent with the objectives of the programs, and will respect the rights of individuals under the United States Constitution, the Social Security Act, Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990, and all other relevant provisions of Federal and State laws.

L. **Program Oversight.** The State Office and/or Regional Offices shall establish and maintain methods by which they shall be kept currently informed about local department adherence to the Department's provisions and procedural requirements for determining eligibility, and it shall take corrective action when necessary. Bi-annual reports shall be made by the Regional Offices regarding local office compliance to the State Office.

M. **General Provisions Regarding Coverage and Eligibility.**

(1) The Department shall specify the groups of individuals, based on reasonable classifications, that will be included in the Program, and all the conditions of eligibility that must be met by the individuals in the groups. The groups selected for inclusion in the State Plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups. There must be clarity as to what groups are included in the State Plan.

- (2) Eligibility conditions must be applied on a consistent and equitable basis throughout the State.
- (3) Eligibility conditions or Department procedures or methods must not prevent an individual from applying and obtaining a determination of eligibility or ineligibility.
- (4) Methods of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.

N. Need and Amount of Assistance.

(1) The determination of need and amount of assistance for all applicants and recipients will be made on an objective and equitable basis and all types of income will be taken into consideration in the same way except where otherwise specifically authorized by state statute.

(2) The needs, income, and resources of individuals receiving Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act, individuals with respect to whom Federal foster care payments are made, individuals with respect to whom State or local foster care payments are made, individuals with respect to whom Federal adoption assistance payments are made, or individuals with respect to whom State adoption assistance payments are made, for the period for which such benefits or payments are received, shall not be included in determining the need and the amount of the assistance payment.

(3) When the Department learns of an individual who is required to be included in the assistance unit, the Department must redetermine the assistance unit's eligibility and payment amount.

(4) In determining need and the amount of payment for the assistance unit, all income and resources of an individual required to be in the assistance unit, but subject to sanction are considered available to the assistance unit to the same extent that they would be if the person were not subject to a sanction.

**HISTORY: Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.**

## **114–1130. Non-Financial Criteria.**

A. Relationship. A child may be considered to meet the requirement of living with a specified relative if his or her home is with a parent or a person in one of the following groups:

(1) Any blood relative, including those of half-blood, and including first cousins, first cousins once removed, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.

(2) Stepfather, stepmother, stepbrother, and stepsister.

(3) Persons who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with State law.

(4) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

B. Filing Unit. In order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

(1) Any natural or adoptive parent, and

(2) Any blood-related or adoptive brother or sister including those of half-blood; Exception: needs of disqualified alien siblings are not considered in determining the eligibility and payment of an otherwise eligible dependent child, and

(3) A stepparent living in the home. The stepparent's income may be reduced by any child support paid to legal dependents outside the home.

(4) When an individual who is required to be included in the assistance unit pursuant to paragraphs (1) and (2) above is also required to be included in another assistance unit, those assistance units must be consolidated, and treated as one assistance unit for purposes of determining eligibility and the amount of payment.

(5) Unborn children are not included in the filing unit.

C. Residence. The Department will not impose any residence requirement which excludes any individual who is a resident of the State except as provided in paragraph (2) of this section. For purposes of this section, a resident of the state is one:

(1) Who is living in the State voluntarily with the intention of making his or her home there and not for a temporary purpose. A child is a resident of the State unless he or she is living here on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether the individual is here voluntarily or for a temporary purpose; or

(2) Who is living in the State and is not receiving assistance from another State.

D. Citizenship and Alienage. To be eligible for assistance the dependent child, the caretaker relative or any other person whose needs are considered in determining the need of the child claiming aid must be either:

(1) A United States citizen or a legal alien who entered the United States before August 22, 1996, or

(2) Belong to one of the following alien categories:

(a) Refugees, asylees, and those whose deportation is withheld (only for their first five years in the United States).

(b) Veterans, persons on active duty, and their spouses and unmarried dependent children.

(c) Immigrants who have worked in the United States for ten years.

E. Age. To receive assistance a dependent child must be under eighteen years of age or under nineteen years of age and a full-time student in a secondary school (or in the equivalent level of vocational or technical training).

F. Furnishing of Social Security Numbers. As a condition of eligibility, each applicant for or recipient of FI benefits will be required:

(1) To furnish to the Department a Social Security Account Number, hereinafter referred to as the SSN (or numbers, if more than one has been issued).

(2) If he cannot furnish a SSN (either because such SSN has not been issued or is not known), to apply for such number with the Social Security Administration (SSA). The applicant or recipient shall apply directly for such number, submit verification of such application, and provide the number to the Department upon its receipt.

(3) The Department will assist the applicant or recipient in making applications for SSN's and will comply with the procedures and requirements established by the Social Security Administration for application, issuance, and verification of SSN's.

(4) The Department will not deny, delay, or discontinue assistance pending the issuance or verification of such numbers if the applicant or recipient has complied with the requirements of paragraph (2) above.

(5) The State or local agency will use such account numbers, in addition to any other means of identification it may determine to employ, in the administration of the FI Program.

(6) "Applicant" and "recipient" include for the purposes of this section the individuals seeking or receiving assistance and any other individual(s) whose needs are considered in determining the amount of assistance.

(7) The Department shall notify the applicant or recipient that the furnishing of the SSN is a condition of eligibility for assistance and that the SSN will be utilized in the administration of the program.

(8) The Department will submit all unverified SSN's to the SSA for verification. The State agency may accept as verified a social security number provided directly to the State agency by SSA or by another Federal or federally-assisted benefit program which has received the number from SSA or has submitted it to SSA for verification.

G. Temporary Absence. The Department will not provide assistance for a minor child or caretaker relative who has been or is expected to be absent from the home for a period of thirty consecutive days or more; however, the casemanager may extend the absence for up to an additional sixty days if it is determined that a longer absence would serve the best interests of the family.

H. Notice Requirements. In cases of intended action to discontinue, terminate, suspend or reduce assistance or to change the manner or form of payment to a protective payment:



(1) The State or local department shall give timely and adequate notice, except as provided for in paragraphs (2) or (4) of this paragraph. Under this requirement:

(a) "Timely" means that the notice is mailed at least 10 days before the date of action, that is, the date upon which the action would become effective;

(b) "Adequate" means a written notice that includes a statement of what action the Department intends to take, the reasons for the intended departmental action, explanation of the individual's right to request a State agency hearing, the circumstances under which assistance is continued if a hearing is requested, and if the agency action is upheld, that such assistance must be repaid.

(2) The Department may dispense with timely notice but shall send adequate notice not later than the date of action when:

(a) The Department has factual information confirming the death of a recipient or of the FI payee when there is no relative available to serve as new payee;

(b) The Department receives a clear written statement signed by a recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance, and the recipient has indicated, in writing, that he understands that this must be the consequence of supplying such information;

(c) The recipient has been admitted or committed to an institution, and is ineligible for further payments;

(d) The recipient has been placed in skilled nursing care, intermediate care or long-term hospitalization;

(e) The claimant's whereabouts are unknown and agency mail directed to him has been returned by the post office indicating no known forwarding address. The claimant's check must, however, be made available to him if his whereabouts become known during the payment period covered by a returned check;

(f) A recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the jurisdiction previously providing assistance;

(g) A FI child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his legal guardian.

(3) When changes in either State law require automatic grant adjustments for classes of recipients, adequate notice of such grant adjustments shall be given which includes a statement of the intended action, the reasons for such intended action, and a statement of the circumstances under which a hearing may be obtained and assistance continued.

(4) When the Department obtains facts indicating that assistance should be discontinued, suspended, terminated, or reduced because of the probable fraud of the recipient, and, where possible, such facts have been verified through collateral sources, notice of such grant adjustment shall be timely if it is received by the date the action would become effective.

#### I. Institutional Status.

(1) Assistance is not available for any individual who is an inmate of a public institution, such as a correctional institution, juvenile detention facility, etc.

(2) Assistance is available for the month of entry and the following month for an individual who enters a medical institution or an institution for mental diseases.

(a) "Medical institution" means an institution which:

(i) Is organized to provide medical care, including nursing and convalescent care;

(ii) Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards;

(iii) Is authorized under State law to provide medical care;

(b) "Institution for mental diseases" means an institution which is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care, and related services.

(3) Assistance is available for recipients who enter facilities operated by the Department of Alcohol and Other Drug Abuse Substances for the month of entry and the following month.

J. Minor Unmarried Parent. The Department requires a minor unmarried parent under age eighteen to live in the household of her parent, legal guardian, other adult relative or in an adult supervised supportive living arrangement (e.g., a foster home or maternity home) in order to receive FI benefits unless:

(1) The minor parent has no living parent or legal guardian whose whereabouts is known;

(2) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(3) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FI;

(4) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian;

(5) There is otherwise good cause for the minor parent and dependent child to receive assistance while living apart from the minor parent's parent, legal guardian, or other adult relative, or an adult-supervised supportive living arrangement.

(6) If a minor parent makes allegations supporting the conclusion that paragraph J(4) of this section applies, the Department shall determine whether it is justified.

(7) The circumstances justifying a determination of good cause include but are not limited to written statements from at least two corroborating persons showing that it is not in the best interest of the minor parent to live with his or her parents, legal guardian or in an adult-supervised supportive living arrangement.

(8) When a minor parent and his or her dependent child are required to live with the minor parent's parent, legal guardian, or other adult relative, or in an adult-supervised supportive living arrangement, then FI is paid (where possible) in the form of a protective payment.

(9) A minor parent applicant shall be informed directly about FI eligibility requirements including his or her rights and responsibilities under the program. He or she shall be told of the possible exemptions set forth in this section and be asked whether one or more of the exemptions is applicable to his or her situation. The Department will assist the minor in obtaining the necessary verification if one or more of these exemptions is alleged.

K. Denial of Benefits to Strikers. Participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept employment.

(1) FI benefits will be denied to any family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike; and

(2) No individual's needs shall be included in determining the amount of assistance payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike.

(3) Definitions: "Strike" is defined by using the National Labor Relations Board definition (29 U.S.C. 142(2)). For purposes of paragraph (1) above, "caretaker relative" means any natural or adoptive parent.

L. Identity and Proof of Residence. The Department shall require that all persons applying for assistance shall provide acceptable identification and proof of residence in the State.

M. Change Reporting Requirements. Family Independence applicants and recipients shall report the following changes within ten days:

(1) A change in the composition of the household;

(2) A change of address; or

(3) Obtaining a job or losing a job.

(4) Failure to report any of the above changes does not excuse the client from repayment of benefits in the situation where failure to report caused an overpayment of the FI benefit.

N. Child Support Requirements.

(1) Cooperation with Child Support.

(a) Applicants and recipients of FI must provide as a condition of receiving benefits:

(i) The first and last name of the absent parent and putative father and any known licenses as defined in 1976 Code Section 20-7-941(4); and

(ii) At least two of the following items on each absent parent and each putative father named: date of birth, SSN, last known home address, last known employer's name and address, or either of the absent parent's parent's name and address.

(iii) An applicant or recipient who fails to provide this information or who provides the names of two putative fathers, both of whom are excluded from paternity by genetic testing, is ineligible for assistance for herself and the child for whom parental information was not provided, unless the applicant or recipient asserts, and the Department verifies, there is good cause for not providing this information.

(b) Upon legal establishment of paternity of the child in question, FI benefits may be established or reinstated if all other eligibility requirements are met.

(c) If an applicant or recipient claims good cause for refusing to cooperate with child support requirements, the Department's determination of good cause is to be made within forty-five days from the day the good cause claim is made.

(d) If the Department determines that good cause exists, it also makes the determination of whether child support enforcement could proceed without risk of harm to the child or caretaker relative if the enforcement or collection activities would not involve their participation.

(2) Sanctions. If the applicant or recipient fails to provide the information requested in N(1)(a) above the parent and child for whom the information is requested are sanctioned by having their needs left out of the FI budget.

(3) Assignment of Rights to Child Support and Spousal Support. By the act of accepting FI benefits, the applicant assigns any right he or she has to child support or spousal support monies from responsible absent parents whose children are receiving FI benefits to the Department of Social Services in accordance with § 43-5-65 of the 1976 South Carolina Code. The Department may take action to collect child and/or spousal support from absent parents with or without the permission of the applicant or recipient. The Department may retain these support collections up to the amount allowed under federal laws and regulations.

O. Time Limited Benefits.

(1) Family Independence benefits are limited to no more than twenty-four months in a one hundred twenty month period and to no more than sixty months in a recipient's lifetime.

(2) Twenty-four and sixty month time limits apply to benefit groups containing adult parent/caretaker relatives receiving benefits for themselves and minor children.

(3) Minor children living in the home with the adult caretaker under their daily parental care and guidance are ineligible for benefits within that family unit once the adult has received sixty months of FI regardless of the number of months of benefits the child(ren) has received.

(4) Once a minor child reaches age eighteen, he/she may apply to receive FI, and if eligible, may receive under the time limit standards without regard to the amount of FI he/she received as a child.

(5) Children who have received benefits and who are terminated due to the adult in the household reaching the time limit may not receive benefits in the care of another caretaker relative unless it is established that the child(ren) is abandoned. The presumption will be made by the Department that the child(ren) is not abandoned, except in the case of the death of the parent/caretaker relative. This presumption may be rebutted by the applicant only through the Fair Hearing process.

(6) Additional exceptions to the time limits set forth in paragraph P(1) above are as follows and as such do not cause the adult FI recipient to accumulate countable benefit months against the time limits:

(a) The head of household is permanently and totally disabled, whether physical or mental.

(b) The head of household is providing full-time care for a disabled individual in the home.

(c) The parent of the child for whom benefits are received is a minor under the age of eighteen who has not completed high school. Benefits may be provided for a period of up to twenty-four months after the minor parent attains age eighteen or completes high school, whichever occurs first.

(d) The individual is involved in an approved training program which will not be completed by the twenty-fourth month may receive up to a maximum six month extension of benefits. No extension may be granted beyond the thirtieth month except with the express permission of the county director. To be extended beyond thirty months, the recipient must be currently enrolled in a training or educational program, making satisfactory progress toward completion and completion of the program should provide the recipient entree to employment opportunities that provide a salary significantly above the federal minimum wage.

(e) The adult head of the household is not the parent of a child and is not included in the benefit group.

(f) The adult head of household is providing a home for and caring for a child whom the Department has determined to be abandoned by his/her parents and for whom the alternative placement is foster care. If the adult head of household is included in the FI benefit he/she must comply with all FI program requirements. If failure to comply results in termination of benefits, the Department will evaluate the case to determine whether or not the child(ren) should be placed in foster care. If the Department determines that the child(ren) should remain with the caretaker relative, a protective payee other than the caretaker relative must be appointed.

(g) Lack of child care when the Department is unable to provide child care for a recipient in accordance with Department established guidelines (the participant will be exempt from the time limit standard for the period of time the agency is unable to provide the service).

(h) Lack of transportation when the Department is unable to provide transportation for a recipient, who lives more than one and one-half miles from his/her work, training, education or child care destination, in accordance with agency established guidelines (the participant will be exempt from the time limit standard for the period of time the agency is unable to provide the service).

(i) [Reserved]

(j) The recipient can establish by clear and convincing evidence to the Department that the recipient has fully complied with the recipient's agreement with the Department including:

(i) Diligently seeking all available employment and following up on all employment opportunities known to the Department or related state agencies, for which the recipient is qualified.

(ii) Demonstrating a willingness to relocate.

(iii) Cooperating fully with all state agencies in order to strive to become gainfully employed; and the Department is satisfied that no available employment reasonably exists for the recipient and that there is no other means of support reasonably available to the recipient's family. Every sixty days the Department shall conduct a review of the recipient's compliance with the requirements of this item. Under this review, benefits provided pursuant to this item may only be extended for a maximum of twelve additional months. At the end of the twelve month extension, further benefits may only be provided with the express permission of the county director who must certify that the person is engaged in education, training, or other employment-related activities.

(k) No sooner than sixty and not later than ninety days after an FI recipient's benefits are terminated under the time limits for the receipt of FI as provided for in this section, the Department shall conduct an assessment of and make recommendations, as appropriate, for the health and well-being of the children in the care and custody of the former FI recipient.

#### P. Protective Payee.

(1) Protective payments for money mismanagement are made to a protective payee when:

(a) the parent/caretaker relative fails to use the benefits to the best interest of the child. This occurs when the parent/caretaker relative has misused funds to the extent that a threat to the health or safety of the child exists. Also, the mismanagement is willful and consistent and the

parent or caretaker relative is mentally and physically capable of learning and carrying out sound money management. The Department must provide the parent/caretaker relative counseling services aimed at improving money management.

(b) the parent/caretaker relative is not physically or mentally capable of learning money management.

(2) The representative payee may be removed when the parent/caretaker relative is considered able to manage the benefits. Protective payee cases will be reviewed at least every 12 months to determine if a protective payee should continue.

(3) Role of and appointment of the protective payee:

(a) The individual who agrees to act as protective payee for a recipient assumes a dual responsibility to the recipient and to the Department. In accepting an appointment, the protective payee assumes the obligation to see that the FI payment is spent for the benefit of the family and to work cooperatively with the Department in fulfilling this role. The protective payee is not responsible for: providing eligibility information; reporting changes; or completing the application.

(b) The selection of a protective payee will be made with the participation and consent of the recipient, to the extent possible. If it is in the best interest of the recipient for a staff member of the Department, of a private agency, or of any other appropriate organization to serve as a protective payee, such selection will be made preferably from the staff of an agency or that part of the agency providing protective services for families. The selection will not include: the county director of a local department administering the FI Program; staff involved in the determining financial eligibility of families; special investigative or resource staff; or staff handling fiscal processes related to the recipient; or landlords, grocers, or other vendors of goods, services, or items dealing directly with the recipient.

#### Q. Referral for Alcohol and Drug Treatment.

(1) The following recipients shall participate in an alcohol or drug treatment program approved by the Department of Alcohol and Other Drug Abuse Services (DAODAS) as part of their Individual Self-Sufficiency Plan (ISSP). The Department will refer to DAODAS for clinical assessment for participation in an alcohol or drug treatment program FI recipients who:

(a) Have been identified by a casemanager with concurrence from a supervisor as possibly being in need of alcohol or drug abuse treatment service using indicators provided by DAODAS;

(b) Have been convicted of an alcohol or drug related offense; or

(c) Give birth to a child who tests positive for drugs.

(2) Determination that substance abuse treatment is necessary will be made by appropriate clinical staff approved by DAODAS. Such staff will also assess the participant's compliance with the treatment program using recognized methods of assessment including, but not limited to, random testing. In no instance shall failure to pass a random test by itself constitute a non-compliance with treatment.

(3) The Department will monitor participants who complete the approved DAODAS treatment program using recognized methods of assessment including, but not limited to, random testing.

(4) Failure to pass such a random test for alcohol shall not constitute the basis for a sanction, but may constitute grounds for a review by a clinical professional who will determine if there are additional indicators of substance abuse or grounds for resumption of treatment.

(5) The Department may impose a full-family sanction for noncompliance with the ISSP participants who complete treatment and fail to pass a random test for use of illegal drugs.

(6) The Department may impose a full-family sanction for noncompliance with the ISSP participants who fail to complete a treatment program for alcoholism or substance abuse.

(7) Applicants who meet the criteria to be referred to DAODAS for alcohol or drug treatment but who refuse to be referred will have their FI application denied.

(8) The Department will keep records of an individual's alcohol and drug treatment participation confidential and will not release this information to law enforcement personnel.

R. Establishment of Paternity in the FI Program. Establishment of paternity in the FI program solely for the purpose of determining relationship to the child's alleged biological father and paternal relatives can be effected by the following methods:

(1) If the mother is available to give a statement, the person she names is considered to be the child's father, unless denied in a written statement by the alleged biological father.

(2) If the mother is not available (deceased, whereabouts unknown etc.) paternity can be established as follows, unless denied in a written statement by the alleged biological father.

(a) The child's birth certificate or other verification from the Department of Health and Environmental Control listing the father's name;

(b) A written statement from the alleged father acknowledging paternity;

(c) Written evidence that paternity has been proven in a judicial proceeding (divorce decree, child support order, etc.);

(d) The subsequent marriage, ceremonial or common-law, of the alleged father to the mother and his acknowledgment that he is the father of the child;

(e) Prior FI case file documentation of the mother's statement of the child's paternity;

(f) Prior FI case file documentation of the alleged father's acknowledgment of paternity;

(g) Social Security Administration records showing that benefits are being paid on the alleged father's account for the child; or

(h) Court records showing the mother had, under oath, asserted the father's identity, provided the court did not find the man not to be the father.

S. Data Collection and Reporting. The Department will collect and submit to the Secretary of the Department of Health and Human Services the data required in Section 411 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **114–1140. Financial Criteria.**

### A. Need Standard

(1) The Department has a fully consolidated need standard and all needs are included in a flat amount per family size.

(2) The FI need standard, by family size, is set by the Department at fifty percent of the current year's "Health and Human Services Poverty Guidelines for All States (except Alaska and Hawaii) and the District of Columbia." The Department shall adjust the need standard annually after the State's General Appropriation Act is passed and signed by the Governor. The standard will be uniformly applied throughout the State.

(3) The Department does not meet full need as defined by its need standard; therefore, it uses a ratable reduction to control the amount of the benefit. The need standard, by family size, multiplied by the ratable reduction percentage determines the Department's Payment Standard. The ratable reduction is set by the Department annually based on the amount of money appropriated for FI benefits in the General Appropriations Act, also taking into account the anticipated number of FI recipients to whom benefits will be paid in the next State fiscal year. The Department may adjust the ratable reduction during the fiscal year if the anticipated number of recipients increases or decreases. The need standard, payment standard and ratable reduction are available at the Department's State Office, Columbia, South Carolina.

(4) The FI benefit will be rounded down to the next lower whole dollar when the result of determining the standard of need or the payment amount is not a whole dollar. Proration to determine the amount of payment for the month of application must occur before rounding to determine the payment amount for that month.

(5) In the case of FI, no payment of assistance shall be made to an assistance unit in any month in which the amount of assistance prior to any adjustments is determined to be less than ten dollars.

(6) An assistance unit that is denied assistance because of the limitation specified in (5) of this section or because the payment amount is determined to be zero as a result of rounding down the payment shall be deemed a recipient for all other purposes.

(7) A month in which a recipient does not receive a cash benefit, regardless of the reason, does not count as a month against the time limit.

**B. No Benefit Increase for a Child Born Ten Months after Receipt of Family Independence Benefits.**

(1) In determining the size of the BG for eligibility and payment determination, there must be no increase in BG size due to a child born to an FI recipient ten or more months after the BG begins to receive FI.

(a) This does not include a child born to a minor mother who is required to be in her mother's BG.

(b) Income and resources of this child are counted in the FI eligibility and benefit calculation.

(c) This provision does not apply if it is determined that this child was conceived as a result of rape or incest.

(2) The Department may provide vouchers for a child born ten months or more after initial receipt of FI assistance. The vouchers may be used to pay for goods and services for the child, as determined by the Department, which will enable the mother to participate in education, training and employment related activities. The Department will determine the monthly amount to be expended for these services dependent on the funds available.

**C. Resource Limit and Exclusions.** The amount of real and personal property that can be reserved for each assistance unit shall not be in excess of twenty-five hundred dollars equity value excluding only:

(1) The home and its contiguous property (even if separated by public right-of-ways) which is the usual residence of the assistance unit;

(2) One burial plot (as defined by the Department) for each member of the assistance unit;

(3) Bona fide funeral agreements (as defined by State law) up to fifteen hundred dollars in value, plus any interest accrued, for each member of the assistance unit;

(4) Real property which the family is making a good faith effort (as defined by the Department) to sell. A good faith effort means agreeing to sell the property at the current market value and putting the property up for sale in the area where it commands a market.

(5) Basic maintenance items essential to day-to-day living such as clothes, furniture and other similarly essential items of limited value.

(6) The cash value of life insurance policies.

(7) Items of assistance technology for a handicapped person required to develop or maintain life or work skills, such as a power wheel chair or computer shall not count against the two thousand five hundred dollar resource limit. Adaptive items added to a care or van shall not increase its book value.

**D. Special Benefit Payment Situations.**

(1) Payment is made for the entire month, except the month of application, to or for a family which, for any portion of the month, met all of the eligibility conditions, provided the family was eligible on the date payment was made.

(2) Payment is made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or while the child is in a foster care home.

(3) Payment is made to persons acting for relatives in emergency situations that deprive a child of the care of the relative through whom he has been receiving benefits for a temporary period necessary to make and carry out plans for the child's continuing care and support.

**E. Vehicles.** One licensed vehicle per budget group not to exceed ten thousand dollars fair market value (as determined by N.A.D.A. Official Used Car Guide or equivalent publication) is exempt from the asset limit.

F. Inaccessible Resources. The following resources are considered to be inaccessible and are not counted against the FI resource limit:

- (1) Security deposits being held on rental property or utilities.
- (2) Property in probate or awaiting probate (includes property of individuals who die intestate).
- (3) Property in Chapter 13 bankruptcy unless exempted from bankruptcy proceedings by the Bankruptcy Court and the Trustee in Bankruptcy.
- (4) Property in equitable or existing trust where one individual holds the title to the property but another non-budget group member pays the purchase price, including monthly payments, and is responsible for the general upkeep of the property. This principle applies to both liquid and non-liquid resources.
- (5) Property with multiple owners when it is not possible to obtain the consent of all the owners to sell the property.

G. Transfer of Resources.

(1) A budget group member that has transferred a countable resource(s) may be sanctioned for up to one year if:

- (a) The resource(s) was transferred within the three-month period immediately preceding the application filing date; and
- (b) The resource(s) was transferred for the purpose of qualifying for benefits; or
- (c) The resource(s) was transferred at any time after approval for benefits.

(2) The length of the disqualification period is based on the amount by which the transferred resource(s) when added to other countable resources exceeds the allowable resource limit. For applicant households, the disqualification period begins with the month of application; for recipient households, the month after the timely notice is received.

(3) Disqualification Periods:

\$0	to	\$249.99	1 month
250	to	999.99	3 months
1,000	to	2,999.99	6 months
3,000	to	4,999.99	9 months
5,000	to	and up	12 months

(4) Transfer of resources will not result in disqualification when:

- (a) The resource would have been excluded; or
- (b) The resource was sold or traded at the approximate fair market value; or
- (c) The resource was transferred to another eligible or sanctioned budget group member; or
- (d) The resource was transferred for a reason other than qualifying for benefits.

H. Irrevocable Trusts. The funds in an irrevocable trust are considered inaccessible to the budget group; however, any income paid from the trust to the budget group is counted as unearned income.

I. Individual Development Accounts.

(1) A savings account owned by a recipient and designated by the recipient as an Individual Development Account (IDA) which has a value of ten thousand dollars or less is excluded from the FI resource limit.

(2) A savings account owned by an FI recipient prior to application, with a value of two thousand five hundred dollars or less, may be converted to an IDA.

(3) A lump sum payment of ten thousand dollars or less deposited in an IDA within thirty days will not be counted as income.

(4) Funds in an IDA in excess of ten thousand dollars are counted against the two thousand five hundred dollar resource limit.

J. Requirement to Apply for Available Benefits. The Department will establish and carry out policies with reference to applicants' and recipients' potential sources of income which provide for their being developed to a state of availability.



K. JTPA Income of Adults and Children.

(1) Earned or unearned income received by minor children from Job Training Partnership Act (JTPA) Programs is disregarded in eligibility and benefit computations.

(2) Earned income received by adults, after appropriate disregards are granted, is counted in the budget.

(3) Unearned income received by adults, designated by JTPA as being for training expenses is excluded.

L. Disregard of Child Support Payments Made by a Budget Group Member to a Non-Budget Group Member. Child support payments made by a budget group member to legal dependents who are not budget group members may be deducted from the income of the payor.

M. Garnished Wages. A garnishment from wages is not excludable income.

N. Exclusions from Income. In determining the availability of income and resources, the following will not be included as income:

(1) The earned income of dependent children is excluded in the FI gross income limit test and the need and benefit determination.

(2) Up to four hundred dollars of interest and dividends per benefit group may be excluded annually.

(3) Vendor payments made by a third party who is not a member of the budget group are excluded from income.

(4) In-kind income received by the benefit group is excluded.

(5) Grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs.

(6) Home produce of an applicant or recipient, utilized by him and his household for their own consumption.

(7) Small nonrecurring gifts not to exceed \$100 per recipient in any quarter.

(8) Payments made to FI recipients known as "child support gap payments" which are made from the child support payments from absent parents collected by the Office of Child Support Enforcement of the Department of Social Services.

(9) Assistance from other agencies and organizations will be excluded in determining the amount of assistance to be paid, provided that no duplication shall exist between such other assistance and that provided by the FI Program. In such complementary program relationships, nonduplication shall be assured by the fact that FI funds are insufficient to meet the total amount of money determined to be needed in accordance with the statewide standard. In such instances, grants by other agencies in an amount sufficient to make it possible for the individual to have the amount of money determined to be needed, in accordance with the FI standard, will not constitute duplication.

(10) Payments for home energy assistance will be excluded if certified by the Division of Economic Opportunity, Office of the Governor (or its successor), as being based on need.

(11) The principal of a bona fide loan will not be counted as income or a resource in the determination of eligibility and the amount of assistance. Interest earned on a loan is counted as unearned income in the month received and as a resource thereafter. Purchases made with a loan are counted as resources.

(12) The value of a governmental rent or housing subsidy is not counted as income.

(13) The value of the U.S. Department of Agriculture Food Stamp benefits or donated foods (surplus commodities).

(14) Relocation allowances paid to a recipient by the Family Independence Program.

(15) A Child Care deduction of two hundred dollars per month per dependent child, under age 12, will be subtracted from the gross earned or unearned income of families applying for Family Independence benefits. To be eligible for this deduction, the family must incur a child care expense for a dependent child(ren) living in the home. This deduction may only be given in the month of application and the two subsequent months.

O. Disregarded Income and Resources. In determining eligibility and the amount of the assistance payment, the following will be disregarded as income and resources:

(1) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(2) Grants or loans to any undergraduate student for educational purposes made or insured under any programs administered by the Secretary of Education except the programs under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.). Student financial assistance provided under the Carl D. Perkins Vocational Act will be disregarded in accordance with paragraph (a)(4)(ii)(t) of this section.

(3) Any funds distributed per capita to or held in trust for members of any Indian tribe under Public Law 92-254 or Pub. L. 94-540.

(4) Any benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1995, as amended.

(5) Payments for supporting services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Titles II and III, pursuant to Section 418 of Pub. L. 93-113.

(6) Payments to applicants or recipients participating in the Volunteers in Service to America (VISTA) Program, except that this disregard will not be applied when the Director of ACTION determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the States where the volunteers are serving, whichever is greater. (Section 404(g) of Pub. L. 93-113, as amended by Section 9 of Pub. L. 96-143).

(7) The value of supplemental food assistance received under the Child Nutrition Act of 1966 as amended, and the special food service program for children under the National School Lunch Act, as amended (Pub. L. 92-433 and Pub. L. 93-150).

(8) Pursuant to Section 15 of Pub. L. 100-241, any of the following distributions made to a household, an individual Native, or a descendant of a Native by a Native Corporation established pursuant to the Alaska Native Claims Settlement Act (ANCSA) (Pub. L. 92-203, as amended):

(a) Cash distributions (including cash dividends on stock from a Native Corporation) received by an individual are never counted as income or resources to the extent that such cash does not in the aggregate, exceed \$2,000 in a year. Cash which, in the aggregate, is in excess of \$2,000 in a year is not subject to the income and resources disregard;

(b) Stock (including stock issued or distributed by a Native Corporation as a dividend or distribution on stock);

(c) A partnership interest;

(d) Land or an interest in land (including land or an interest in land received from a Native Corporation as a dividend or distribution on stock); and

(e) An interest in a settlement trust.

(9) Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981 pursuant to Section 2605(f) of Pub. L. 97-35.

(10) Effective October 17, 1975, pursuant to Section 6 of Pub. L. 94-114 (89 Stat. 577, 25 U.S.C. 459e), receipts distributed to members of certain Indian tribes which are referred to in Section 4 of Pub. L. 94-114 (89 Stat. 577, 25 U.S.C. 459d).

(11) Pursuant to Section 7 of Pub. L. 93-134, as amended by Section 4 of Pub. L. 97-458. Indian judgment funds that are held in trust by the Secretary of the Interior (including interest and investment income accrued while such funds are so held in trust), or distributed per capita to a household or member of an Indian tribe pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress, and initial purchases made with such funds. This disregard does not apply to proceeds from the sale of initial purchases, subsequent

purchases made with funds derived from the sale or conversion of the initial purchases, or to funds or initial purchases which are inherited or transferred.

(12) Pursuant to Section 2 of Pub. L. 98-64, all funds held in trust by the Secretary of the Interior for an Indian tribe (including interest and investment income accrued while such funds are so held in trust) and distributed per capita to a household or member of an Indian tribe, and initial purchases made with such funds. This disregard does not apply to proceeds from the sale of initial purchases, subsequent purchases made with funds derived from the sale or conversion of initial purchases, or to funds or initial purchases which are inherited or transferred.

(13) Any student financial assistance provided under programs in Title IV of the Higher Education Act of 1965, as amended, and under Bureau of Indian Affairs education assistance programs.

(14) For FI, any payments made as restitution to an individual under Title I of Public Law 100-383 (the Civil Liberties Act of 1988) or under Title II of Public Law 100-383 (the Aleutian and Pribilof Islands Restitution Act).

(15) Any Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, as amended by Public Law 100-707 (the Disaster Relief and Emergency Assistance Amendments of 1988) and comparable disaster assistance provided by States, local governments and disaster assistance organizations.

(16) Any payments made pursuant to the Settlement in the In Re Agent Orange Product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

(17) Student financial assistance made available for the attendance costs defined in this paragraph under programs in the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.). Attendance costs are: tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, dependent care and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

(18) For FI, any payments made pursuant to Section 6(h)(2) of Public Law 101-426, the Radiation Exposure Compensation Act.

P. Determination of Need and Amount of Assistance. After all policies governing the reserves and allowances and disregard or setting aside of income and resources referred to in this section have been uniformly applied:

(1) In determining need, financial eligibility and the amount of the assistance payment all remaining income shall be considered in relation to the State's need standard.

(2) Income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance.

(3) Income tax refunds shall be considered as resources.

(4) Lump sum payments shall be treated as resources for applicants and recipients. When the lump sum includes a payment for the current month, that amount is treated as income.

(5) Income received by individuals employed on a contractual basis may be prorated over the period of the contract; or intermittent income received quarterly, semiannually, or yearly may be prorated over the period covered by the income.

(6) Child support payments made directly to the FI benefit group are counted as unearned income.

(7) Income of aliens who would be FI budget group members except that their alien status disqualifies them will have their income counted toward the budget group.

(8) Income of sanctioned budget group members will have their income counted toward the budget group.

(9) In family groups living together, income of the spouse is considered available for the budget group and income of a parent(s) is considered available for dependent children under 19. If an individual is a spouse or parent who is a recipient of SSI benefits under Title XVI, an individual

with respect to whom Federal foster care payments are made, an individual with respect to whom State or local foster care payments are made, an individual with respect to whom Federal adoption assistance payments are made, or an individual with respect to whom State or local adoption assistance payments are made, then, for the period for which such benefits or payments are received, his or her income and resources shall not be counted as income and resources available to the FI unit.

(10) A minor parent recipient living in the home will have income deemed to the minor parent budget group from his or her parent's income. The amount of income to be deemed shall be determined by computing the parent's gross monthly income and then subtracting an amount equal to the monthly gross income limit for a family size comprised of the parents and their legal dependents exclusive of the minor parent; the remainder is the amount of deemed income.

Q. Recovery of Overpayments and Correction of Underpayments.

(1) The Department will specify uniform statewide procedures for recovery of overpayments of assistance, including overpayments resulting from assistance paid pending hearing decisions. Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible.

(a) Any recovery of an overpayment to a current assistance unit, including a current assistance unit or recipient whose overpayment occurred during a prior period of eligibility, must be recovered through repayment (in part or in full) by the individual responsible for the overpayment or by recovering the overpayment through reducing the amount of any assistance payable to the assistance unit of which he or she is a member, or both.

(b) If recovery is made from the grant, such recovery shall result in the assistance unit retaining, for any payment month, from the combined assistance, income, and liquid resources not less than 90 percent of the amount payable to a family of the same composition with no other income. If the Department chooses to recover at a rate less than the maximum, it must recover promptly.

(c) The Department shall recover an overpayment from:

(i) the assistance unit which was overpaid, or

(ii) any assistance unit of which an adult member of the overpaid assistance unit has subsequently become a member, or

(iii) any adult members of the overpaid assistance unit whether or not currently recipients. If the Department recovers from individuals who are no longer recipients, or from recipients who refuse to repay the overpayment from their income and resources, recovery shall be made by appropriate action under State law against the income or resources of those individuals, or

(iv) any assistance unit of which an adult member accessed all or part of their monthly payment at a liquor store, a casino, gambling casino or gaming establishment, or an adult-oriented entertainment establishment. The amount of the overpayment shall equal the amount accessed at any of the locations listed in 114-1150(F).

(d) If through recovery, the amount payable to the assistance unit is reduced to zero, members of the assistance unit are still considered recipients of FI.

(e) In cases which have both an underpayment and an overpayment the Department must take one of the following three actions by the end of the quarter following the quarter in which the overpayment is first identified:

(i) recover the overpayment, or

(ii) initiate action to locate and/or recover the overpayment from a former recipient, or

(iii) execute a monthly recovery agreement from a current recipient's grant, income or resources.

(2) Underpayments. The Department will specify uniform statewide policies for prompt correction of any underpayments to current recipients and those who would be a current recipient if the error causing the underpayment had not occurred. Underpayment means a financial assistance payment received by or for an assistance unit for the payment month which is less than the amount for which the assistance unit was eligible, or failure by the State to issue a financial assistance

payment for the payment month to an eligible assistance unit if such payment should have been issued. The number of months for which retroactive underpayment corrections shall not exceed twelve. Retroactive corrective payments shall not be considered as income, or as a resource in the month paid nor in the next following month.

(3) In locating former recipients who have outstanding overpayments the Department should use appropriate data sources such as State Unemployment Insurance files, South Carolina Department of Revenue and Taxation information from tax returns, state automobile registration, IEVS, and other files relating to current or former recipients.

(4) The Department must maintain information on the individual and total number and amount of overpayments identified and their disposition for current and former recipients.

(5) The Department may elect not to attempt recovery of an overpayment from an individual no longer receiving assistance where the overpayment amount is less than \$35. Where the overpayment amount owed by an individual no longer receiving assistance is \$35 or more, the Department can determine when it is no longer cost-effective to continue overpayment recovery efforts, provided it has made reasonable efforts to recover the overpayment from the individual. Reasonable efforts must include notification of the amount of and reasons for the overpayment and that repayment is required.

(6) FI established claims for overpayment of benefits that are thirty-five dollars or greater and are more than ninety days delinquent are referred to the South Carolina Department of Revenue and Taxation and/or the United States Internal Revenue Service for intercept of those claims from tax refunds due persons against whom the claims are established. Clients are given written notification by the Department when delinquent claims are referred for state and/or federal tax intercept.

**HISTORY: Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002; State Register Volume 38, Issue No. 5, Doc. No. 4457, eff May 23, 2014.**

## **114–1150. Determination of Benefits.**

A. Gross Income Limit. Gross monthly countable earned and unearned income of the Family Independence benefit group must not exceed 185 percent of the need standard by family size. The gross income limit is an initial screen of eligibility for assistance.

B. Earned Income and Unearned Income.

(1) Earned income means gross earned income prior to any deductions for taxes or for any other purposes. Such earned income may be derived from an applicant's or recipient's own employment, such as a business enterprise, or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of the sale of farm crops, livestock, or poultry.

(2) With reference to commissions, wages, or salary, earned income means the total amount, irrespective of personal expenses, such as income-tax deductions, lunches, and transportation to and from work, and irrespective of expenses of employment which are not personal, such as the cost of tools, materials, special uniforms, or transportation to call on customers.

(3) With respect to self-employment income, earned income means the total profit from a business enterprise, farming, etc., resulting from a comparison of the gross receipts with the business expenses (i.e., expenses directly related to producing the goods or services and without which the good or services could not be produced). The profit shall be as determined using Internal Revenue Service methods.

(4) With regard to the degree of activity, earned income is income produced as a result of the performance of services by a recipient; in other words, income which the individual earns by his own efforts, including managerial responsibilities, would be properly classified as earned income, such as management of capital investment in real estate. Conversely, in the instance of capital investment wherein the individual carries no specific responsibility, such as where rental properties are in the hands of rental agencies and the check is forwarded to the recipient, the income would not be classified as earned income.

(5) Unearned income is any income that does not meet the definitions of earned income above, such as direct child support, social security benefits, interest, dividends and gifts.

(6) Unemployment compensation benefits are treated as unearned income in the budgeting process.

C. Disregard of Earned Income. For purposes of eligibility and benefit determination, provided the benefit group has passed the gross income limit test in item A above, the Department will disregard from earned income:

(1) Fifty percent of the monthly gross countable earned income, of each individual whose needs are included in the budget group, for the first four months in which earned income is countable. This disregard can be received only once in twenty-four months.

(2) One hundred dollars per month from gross countable income of each individual whose needs are included in the budget group, for the remaining months of eligibility after the four months in paragraph (1) above have been exhausted.

(3) Casemanagers will counsel with recipients concerning the advantages and disadvantages of receiving a small FI benefit for a few months versus closing their case and possibly losing transitional Medicaid benefits as opposed to saving their time limited months for a possible future emergency, such as becoming unemployed.

D. Prospective Eligibility and Budgeting. All factors of eligibility shall be determined prospectively and the monthly amount of assistance will be computed based on a best estimate of income and circumstances which will exist in the benefit month. This estimate shall be based on the Department's reasonable expectation and knowledge of current, past, or future circumstances. Monthly income is estimated prospectively based on past income from the previous four weeks and anticipated changes in income. Expenses may be estimated prospectively using the same methodology. Weekly income is multiplied by 4.33 to convert it to monthly income.

E. Payment Determination. To determine the amount of the payment for the benefit group, subtract countable income from the full need standard and multiply the result (deficit) by the ratable reduction.

F. Payment Methods. Money payments made to eligible families may be made by checks, warrants immediately redeemable at par, by electronic benefits transfer, or direct deposit to bank accounts. Family Independence payments are not to be accessed, by electronic transaction using a Point-of-Sale device, ATM, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service, at any of the following locations:

(1) A liquor store. A liquor store means any retail establishment which sells exclusively or primarily intoxicating liquor. Such term does not include a grocery store which sells both intoxicating liquor and groceries including staple foods (within the meaning of section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r)).

(2) A casino, gambling casino or gaming establishment.

(3) An adult oriented entertainment establishment. An adult oriented establishment is defined as a retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997; State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002; State Register Volume 38, Issue No. 5, Doc. No. 4457, eff May 23, 2014.

## **114–1160. Work Requirements.**

A. Individualized Self-Sufficiency Plan.

(1) Each adult and minor parent recipient of FI must sign an Individualized Self-Sufficiency Plan (ISSP) with the Department that states the actions the recipient must take to become employed and the time frames for completing these actions. The agreement must also state the services the Department will provide and coordinate to assist the recipient to become employed. Refusal to sign the ISSP will cause the FI case to be subject to sanction.

(2) An FI recipient who fails, without good cause, to comply with the employment and training requirements of the ISSP shall be granted a thirty-day conciliation period to reconsider the decision not to comply with the terms of the agreement.

(a) The notice of conciliation serves to advise the recipient that a conciliation conference is necessary and that his case may be terminated at the end of the thirty-day conciliation period if conciliation has not been accomplished.

(b) A conciliation conference must be conducted within ten calendar days of the date of the notice, unless the recipient can establish good cause for failure to keep the appointment.

(c) If the recipient agrees to comply, within the thirty-day conciliation period, FI benefits will be continued without interruption, although they may be delayed.

(d) A timely and adequate notice must be sent to terminate benefits to the entire family if the client fails to keep the conciliation appointment or if the client fails to comply with the conciliation requirement.

(e) If the conciliation decision is adverse to the recipient, the recipient has ten days in which to request a fair hearing.

(f) If the recipient agrees to comply after the thirty-day conciliation period has expired, compliance must be demonstrated by participating in the employment and training program for thirty days prior to the reinstatement of FI benefits.

(g) If the recipient's FI case is closed a new written FI application is not required if the recipient agrees to comply with the requirement that caused the case closure and reapplies within sixty days of the closure. The existing application on file must be resigned and dated. The requirement of section A(2)(e) above applies to this reapplication.

(3) A recipient may be exempted from complying with the employment and training requirements for the following reasons:

(a) The parent or caretaker relative has a child under one year of age; however, custodial parents under age twenty-five who have not completed their high school education shall comply with these provisions regardless of the age of the child;

(b) Is at least six months pregnant and the pregnancy is verified by a qualified licensed health care provider;

(c) Is incapacitated and the incapacity is verified by a physician, and if the Department considers it necessary, confirmed by an assessment performed by the Department of Vocational Rehabilitation, as a physical or mental impairment that prevents the recipient from engaging in gainful employment or participating in education or training;

(d) Is caring for an incapacitated person whose incapacity has been verified by a physician, and if the Department considers it necessary, confirmed by an assessment performed by the Department of Vocational Rehabilitation;

(e) Is unable to participate because child care and reasonable transportation were not provided when needed for participation in employment and training programs.

(4) All FI benefits will be terminated if a recipient completes the training requirements contained in the ISSP and then refuses an offer of employment.

#### B. Initial Job Search.

(1) All adult applicants (includes adults added to open FI cases) who do not meet the exemption criteria of Section 114.1130A(3) above and those who meet exemption criteria but volunteer must conduct an initial job search and shall provide evidence of this search by returning to the Department a listing of the employers contacted, date of contact, and the name and telephone number of the person with whom the applicant spoke. The number of employers to be contacted shall be determined by the Department. An applicant must provide this information before case approval; an applicant who does not provide this information by the thirtieth day must have the application denied.

(2) An employment assessment must be conducted on an approved applicant/recipient who has not found a job to determine if the individual is job ready.

(3) A recipient who has been employed twelve out of the previous twenty-four months or who has graduated from high school or has obtained a General Equivalency Diploma (GED) must be considered job ready and must be enrolled in a job club.

(4) Following participation in a job club, the recipient must conduct a job search for a period not to exceed sixty days or until the recipient obtains a job, whichever comes first.

(5) A recipient who is not job ready or a job ready recipient who is unsuccessful in the sixty day job search must be evaluated for barriers to employment. From the evaluation, the agreement set forth in Section 114.1130A(3) above must be modified to set forth specific training and employment requirements for the recipient.

#### C. Training Programs.

(1) The Department shall provide information to applicants and recipients regarding the advantages of participation in the employment and training programs.

(2) The Department shall market its training and employment program to education and training program providers and to employers.

(3) The Department shall provide special educational and related services for teen parents under age twenty to assist them in becoming economically independent and to provide health information. The Department shall coordinate the provision of these services with other state and local agencies. Staff for this program should be familiar with school dropout programs, family planning programs which comply with existing law, and parent effectiveness training programs.

(4) Each adult FI recipient and minor mother must participate in the life Skills Training Program (LSTP) as a condition of eligibility even if exempt from the employment and training requirement. Participation in the LSTP must be a part of the ISSP.

(a) The life skills training program must include, but is not limited to, training in parenting skills, financial planning and health information.

(b) The program must include an alcohol and drug assessment for any FI recipient for whom it is deemed appropriate by the Department. The Department shall coordinate the assessment with the Department of Alcohol and Other Drug Abuse Services (DAODAS) and shall include the individually determined terms and conditions of the treatment plan in the recipient's agreement with the Department.

(c) The Department shall provide through its training programs information about the value of family planning services to reproductive age recipients. The program must include a family planning assessment for any FI recipient for whom it is deemed appropriate by the Department. The Department shall coordinate the assessment and family planning education with the Department of Health and Environmental Control (DHEC). Training program placement staff shall actively seek the cooperation of employers or potential employers in an agreement which permits an FI recipient time off from work, not to exceed four hours, at least once a year to voluntarily seek family planning services, from a provider of the FI recipient's choice, without fear of losing employment or other reprisals. State funds may not be used to pay for an abortion.

#### D. Provision of Child Care and Transportation.

(1) The Department guarantees child care for a dependent child who is: under age 13; physically or mentally incapable of caring for himself, as verified by a physician or certified psychologist; or under court supervision; or a child who would be a dependent child except for the receipt of Supplemental Security Income, to the extent such child care is necessary to permit an FI eligible family member to:

(a) Accept employment or remain employed; or

(b) Participate in an approved education or training activity under the Family Independence Program; or

(c) Participate in initial job search.

(2) The Department may provide for child care for an individual who is waiting to enter an approved education, training, or FI component or employment:

(a) For a period not to exceed two weeks; or

(b) For a period not to exceed one month, on an exception basis, when child care arrangements would otherwise be lost and participation in a FI Program activity or employment is scheduled to begin within that period; or

(c) For a thirty-day trial period required for an individual to overcome a sanction.



(d) Assistance with child care payments may be denied or terminated if a client fails to successfully complete the good cause/conciliation process for correcting a non-compliance with FI employment and training program requirements. The recipient shall be informed that he is responsible for all child care payments after the termination date and that an overpayment for child care is subject to recoupment.

(3) Child care assistance shall be provided to a recipient participating in structured FI activities as follows:

(a) Full-time child care is provided for participation of twenty or more hours per week or attendance at a post secondary institution of at least twelve hours per week; or

(b) Half-time child care is provided for participation of ten or more hours but less than twenty per week; or

(c) Hourly rate child care is provided for participation of less than ten hours per week.

(4) In arranging child care, the Department will consider the following:

(a) The individual needs of the child, including reasonable accessibility of the care to the child's home and school or to the parent's place of employment or training;

(b) The appropriateness of the care to the age and special needs of the child; and

(c) Encouraging the recipient to arrange his own child care at no cost to the State when possible.

(d) The local Department will make available for a parent's review the available county listings of regulated child care providers.

(5) Payment of child care by the Department:

(a) Payment will not be made to any Child Day Care Centers, Group Day Care Homes or Family Day Care Homes that do not meet applicable State and local regulatory requirements.

(b) Payments may be made to providers who are by law exempt from regulatory requirements (e.g. churches) and who provide documentation of their exempt status.

(c) Payments cannot be made to an alleged absent parent.

(d) Payments cannot be made to a child care provider who is a member of the same FI budget group as the parent.

(e) Payments cannot exceed the prescribed local market rates established by the Department.

(f) A parent who chooses a child care provider whose rates exceed the maximum allowable amount shall be responsible for the excess amount (the excess is not considered to be a fee or co-payment).

(g) Child care registration will be paid only once per year unless there are extenuating circumstances that require a change in child care providers.

(h) Informal child care providers must be at least twenty-one years of age.

(i) Child care payments to relatives, friends, or neighbors are subject to federal and State income taxes; the provider of the child care will be sent a 1099 form showing the amount of the child care payments.

(j) Any child care facility accepting children of FI recipients shall allow parents or guardians unrestricted access to the child care facility.

(6) The Department will provide, pay for, or reimburse transportation expenses which it determines are necessary, based on a recipient's established need which enable the recipient to participate in approved FI employment and training program activities.

(a) Recipients who live less than one and one-half miles from their destination will not receive assistance with transportation costs.

(b) Transportation costs that will be reimbursed include, but are not limited to:

(i) Reimbursing a recipient or operator driving a privately owned vehicle at a rate set by the Department, dependent on funds available. The Department may set a maximum on the amount of the reimbursement.

(ii) Purchased transportation will be contracted for at the least expensive rate not to exceed the rate set by the Department, dependent on funds available.

(iii) Recipients living in areas where bus service is available must use this mode of transportation, unless the recipient has alternate transportation. Bus tickets may be provided.

(iv) Payments to assist with child care transportation to and from the child's home are allowable up to limits established in items (3)(a)-(c) above.

(7) The Department must inform families requesting child care or transportation of their rights and responsibilities:

(a) The Department must respond to a request for child care or transportation within a reasonable period of time.

(b) FI applicants and recipients are entitled a Fair Hearing, under the provisions of R.114-110 and R.114-1180, on issues concerning the appropriateness of, denial of, prompt issuance of, or intended actions to discontinue, terminate, suspend or reduce child care or transportation assistance. The denial or termination of child care or transportation assistance to an applicant or recipient must be communicated in writing.

#### E. Wage Supplementation.

(1) The Department may operate a wage supplementation program as a part of its Employment and Training Program. The Department may use Family Independence funds to develop and subsidize jobs for FI recipients as an alternative to aid.

(2) A "supplemented job" is a job provided under this section to an eligible individual by an employer for which all or part of the wages are paid by the FI Program.

(3) The Department may provide or subsidize any type of newly created unfilled job. It may determine the length of time the position is to be provided or subsidized not to exceed nine months, the amount of wages to be paid to the recipient, the amount of subsidy to be provided, and the conditions of participation, except that no participant may be assigned to fill any established, unfilled position vacancy.

(4) An eligible individual is one which the Department has determined should be eligible to participate in the Employment and Training Program at the time of placement. Time of placement is the date on which the Department and the employer reach agreement on the terms of the placement and the specific individual to be placed.

(5) The wage supplementation program is a voluntary program.

(6) Participants in a supplemented job will be paid a wage equal to or greater than the federal minimum wage which shall be considered to be earned income.

(7) The Department will calculate the amount of a participant's residual grant (direct FI grant), if any, at the time of placement in the supplemented job and base the amount of the residual grant (the FI grant minus earnings and other countable income) for the duration of the individual's participation in the supplemented job (in whole or in part) on that calculation. This is known as "freezing the grant." If the individual becomes otherwise ineligible for FI benefits, the Department may allow the individual to continue in the supplemented job and divert the FI grant to the wage pool, but the Department shall not pay a residual grant to the individual.

(8) If an individual in a supplemented job would have been eligible for transitional child care at the time of ineligibility for FI, she shall be eligible for transitional child care after her supplemented job ends for up to twenty-four months.

(9) The Department will allow the earned income disregards for the length of the contract period.

#### F. Relocation Assistance.

(1) A FI caretaker recipient may be assisted in relocating to another area of the State or to another state if he has a verified job offer at the relocation site.

(2) A FI caretaker recipient, in some instances, may be assisted in relocating to another area in the State or to another state without a verified offer of employment if the casemanager and the recipient have thoroughly evaluated the recipient's existing circumstances as well as the opportunities at the relocation site and conclude that the family would be more likely to achieve self-sufficiency at the relocation site. The casemanager should contact social service agencies and agencies operating

employment and training programs at the relocation site so that the recipient will know where to seek assistance upon arrival.

(3) Relocation assistance may be provided to a FI caretaker recipient if he needs to move to provide care for an ill family member or if the family will receive assistance at the new location that is unavailable to them at their present location, such as free housing or child care.

(4) The decision to relocate must be a voluntary decision by the recipient.

(5) Relocation expenses of a reasonable amount may be paid to a FI caretaker recipient only once in any twenty-four month period. Travel and moving expenses must utilize the least expensive means of travel; assistance with living expenses for the first thirty days at the new location may not exceed the one hundred eighty-five percent gross income limit by family size. The amount of the relocation expenditure must be approved by both the casemanager and the county director.

#### G. Participation in Employment and Training Required When Child is One Year Old.

(1) FI recipients must participate in the Department's employment and training program when their youngest child reaches age one, unless exempt under Section 114-1160 A(3).

(2) FI recipients are to be encouraged to volunteer to participate in the Department's employment and training program when their youngest child reaches the age of six months.

**HISTORY: Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.**

### **114-1170. Safeguarding Information.**

A. The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with:

(1) The administration of the Family Independence Program. Such purposes include establishing eligibility, determining the amount of assistance, and providing services for applicants and recipients.

(2) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such plans or programs.

(3) The administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services directly to individuals on the basis of need.

(4) Any audit or similar activity (review of expenditure reports or financial review) conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity.

(5) The administration of a State unemployment compensation program.

(6) The reporting to the appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under circumstances which indicate the child's health or welfare is threatened.

(7) The Department, in its sole discretion, may permit access to client information, on a confidential basis to non-Departmental entities, for research purposes where the research may provide greater knowledge about program affects and outcomes or administrative improvements in the Family Independence Program.

B. The Department has authority to implement and enforce the provisions for safeguarding information about applicants and recipients. Disclosure of any information that identifies by name or address any applicant or recipient to any federal, State, or local committee or legislative body other than in connection with any activity under paragraph D(1) of this section is prohibited.

C. Publication of lists or names of applicants and recipients will be prohibited.

D. The Department has authority to disclose the current address of a recipient to a State or local law enforcement officer at his or her request. Such information is disclosed only to law enforcement officers who provide the name and SSN of the recipient and satisfactorily demonstrate that:

(1) The recipient is a fugitive felon;

(2) The location or apprehension of such felon is within the law officer's official duties; and

(3) The request is made in the proper exercise of those duties.

E. The Department has the authority to release only the name, address and telephone number of the caretaker relative to organizations with which it has a Memorandum of Agreement to provide services for its FI recipients, provided the individual has voluntarily signed a release permitting same.

F. The Department safeguards the following types of information:

(1) Types of information to be safeguarded include but are not limited to:

- (a) The names and addresses of applicants and recipients and amounts of assistance provided;
- (b) Information related to the social and economic conditions or circumstances of a particular individual including information obtained from any agency. Information obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA) must be safeguarded in accordance with procedures set forth by those agencies;
- (c) Agency evaluation of information about a particular individual;
- (d) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.
- (e) Medical data received directly from third parties may not be released to recipients.

(2) The release or use of information concerning individuals applying for or receiving financial assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial assistance programs.

(3) Except in the case of information requested from the Income and Eligibility Verification Systems (IEVS) or in the case of an emergency situation when the individual's prior consent for the release of information cannot be obtained, the family or individual is informed whenever possible of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately.

(4) In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning an applicant or recipient, the court's attention is called, through proper channels to the statutory provisions and the policies or rules and regulations against disclosure of information.

(5) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement officer (except as provided with respect to fugitive felons) as from any other outside source.

G. The Department will publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions imposed for improper disclosure and use, and will make these provisions available to applicants and recipients and to other persons and agencies to whom information is disclosed.

(1) All information obtained pursuant to the income and eligibility verification system will be stored and processed so that no unauthorized personnel can acquire or retrieve the information by any means.

(2) All persons with access to information obtained pursuant to the income and eligibility verification systems will be advised of the circumstances under which access is permitted and the sanctions imposed for illegal use or disclosure of the information.

H. All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications. Under this requirement:

(1) Specifically excluded from mailing or distribution are materials such as "holiday" greetings, general public announcements, voting information, alien registration notices;

(2) Not prohibited from such mailing or distribution are materials in the immediate interest of the health and welfare of applicants and recipients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information;

(3) Only the names of persons directly connected with the administration of the program are contained in material sent or distributed to applicants, recipients, and vendors, and such persons are identified only in their official capacity with the State or local agency.

I. The Department will provide documentation to employers verifying an individual's status as an Family Independence recipient for the purpose of claiming a State tax credit under 1976 Code Section 12-7-1280, provided the recipient signs a release permitting the Department to release this information.

J. The applicant or recipient may review his case record with the exception of confidential medical reports from third parties.

K. The Department may refute on an item-for-item basis specific information released by a recipient or former recipient directly to and published or broadcast by the public media if the Department reasonably believes that it has factual information that establishes the inaccuracy of the information provided by the recipient or former recipient to the public media.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **114-1180. Appeals and Hearings.**

A. Fair Hearings for FI applicants or recipients are provided for in R.114-110.

B. Hearings are denied when changes in Federal or State law or Department policy require automatic benefit adjustments except if the appeal is a challenge of the correctness of the benefit computation.

C. When a hearing is requested within ten days after receipt of an adequate and timely notice, FI benefits are not continued unless the recipient specifically requests in writing that they be paid pending the hearing decision. The recipient must be informed that an adverse hearing decision will require the repayment of the benefits paid pending the hearing decision.

D. The Department does not extend the result of a hearing decision or court order to others in the same situation as those directly affected by the court order unless the order so states.

E. The Department allows hearings to be conducted by telephone or any other method that substitutes for a personal appearance.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **114-1190. Conflict between Federal and State Laws or Regulations.**

When the requirements of State and federal regulations or laws are not in agreement the requirements of the federal regulations or laws shall prevail.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **114-1191. Conflict between State Law and State Regulations.**

When the requirements of State law and State regulations are not in agreement the provisions of State law shall prevail.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **114-1192. Pilot and Demonstration Projects.**

The Department may conduct pilot or demonstration projects in the Family Independence Program to achieve more effective and efficient use of Family Independence funds, reduce the dependency of Family Independence recipients, to improve the living conditions and/or increase the incomes of Family Independence recipients. Such projects or demonstrations may be conducted without the requirement to amend the State Regulations currently in effect.

**HISTORY:** Added by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

## **ARTICLE 13 FOOD STAMP PROGRAM**

## **114–1300. General.**

A. The Food Stamp Program (FSP) is administered by the Food and Nutrition Service, United States Department of Agriculture. The Food Stamp Program (FSP) is authorized by the Food Stamp Act of 1977, as amended. The eligibility provisions of the Act are further developed in Title 7, Code of Federal Regulations, Parts 210 through 299.

(1) If an alternative is provided and the State does not select the alternative, the primary federal regulation prevails.

(2) Certain parts of these regulations permit the State to select options regarding FSP eligibility criteria. The State follows the federal regulations where no options are permitted.

(3) The State may also submit “waivers” of federal regulations to Food and Nutrition Service for approval that will permit the State to operate certain parts of the FSP according to regulations developed by the state and different than those specified in the Code of Federal Regulations. Such “waivers” are approved for a certain period of time and must be resubmitted for renewal prior to the end of the approved time period.

The State Regulations for the FSP address only the areas where the federal regulations allow the State to choose an option or where the State has obtained a waiver from those regulations.

The Department of Social Services is the designated single State Agency to operate the FSP.

B. Each of the forty-six counties is considered to be a project area for the Food Stamp Program. Applicants may apply for food stamps in any of the forty-six counties within the state. Their eligibility will be determined and maintained in the county in which they currently reside. When a food stamp household moves from one county to another county the food stamp case will remain open. The Department of Social Services County Office will review the household’s circumstances and act on any changes resulting from the move.

C. The Department will extend categorical eligibility to any household in which all members receive or are authorized to receive non-cash or in-kind services from a program that is less than 50 percent funded with Title IV-A money and that is designed to further purposes one and two of the TANF block grant.

D. The Department will use TANF vehicle allowance rules when determining whether a vehicle is an excluded resource. These rules will exclude one licensed/registered vehicle per licensed driver in the household.

E. The Department may opt to provide households leaving Temporary Assistance to Needy Families (TANF) with transitional food stamp benefits. When the household leaves TANF, the Department will freeze the household’s food stamp benefit amount at the level the household received when it received TANF. This does not apply to households that, at the time the household leaves TANF, are noncompliant with TANF requirements and the Department is imposing a comparable food stamp sanction, households who have violated a food stamp work requirement, households where a member has committed an intentional program violation, or households where the TANF case is being closed because the household failed to comply with food stamp reporting requirements.

F. The Department of Social Services may opt to operate a Simplified Food Stamp Program to conform FSP regulations to the State regulations used to determine eligibility for the Temporary Assistance for Needy Families (TANF) Program. At such time as requirements for such a program are developed, the Department will provide an opportunity for public input. The State Regulations contained in Chapter 114, Article 13, Food Stamp Program, apply to all Food Stamp Program recipients except for those who would receive food stamps under the provisions of the Simplified Food Stamp Program (Section 26 of the Food Stamp Act of 1977, as amended) at such time as it is developed.

G. The State will submit to FNS for renewal annually, the “waiver” to exempt all counties with an annual unemployment rate greater than ten percent and all counties identified as labor surplus areas from policy pertaining to individuals identified as Able-bodied Adults Without Dependents (ABAWDs).

Individuals identified as ABAWDS are limited to receipt of three months of food stamp benefits in a three year period unless they are complying with minimum work requirements.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998; State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002.

### **114–1310. Definitions.**

A. “Applicant” means a person who has directly or through his authorized representative made application for Food Stamps (FS) to the County Department of Social Services (CDSS) and whose application has not been denied by appropriate CDSS action.

B. “Application” means the action taken by a person or his duly authorized representative by signing an application form requesting FS.

C. “Authorized Representative” means someone who is acting for another individual with his knowledge and consent and who has knowledge of the other individual’s circumstances.

D. “Benefit” means the dollar amount of coupons or benefits provided to the FS benefit group.

E. “Benefit Group” means all the persons whose income and deductions must be included in the computation of the FS benefit amount.

F. “Certification Period” means the period for which benefits are authorized.

G. “Department” means the South Carolina Department of Social Services.

H. “Effective Date of Application” means the date on which an application that includes the applicant’s name, address and signature or authorized representative’s signature is filed at the CDSS.

I. “Initial Month” means the first month for which the benefit group is certified for FS.

J. “Recertification” means the action taken by the benefit group to reapply for FS after the expiration of the certification period.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995.

### **114–1320. Application Processing.**

A. The State will inform applicants about the eligibility requirements and their rights and responsibilities and the responsibilities of the Department under the Food Stamp Program. Under this requirement, individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms shall be available. Applicants for and recipients of assistance shall be notified in writing at the time of application and recertification that the Department will regularly request information from other federal and State agencies which will be used to aid in determining their eligibility for and the amount of benefits.

B. The Department will verify the validity of all documents used to verify the immigration status of noncitizens through the Immigration and Naturalization Service (INS) Systematic Alien Verification Entitlement (SAVE) Program.

C. The Department will use information obtained through the Income and Eligibility Verification System (IEVS) to verify the eligibility and benefit levels of applicants and participating households

D. If an applicant has failed to complete the initial application process and the Department has taken all action to assist, the applicant is sent a notice of denial on the 31st day following application. If the needed information is provided within 60 days of the date of application the household does not have to complete a new application. Benefits will be prorated from the date the needed information is received by the Department if received within 60 days of the application filing date.

E. If the applicant fails to verify a new or changed deductible expense, the Department will not allow the deduction. The applicant, if eligible, must be certified without the deduction.

F. The household’s timely recertification application will continue to be denied at the end of the last month of the certification period if the recipient either fails to appear for an interview or fails to submit required verification(s) within the required time frame.

G. Applicants shall be informed about the eligibility requirements and their rights and responsibilities and the responsibilities of the Department under the Food Stamp Program. Under this requirement, individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms shall be available. Applicants for and recipients of assistance shall be notified in writing at the time of application and recertification that the Department will regularly request information from other federal and State agencies which will be used to aid in determining their eligibility for and the amount of benefits.

H. Each individual wishing to do so shall have the opportunity to apply for assistance without delay. Under this requirement:

(1) The Department shall require a written application, signed under a penalty of perjury, on a form prescribed by the Department, from the applicant himself or someone acting responsibly for him.

(2) An applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility and may be accompanied by such individual(s) in contacts with the Department and when so accompanied may also be represented by him.

I. The Standards and methods for determination of eligibility shall be consistent with the objectives of the program, and will respect the rights of individuals under the United States Constitution, the Social Security Act, Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act of 1990, and all other relevant provisions of federal and State laws.

J. Eligibility conditions or Department procedures or methods must not prevent an individual from applying for and obtaining a determination of eligibility or ineligibility. Methods of eligibility determination must be consistent with the objective of assisting all eligible persons to qualify.

K. All applicants and recipients are entitled to due process rights, which include a ten day advance notice of decisions adversely affecting their food stamp benefits and the right to request a fair hearing.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998; State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002.

## **114-1330. Income and Deductions.**

A. In addition to a monthly Standard Utility Allowance for households which incur a heating or cooling expense during the year, the State will offer a monthly Basic Utility Allowance for households which do not incur a heating or cooling expense during the year shall be determined by the Department. The standards shall be reviewed and updated annually using a statistically acceptable sampling procedure to establish a normative utility cost incurred by food stamp recipients.

B. The State will allow homeless food stamp recipient households to claim a monthly shelter deduction based on the actual costs that the household incurs.

C. The State will count a pro rata share of the gross income of an ineligible alien toward the total income of the food stamp budget group.

D. The State will submit to FNS for renewal every two years, the "waiver" to accept the benefit group's statement as verification for interest income in the amount of \$10 or less per month or \$120 or less per year.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998; State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002.

## **114-1335. Disqualifications and Sanctions.**

A. The State will sanction an individual recipient who fails to cooperate with Food Stamp work requirements for the time periods shown below. The non-compliant recipient must serve the entire sanction period (unless they become exempt from work registration requirements, at which time the



sanction is lifted) and comply with Food Stamp work requirements before eligibility may be reestablished.

- (1) First violation—one month.
- (2) Second violation—three months.
- (3) Third violation—six months.

B. When an individual(s) recipient in the Food Stamp Program is sanctioned in another means-tested program, such as the Family Independence Program, for failure to that the food stamp benefit will not increase as a result of the loss of income from the means-tested program until such time as he complies with Family Independence program requirements

C. When a Family Independence household receives a full-family sanction, the State will remove the non-compliant individual causing the sanction from the food stamp budget (unless he is exempt from food stamp work requirements) and any income he receives will continue to be counted in the food stamp budget. The food stamp benefit paid to the household at the time of the Family Independence case closure will not increase as a result of the loss of income from the Family Independence case closure. This process is limited to one year or until such time as the non-compliant individual complies with Family Independence program requirements or becomes exempt from food stamp work requirements, whichever is less.

D. When a Family Independence household receives a full-family sanction, the non-compliant individual causing the sanction will be removed from the food stamp budget and any income he receives will continue to be counted in the food stamp budget. Also, the Family Independence benefit that is being paid to the household at the time of the Family Independence case closure will continue to be counted in the household's food stamp budget. This process will continue until such time as the household is reinstated to a Family Independence benefit or until their eligibility for Family Independence related Medicaid ceases.

E. Individuals who are in arrears on court-ordered child support payments are disqualified from food stamp benefits until such time as they enter into an agreement with the court to make payments which will reduce the arrearage amount or until such time as they are no longer in arrears.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998. Amended by State Register Volume 26, Issue No. 5, Part 2, May 24, 2002.

## **114–1340. Determining Eligibility and Benefit Levels.**

A. The Department's time period covered by the benefit month is a calendar month.

B. The State will use prospective budgeting for all FS cases, determining the best estimate of income that will exist in the benefit month. Past income which is indicative of future income is used to calculate budgeted income for the certification period.

C. The Department will convert income to monthly amounts by multiplying weekly amounts by 4.33 and bi-weekly amounts by 2.16.

D. The State will automatically process by the FS computer system, Social Security and Supplemental Security Income cost of living increases received by benefit group members.

E. When calculating income and benefit level, dollars and cents shall be included at each step of the FS calculation. Final income and deduction amounts will be rounded down.

F. Social Security and Supplemental Security Income cost of living increases received by benefit group members will be automatically processed by the FS computer system.

G. Food Stamp recipients who leave a drug or alcohol abuse treatment center, for whom the center was the individual's authorized representative, during the month are entitled to a portion of their monthly food stamp benefit. The treatment center must make the appropriate share of the food stamp benefit available to the recipient.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998; State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002.

### **114–1345. Work Supplementation Program.**

The Department may elect to operate a Work Supplementation or Support Program under Section 849 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193).

A. Such a program may provide public assistance to an employer, using a benefit provided under the Food Stamp Program, which may be used for hiring and employing a recipient who was not employed by the employer at the time the recipient entered the Food Stamp Program.

B. The Department may elect to use an amount equal to the food stamp allotment that would otherwise be issued to the household under the Food Stamp Program, but for the operation of the Work Supplementation Program, for the purpose of subsidizing or supporting a job under a work supplementation or support program established by the Department.

C. A work supplementation or support program shall not displace the employment of individuals who are not supplemented or supported.

**HISTORY:** Added by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998.

### **114–1350. Reporting Changes.**

A. The State will allow households with earned income and six month certification periods to report only changes in the amount of gross monthly income that result in their gross monthly income exceeding 130 percent of the monthly poverty income guideline for their household size. Households with earned income certified for longer than six months must submit an interim report at six months which would detail all changes in the household.

B. The State will submit to FNS for renewal every two years, the “waiver” to require certified benefit groups to report changes in earned income if there is a change in:

(1) Source;

(2) Hourly rate or salary; or

(3) Employment status (part-time to full-time and full-time to part-time as defined by the employer).

C. The State will submit to FNS for renewal every two years, the “waiver” to require certified benefit groups to report new employment within 10 days from the start of the new employment.

D. The State will submit to FNS for renewal every two years, the “waiver” to require certified benefit groups that are not subject to the mailed recertification process to report a change in source of unearned income from private sources and changes in the amount of unearned income from private sources of greater than \$100 within 10 days of the date the change becomes known to the benefit group.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002.

### **114–1360. Demonstration, Research or Evaluation Projects.**

When authorized by federal regulations, the Department may participate in demonstration, research or evaluation projects designed to improve the administration and effectiveness of the FS program in the delivery of benefits to eligible households. Such projects may be conducted without the requirement to amend the State regulations currently in effect.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995.

### **114–1370. Safeguarding Information.**

Disclosure of information about FS applicants or FS household members is restricted. Conditions of disclosure are outlined in 7 CFR 272.1. Disclosure of program information is outlined in 7 CFR 272.1.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995.

### **114–1380. Outreach.**

Outreach activities will be coordinated by the agency through local agencies and organizations within each county. The purpose of the Food Stamp Outreach Program is to:

- (1) Inform low income households of the application process and availability of benefits;
- (2) Enlist the cooperation of other agencies and organizations in distributing FS program information and in facilitating the participation of eligible benefit groups;
- (3) Identify reasons why eligible households do not participate in the FS program; and
- (4) Plan actions to remove barriers to participation in the FS program

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002.

### **114–1385. Claims.**

A. The State will take action to establish claims on all agency error, inadvertent household error and intentional program violation overpayment referrals no later than the six months from the date the overpayment was detected.

B. The State will initiate collection action on inadvertent household or agency error claims under \$125 at such time that multiple overpayments for a household total \$125 or more.

C. The State will participate in the South Carolina Department of Revenue Debt Offset Program for the collection of delinquent Family Independence and food stamp overpayments and follows state regulations for this program.

D. The State will submit to FNS for renewal at the State's discretion, the "waiver" to use the wage amounts obtained from the Employment Security Commission Wage Match when calculating the amount of overpayment that results from earned income. The overpayment is calculated by using one-third of the total income for each quarter listed in the Match for each corresponding month of the claim. The benefit group must be informed of their right to a fair hearing to refute the amount of the claim.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002.

### **114–1390. Fair Hearings.**

A. The State will allow the applicant or recipient to choose between a face-to-face hearing or a telephone hearing. If neither option is chosen, a face-to-face hearing will be scheduled. Also, if the hearing official decides that a face-to-face hearing is necessary, one will be scheduled.

B. The State will monitor county appeal decisions to ensure correct interpretation of FS policies. When appropriate, county corrective action will be required if the number of appeals or overturned appeals becomes excessive.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995. Amended by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998; State Register Volume 26, Issue No. 5, Part 2, eff May 24, 2002.

### **114–1395. Conflict between State and Federal Regulations.**

When the requirements of the State and federal regulations are not in agreement, the requirements of the federal regulations shall prevail.

**HISTORY:** Added by State Register Volume 19, Issue No. 5, eff May 26, 1995.

## **ARTICLE 15**

### **ESTABLISHING ELIGIBILITY FOR GENERAL DISABILITY ASSISTANCE**

### **114–1510. Definitions and General Requirements.**

#### **A. Definitions.**

(1) General Disability Assistance (GDA)—totally State-funded financial and medical assistance granted on a one-time basis per application, for a minimum period of one month up to a maximum period of six months, to individuals who meet eligibility criteria specified below.

(2) Total Disability—a serious mental or physical impairment or combination of impairments which renders an individual incapable of engaging in any useful occupation or gainful employment within his competence.

(3) Temporary Disability—an impairment which is expected to last or has lasted at least thirty days, but can be corrected within a one-year period.

#### **B. General Requirements.**

(1) An individual must be totally and temporarily disabled, in need, and ineligible for any other category of financial assistance, with the exception of the General Assistance-Ineligible Spouse (GA-IS) of a Supplemental Security Income (SSI) Recipient Program.

(2) The individual must be at least eighteen years of age but less than sixty-five years of age, with the following exceptions:

(a) If the individual is attending school, he must be at least twenty-one years of age.

(b) If the individual is legally married or emancipated, the lower age limit does not apply.

(3) The individual must be either a citizen of the United States or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law; furthermore, he must be residing in the State with no intention of moving outside the State.

(4) Pregnancy shall not be considered a total and temporary disability.

(5) Individuals who perform homemaking duties for persons other than themselves shall be ineligible for GDA.

(6) All applicants shall be referred to the South Carolina Vocational Rehabilitation Department, and shall accept all available Vocational Rehabilitation services and resources.

### **114–1520. Eligibility Determination.**

A. A medical evaluation must be supplied as evidence of disability. It is the responsibility of the applicant to provide any required medical evaluation(s) on the agency-supplied forms. Additional medical data may be supplied in any form and will be considered by the Agency. If the evaluation shows that the individual is either totally and permanently disabled or is not disabled, the application for GDA shall be denied by the County Department.

B. In all other cases, eligibility decisions based on medical information shall be made by a Medical Social Worker, with the assistance of a consulting physician when necessary. The medical evaluation, along with a social evaluation completed by the County Department and containing information relating to the family, background, work history, and past and present health of the applicant, as well as rehabilitation efforts, will be evaluated by the Medical Social Worker to determine if the individual is medically eligible, and if so, for how many months.

C. If a disability exists but is expected to last longer than six months, the individual shall be referred to the Social Security Administration (SSA) to apply for the SSI program.

D. Eligibility for GDA shall not be extended beyond six months for any one medical diagnosis. A new and different diagnosis, however, may qualify an individual for a new grant. A new application will be necessary in case of a new and different diagnosis of disability.

E. To be considered eligible for GDA, an individual can have no cash reserve or any other resources except the following:

(1) An individual may own or retain a homestead,

(2) An individual may have insurance policies with a face value of any amount, but the total cash surrender or loan value shall not exceed fifteen hundred dollars for all policies.

(3) An individual may have one licensed vehicle that is used for transportation purposes and is not income producing.

(4) An individual may have up to 2 times the maximum monthly payment level for the GDA Program in cash reserves.

F. If an individual sells real or personal property, the money from the sale shall be considered as income for meeting current living expenses. If an individual transfers real or personal property without receiving fair market value therefor, he will not be eligible for GDA until such time as fair market value is received and used for current living expenses.

G. Any income from employment shall render an individual ineligible for GDA. The spouse of the individual may have income from employment. If the spouse is included in the budgetary computation, the spouse's gross wages shall be considered as available income.

H. For purposes of budgeting, an individual and spouse who are living together shall be treated as a unit, except as follows:

(1) If the spouse is receiving SSI or Aid to Families with Dependent Children (AFDC), the spouse is not included in the GDA budget and any income which has been considered by SSA in determining the SSI payment amount or which has been considered in determining the AFDC payment amount shall not be considered available to the GDA applicant or recipient.

(2) If the spouse has children of which the GDA applicant or recipient is not the legal parent and the children are not eligible for SSI or AFDC, the spouse's income shall be allocated to the children according to current AFDC standards. Any income of the children shall be subtracted from the AFDC standard in determining the amount to be allocated from the parent.

(3) If both members of the couple apply for and are found eligible for GDA, a budget is computed for the couple to determine if a deficit exists. If so, each person may be certified for a payment equal to one-half the deficit, not to exceed the maximum payment level per individual.

I. Total needs consist of an allowance for basic requirements and of allowances for special needs, if applicable.

(1) Basic requirements are items of need considered essential to all people in the assistance budget. Allowances are included for food, clothing, medical chest, incidentals, household needs, laundry, insurance, shelter, and utilities. The basic requirements allowance for an individual is ninety-four dollars and fifty-five cents per month and the basic requirement allowance for an individual and spouse is one hundred forty-three dollars and eighty cents per month.

(2) Allowances for the following special needs may be included if verification is provided by an individual's physician that the special need currently exists.

(a) A standard allowance of six dollars per month for a special diet will be included for each person with tuberculosis or an arrested tubercular case who still requires medication for the illness.

(b) An allowance of up to one hundred thirty dollars per month will be included for nursing care in the home if medical necessity is verified and documented and if the care cannot be provided by responsible relatives in the home.

J. Total income for eligibility purposes means total gross income.

If any person in a GDA budget receives income from the sources specified in 114-11-50 B, such income shall be disregarded in the same manner as in the AFDC program. Income received on a weekly basis shall be multiplied by four and one-third to obtain the monthly amount. Irregular unearned income as defined in 114-11-50(A)(2)(b) shall be computed in the same manner as in the AFDC program.

K. Amount of assistance to be granted shall be determined by subtracting total rounded income from total rounded needs. The award will be the amount of the deficit, but may not exceed the maximum payment level.

L. Maximum payment level for GDA shall be set by the agency each year according to funds available from the State General Appropriation Act.

M. An individual who is determined eligible for a GDA money payment shall be eligible for State Medical Assistance beginning with the first day of the month of certification for GDA payment. There shall be no eligibility for medical services performed before this date for GDA clients.

N. Institutional Living Situations.

(1) An individual who needs or desires to live in a public or private institution may be eligible for GDA and medical vendor payments, depending on the nature of the institution and whether the individual is otherwise eligible for GDA.

(2) To be eligible for GDA while living in an institution, the individual must be in a public or private Title XIX certified hospital or nursing facility or a licensed residential care facility.

(3) An individual shall not be eligible for GDA while a patient in or resident of a public or private medical institution which is not Title XIX certified or which is operated primarily for the care of mentally ill or tubercular patients.

(4) The need for nursing care must be certified by the Professional Standards Review Organization (PSRO) before medical vendor payment can be authorized.

(5) The institution in which the individual is living must be licensed by the appropriate State licensing authority.

(6) If the individual is a patient in a public or private hospital, financial eligibility shall be determined according to the individual's home situation.

(7) An individual who resides in a licensed nursing facility shall be allowed a personal needs allowance, the amount of which is set annually by the agency.

(a) If the individual has income it shall be subtracted from the personal needs allowance in determining the amount of the GDA payment. If the income exceeds the personal needs amount, a budget shall be computed to see if the individual would be eligible in his or her home situation. If so, the individual shall be eligible for GDA-Medical Assistance Only.

(b) Any income the individual has in excess of the personal needs allowance shall be applied to his or her cost of care.

(8) A GDA-eligible individual who resides in a licensed residential care facility shall have financial eligibility established according to the Net Income Limitation (NIL) as defined in 114-19-10(C) for the Optional Supplementation Program. The NIL is set by the State General Appropriation Act.

(a) All income available to the individual shall be budgeted against total requirements in determining the GDA payment.

(b) The payment amount will be the exact amount of the deficit.

### **114–1530. Termination, Suspension, or Reduction of Benefits.**

A. GDA is not a continuing assistance program. It is a one-time, single grant program for which an individual may make reapplication. The grant, once authorized, is not reduced or otherwise affected by any change of circumstances. The grant may not be terminated, suspended, reduced or increased prior to the end of the certification period absent fraud or misrepresentation.

B. Notice of right to appeal shall be provided in the document which advises the individual of the grant amount and certification period or the document which denies the award of a grant. No other notice of termination, date of certification, right of appeal, or period (inclusive dates) of the grant shall be made.

C. Appeals under the GDA Program shall be in accordance with DSS Fair Hearing Regulations (R.114-35.1) with the following exceptions:

(1) The period of advance notification shall be fifteen (15) days from the date of the notice of the grant award.

(2) The grant will not continue in excess of six (6) months for any reason.

(3) A new application made by a current grant recipient if denied and appealed, shall not constitute a basis for continued benefits pending an appeal decision.

D. If the current recipient of a grant believes himself to be eligible for additional grants under the GDA Program, a new application and a new medical evaluation must be submitted to the agency, since current grants may not be continued or extended unless a grant award is made for less than six (6) months and an appeal is requested within the period of advance notification. Benefits may then be continued subject to the limitation of C.(2) above.

## **ARTICLE 19**

### **ESTABLISHING ELIGIBILITY FOR OPTIONAL SUPPLEMENTATION**

### **114–1910. Definitions.**

A. Optional Supplementation (OS)—totally State-funded financial and jointly State and Federal funded medical assistance granted by the State to eligible individuals who reside in residential care facilities licensed by the Department of Social Services or the Department of Mental Health.

B. Residential Care Facility (RCF)—any institution, place, building, or agency providing for a period exceeding twenty-four consecutive hours, accommodation, board and a degree of personal assistance in feeding, dressing and other essential daily living activities to two or more individuals eighteen years old or older not related to the administrator or owner thereof within the third degree of

consanguinity, who by reason of age, or physical or mental infirmity, though ambulatory, are unable to sufficiently or properly care for themselves or manage their own affairs but who do not require the daily services of a registered or licensed practical nurse.

C. Net Income Limitation (NIL)—the sum of the agency established rate for services provided by the RCF and the personal needs allowance (PNA).

D. Countable Income (CI)—gross income less those exclusions of income allowed under the Federal Supplemental Security Income Program.

E. Supplemental Security Income (SSI) Program—popular name for Title XVI of the Social Security Act.

F. Retirement, Survivors, or Disability Insurance (RSDI)—benefits received under Title II of the Social Security Act.

### **114–1920. Eligibility Determination.**

A. Individuals or couples shall be eligible for OS payments if they meet the following requirements:

(1) Have been determined to be aged, blind or disabled by the Social Security Administration (SSA) or by the agency in accordance with SSA criteria;

(2) Reside in a RCF licensed by either the Department of Social Services or the Department of Mental Health;

(3) Have resources that do not exceed the resource reserve limitations set by the SSI Program;

(4) Receive an SSI payment, which when combined with other countable income gives them total income less than the NIL appropriate to their living situation, or

(5) Receive countable income that exceeds the SSI payment standard, but is less than the NIL appropriate to their living situation.

B. When an RCF charges an amount for its services which is greater than the rate established by the agency, and if such amount is paid by an individual to the RCF for an OS individual's or couple's care, the amount shall be counted as income to the individual or couple in computing the OS payment.

C. OS recipients who lose their eligibility for OS payments due to cost-of-living increases in Social Security Title II benefits shall continue eligible for Medicaid.

D. For an individual, the OS payment shall be the deficit determined by subtracting the CI from the NIL, rounded to the next higher dollar amount.

E. Eligibility in a couple case is determined by measuring a couple's combined countable income against a combined NIL. However, an OS payment must be made to each spouse in a couple case. The OS payment shall be the deficit, rounded to the next higher dollar amount, determined by subtracting each spouse's own income from the NIL for an individual. If one spouse receives all of the couple's income, their income shall be divided evenly between them and their OS payment shall be the deficit, rounded to the next higher dollar amount determined by subtracting the allocated income to each spouse from the NIL for an individual.

F. Eligibility for OS cases shall be reestablished every twelve months or more frequently as specified by the agency.

G. When a change that might affect a couple's or individual's eligibility is reported, a redetermination of eligibility and grant adjustment shall be made promptly.

### **114–1930. Termination, Suspension or Reduction of Benefits.**

Eligibility for further OS payments shall be terminated as soon as information indicating ineligibility is reported. Procedures of South Carolina Regulation 114-1030 shall be followed.

## **ARTICLE 27**

### **FOOD STAMP ISSUANCE**

### **114–2710. General.**

The Department of Social Services is designated by the United States Department of Agriculture as the single State agency to administer the Food Stamp Program. The Food Stamp Program, as provided for in the Food Stamp Act of 1977, is operated by the State under the regulations set forth in Title 7, Code of Federal Regulations, Parts 210-299. Part 274 of these regulations contain options from which the State can choose regarding issuance of food stamp benefits to eligible households. Federal and State regulations must be consulted for a complete depiction of the State's food stamp issuance responsibilities. These State regulations describe the issuance of food stamp benefits using an Electronic Benefits Transfer System, as permitted by Title 7, Code of Federal Regulations, Part 274. Counties within the state were phased into EBT group by group. Statewide implementation of EBT was accomplished on December 1, 1995.

Title 7, Code of Federal Regulations, Part 278, Participation of Retail Food Stores, Wholesale Food Concerns and Insured Financial Institutions, is also referenced as it pertains to part of this regulation.

**HISTORY:** Added by State Register Volume 19, Issue No. 4, eff April 28, 1995. Amended by State Register Volume 21, Issue No. 6, eff Part 2, June 27, 1997.

### **114–2720. Definitions.**

The South Carolina Department of Social Services (SCDSS) incorporates by reference the definitions found in Title 7, Code of Federal Regulations, Part 274.

**HISTORY:** Added by State Register Volume 19, Issue No. 4, eff April 28, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **114–2730. Food Stamp Issuance.**

The South Carolina Department of Social Services issues food stamp benefits to eligible households through its Electronic Benefits Transfer (EBT) system. SCDSS is responsible for the establishment of EBT accounts and transfer of food stamp benefits to the automated EBT system. SCDSS credits EBT accounts based on eligibility data and debits individual EBT accounts based on food purchase transactions performed by eligible households at authorized food retailer sites in the State through an electronic, real time point-of-sale system. SCDSS contracts with a financial services company (EBT Contractor) to provide the majority of the State's EBT Services.

**HISTORY:** Added by State Register Volume 19, Issue No. 4, eff April 28, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.

### **114–2740. Ongoing Major Responsibilities.**

#### **A. County SCDSS Office Staff.**

- (1) Establish eligibility of Food Stamp Program households;
- (2) Authorize production of EBT cards;
- (3) Train eligible households on the EBT system, the use and protection of the EBT card, food stamp benefit availability, Personal Identification Number (PIN) selection and security, etc.;
- (4) Receive and control embossed and encoded EBT cards;
- (5) Issue EBT cards and manage PIN selection;
- (6) Authorize conversion of EBT benefits to paper food stamp coupons in the event an eligible benefit group moves to an area inside or outside the State where EBT is not used as a method of food stamp benefit issuance.

#### **B. EBT Project Management Office**

- (1) Manage/monitor authorized food retailer EBT participation;
- (2) Provide technical EBT assistance to the SCDSS county offices;
- (3) Physically produce all EBT cards for the State, and coordinate delivery of these cards to SCDSS county offices;
- (4) Process issuance authorizations for EBT benefits converted to paper food stamp coupons;



- (5) Satisfy reporting requirements mandated by Title 7, Code of Federal Regulations, Part 274;
- (6) Manage/monitor the activities of the EBT Contractor.

#### C. EBT Contractor

(1) Credit and debit EBT benefits based on transaction processing from SCDSS and authorized retailer's point-of-sale devices;

(2) Install and maintain POS devices and balance inquiry devices (BID) in authorized food retail sites and PIN selection devices in SCDSS county offices;

(3) During the initial transition from paper food stamp coupons to EBT, train eligible food stamp households and selected SCDSS staff on the use of EBT;

(4) Provide SCDSS access to the EBT database for administrative purposes;

(5) Provide a twenty-four (24) hours a day, seven (7) days a week Toll-Free Hotline Service for eligible households who wish to obtain a current EBT account balance or needs to report EBT cards as being lost, damaged, or stolen;

(6) Provide a twenty-four (24) hours a day, seven (7) days a week Toll-Free Hotline Service for authorized retailers for procedural clarification, funds availability, and equipment problems.

(7) Such other duties that may appear in the contract.

**HISTORY: Added by State Register Volume 19, Issue No. 4, eff April 28, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.**

### **114–2750. EBT Services Interaction.**

The EBT process requires interactions between Food Stamp Program recipients (households), SCDSS, authorized food retailers and the EBT Contractor.

#### A. Food Stamp Program Household/SCDSS Interaction

(1) When Program eligibility and benefit levels are established, each Food Stamp Program household will go through the following process:

(a) Be scheduled for EBT training in the SCDSS county office;

(b) Be present on the scheduled training date for EBT training including viewing of an EBT video;

(c) Have EBT card issued by SCDSS county staff;

(d) Independently selects a PIN by means of an online Customer Activated PIN Selection (CAPS) device;

(e) If needed, participate in the question and answer phase of training.

(2) Through SCDSS' automated eligibility system, food stamp benefits are passed online to the EBT Contractor's database for immediate availability;

(3) Each Food Stamp Program household receives EBT training, its EBT card, and selects a PIN in the SCDSS office in the county where the household resides.

#### B. Food Stamp Program Household/Authorized Retailer Interaction

(1) Following Food Stamp Program eligibility approval, issuance of the EBT card, and PIN selection, a Food Stamp Program household is able to purchase eligible food at an authorized retail store by use of the EBT card and the PIN;

(2) Households are able to purchase eligible foods up to but not exceeding the amount of benefits in its EBT account;

(3) Retailers are required to provide other EBT services to households such as crediting an account when a household wishes to return items and performing manual food sales transaction in the event of system failure or the retailer does not have an online connection to the EBT Contractor's database. An example is a traveling authorized food vendor.

#### C. Food Stamp Program Household/EBT Contractor Interaction

(1) Food Stamp Program households can obtain an account balance by use of a twenty-four (24) hour a day, seven (7) days a week toll free hotline operated by the EBT contractor. This number is

made available to each household through brochures and other EBT related documents issued at training and it is also shown on the protective sleeve used to place the card in;

(2) Food Stamp Program households can report an EBT card as lost, damaged, or stolen by use of a twenty-four (24) hour a day, seven (7) days a week toll free hotline operated by the EBT contractor. Such a report will result in a replacement card being available to the household in the SCDSS county office within three (3) work days following the initial report;

(3) Food Stamp Program households may use their EBT card in any county within the State where EBT is used as the method of food stamp issuance. Households are not necessarily restricted to using the EBT card in the county of residence.

**HISTORY: Added by State Register Volume 19, Issue No. 4, eff April 28, 1995. Amended by State Register Volume 21, Issue No. 6, Part 2, eff June 27, 1997.**

### **ARTICLE 33 PROTECTIVE SERVICES FOR ADULTS**

(Statutory Authority: 1976 Code §§ 43-1-80 & 43-29-90)

#### **114-3310. Definitions, General Requirements, and Purpose.**

A. The agency shall provide protective services for adults who have been determined to be in need of such services in order to remedy or prevent situations of abuse, neglect or exploitation.

B. Protective services for adults shall be directed toward identifying and correcting conditions of actual or potential abuse, neglect or exploitation of persons eighteen (18) years of age or older who are senile, persons with intellectual disability, developmentally disabled or otherwise incapacitated.

C. Definitions of terms found in S. C. Code, 1976, § 43-29-10 shall apply in this article.

#### **Code Commissioner's Note**

Pursuant to 2011 Act No. 47, § 14(B), the Code Commissioner substituted "intellectual disability" or "mental retardation" and "person with intellectual disability" or "persons with intellectual disability" for "mentally retarded".

#### **114-3320. Initiation Procedures.**

A. Person may file complaints concerning situations of abuse, neglect, or exploitation with which they are familiar by writing or calling the local county Department of Social Services. The reporter may remain anonymous.

B. Individuals in need of help may request that protective services be provided to them by the local county Department of Social Services.

C. The agency may provide protective services to individuals pursuant to order of the Family Court.

#### **114-3330. Determination of Need.**

A. When complaints, reports, or requests are received by the county Department of Social Services, the agency shall investigate the circumstances complained of in order to determine whether the report is substantiated or unsubstantiated. The investigation process may include, but is not limited to, home visitation, interviews with neighbors, and review of medical or social service records.

B. A complaint will be deemed substantiated when the agency's investigation discloses evidence of abuse, neglect, or exploitation. Evidence may be directly observed by the investigator, or directly gathered from reliable sources.

C. If no supporting evidence of the allegation is revealed by agency investigation, the report shall be deemed unsubstantiated and protective services will not be supplied.

D. Law enforcement authorities shall be notified by the agency when an adult has been reported to have been abused, neglected, or exploited by another.

E. When a county Department of Social Services receives a report of alleged abuse, neglect, or exploitation of an individual residing in a hospital, institution, or a facility operated by the state, the report shall be referred to the State Law Enforcement Division, the State Ombudsman, or the Circuit Solicitor.

### **114–3340. Scope of the Program.**

A. Adults determined by the agency to be in need of protective services shall be eligible for such services without regard to income. All services shall be rendered pursuant to S.C.R. 114-35-70.

B. Services provided may include, but not limited to, the following:

(1) Counseling with the client or other involved persons in order to remedy or prevent abusive, neglectful, or exploitive circumstances.

(2) Protective placement of the adult client upon a voluntary agreement or by order of the Family Court.

(3) Health related services to treat physical or mental illness. The caseworker shall not sign any consents for surgery unless the surgery is specifically authorized by the appropriate court.

(4) Homemaker services to assist the client with daily living activities in the home.

(5) Emergency caretaker services to provide responsible adult supervision on a temporary basis for an adult in need of protection.

(6) Referral to Probate Court, or the appropriate agency, such as Social Security Administration or Veteran's Administration, in order to assist in the establishment of a representative or protective payee for protective services client.

(7) Facilitation in the provision of any other Title XX service as determined by the needs of the client.

C. If the county Department of Social Services is required to dispose of the client's property, the following procedures shall be followed:

(1) The caseworker shall solicit the help of a relative to dispose of the property. If there are no relatives, or if the relatives are unwilling to assume this responsibility, then the Family Court shall be asked to authorize the county Department of Social Services to dispose to [of] the client's property. If the Family Court does not assume jurisdiction, the caseworker shall request the Probate Court to appoint a guardian or committee to dispose of the real or personal property.

(2) When a voluntary protective service client requests the county Department of Social Services to assist in the disposal of real or personal property, written permission shall be obtained from the client.

### **114–3350. Denial or Termination of Services.**

A. All cases involving unsubstantiated reports or voluntary requests for protective services may be terminated at the client's request, or on initiative of the Department of Social Services.

B. All cases involving substantiated reports may be terminated by the Department of Social Services only when the client is found to be no longer at risk of harm from himself or others.

C. All cases involving services or custody by order to the Family Court can be terminated only by a subsequent order to that effect by the Family Court.

D. A protective services client may appeal a decision made, or action taken, by the Department of Social Services, and may request a fair hearing pursuant to Article Three of these regulations.

### **114–3360. Prior Regulations Repealed.**

All regulations concerning Adult Protective Services previously promulgated by the agency are hereby repealed, including: regulation 114–410.1; and those listed on pages 485–486 of Volume 26 of the Code of Laws of South Carolina, 1976 [repeal refers to pages of former Volume 26, prior to publication, in 1980, of New Binders 26 and 27, and the current 2012 publication.]

**ARTICLE 40**  
**LEGAL ASSISTANCE TO MINORS SEEKING ABORTIONS**

(Statutory Authority: 1976 Code § 44-41-32)

**114-4000. Division to Implement Procedures to Assist Minors Seeking Abortions.**

The Division of Adoption and Birth Parent Services of the Department of Social Services shall implement procedures to assist minors in the preparation and filing of petitions for court orders granting them the right to obtain an abortion without consent.

**HISTORY:** Added by State Register Volume 16, Issue No. 4, eff April 24, 1992.

**114-4010. Minors to Be Treated with Compassion, Dignity and Respect.**

All minors shall be treated with compassion, dignity and respect.

**HISTORY:** Added by State Register Volume 16, Issue No. 4, eff April 24, 1992.

**114-4020. Anonymity of Minor Protected.**

At all times the anonymity of the minor shall be protected, unless otherwise requested by the minor.

**HISTORY:** Added by State Register Volume 16, Issue No. 4, eff April 24, 1992.

**ARTICLE 43**  
**ADOPTION SERVICES**

(Statutory Authority: 1976 Code §§ 20-7-1750, 43-1-80)

**114-4370. Certification of Adoption Investigators and Persons Obtaining Consents or Relinquishments.**

A. Definitions

(1) Person -an individual, self employed or employed by an agency, corporation or professional association.

(2) Department -the South Carolina Department of Social Services.

(3) Child placing agency or agency -the State Department of Social Services and any person or entity as defined in Section 20-7-1650 (e).

(4) Consent -the informed and voluntary release in writing of all parental rights with respect to a child by a parent for the purpose of adoption, or the informed and voluntary release in writing of all custodial or guardianship rights, or both, with respect to a child by the child placing agency or person facilitating the placement of the child for adoption where the child's parent previously has executed a relinquishment to that agency or person.

(5) Relinquishment -the informed and voluntary release in writing of all parental rights with respect to a child by a parent to a child placing agency or to a person who facilitates the placement of a child for the purpose of adoption and to whom the parent has given the right to consent to the adoption of the child.

(6) Investigation and reports -Pursuant to section 20-7-1740, before the final hearing for adoption of a child, investigations and reports must be completed in accordance with the following:

(a) Before the placement of any child by any agency or by any person with a prospective adoptive parent, a preplacement investigation, a background investigation and reports of these investigations must be completed;

(b) A postplacement investigation and report of this investigation must be completed after the filing of the adoption petition.

(7) Court -any Family Court in this state.

#### B. Certification Requirements

(1) Persons certified to complete preplacement and postplacement investigations, and reports of these investigations must meet the following requirements:

(a) Hold a Bachelor's, Master's, or Doctoral degree from an accredited college or university;

(b) Have two years experience conducting adoptive homestudies or investigations or similar family/child oriented reports for a court, school, or social/health agencies; or be currently employed by the Department of Social Services or a licensed child placing agency or by a professional association and be supervised by a person within that agency or association who is a certified adoption investigator;

(c) Be of good reputation in the community as attested to by professional and personal references which may be verified by the Department.

(2) Persons certified to obtain Consents and Relinquishments must meet the following requirements:

(a) Hold a Bachelor's, Master's, or Doctoral degree from an accredited college or university;

(b) Have two years experience counseling with parents about relinquishing their rights and placing their children for adoption; or be currently employed by the Department of Social Services or a licensed child placing agency or by a professional association and be supervised by a person within that agency or association who is certified to accept relinquishments and consents for the purpose of adoption;

(c) Be of good reputation in the community as attested to by professional and personal references which may be verified by the Department.

(3) Adoption related continuing education, as accepted by the Department, is required for Sections (1) and (2) above.

(a) At the time of application for certification, the individual will document that twenty five hours of adoption related continuing education was completed within three years of application.

(b) Documentation of continuing professional development of a minimum of ten hours of adoption related training per year is required for recertification.

#### C. Process for Certification

(1) Individuals will forward completed applications including a S.L.E.D. criminal records check, a C.P.S. Central Registry check and required fees to the Division of Adoption and Birth Parent Services.

(2) Incomplete applications will not be accepted.

(3) Additional information that would clarify an item may be requested in writing, by telephone, or in a personal interview and must be returned within 10 working days of the request.

(4) When a determination has been made that the applicant meets the requirements for certification, a certificate will be issued, and the applicant's name and fees will be placed in the directory of certified persons.

(5) All applications and supporting documentation shall be considered public information.

#### D. Expiration and Renewal of Certificate

(1) Certificates issued under these regulations will expire one year from the date of issuance.

(2) Application for recertification must be received thirty days prior to the expiration date of the current certificate.

(3) Upon determination that the applicant continues to meet the requirements, a new certificate will be issued.

#### E. Fees for Certification/Recertification

(1) The following initial fees are to be paid to the South Carolina Department of Social Services and are not refundable:

- (a) The fee for certification as an adoption investigator is \$15.00;
  - (b) The fee for certification as a person obtaining consents or relinquishments is \$15.00;
  - (c) The fee for certification in both categories simultaneously is \$20.00;
- (2) The fee for recertification is \$15.00.

#### F. Denial or Revocation of a Certificate

(1) Complaints about the performance or conduct of a Certified Investigator may be addressed to the Division of Adoption and Birth Parent Services, South Carolina Department of Social Services, P.O. Box 1520 Columbia, South Carolina 29202-1520.

(2) The Department has the authority to thoroughly investigate any complaints about the performance or conduct of a Certified Investigator.

(3) The decision to deny or revoke a Certificate is made by the Department. The Certificate is the property of the Department and must be returned within ten (10) working days after revocation. Any of the following actions by a Certified Investigator or person to obtain Consents or Relinquishments may be grounds for denial or revocation of a Certificate:

- (a) An act or omission violating the South Carolina Child Protection Act, or any other act or omission in violation of Section (H) Code of Ethics, or any other act or omission which would threaten the health, safety or well-being of clients;
- (b) A violation of the provisions of the South Carolina Adoption Act or its regulations;
- (c) Fraudulent information given during the application or recertification process;
- (d) Material misrepresentation to clients during the course of business;
- (e) Conviction of, forfeiture of bond, a plea of nolo contendere, or a guilty plea to a felony or any other crime involving moral turpitude. However, the Department, in its discretion, may except this ground if the individual submits written documentation regarding the type of rehabilitation program they have undergone and the effects of the rehabilitation efforts on their behavior/lives. An evaluation by the involved counselor or therapist must be submitted to the Department.

#### G. Appeal of Denial of Application or Revocation of Certificate

(1) If an individual is denied a new or renewal certificate or if a certificate is revoked, the individual will be sent a certified letter containing the following information:

- (a) The Department's decision;
- (b) The basis of that decision;
- (c) The right to appeal the decision;
- (d) The procedure for such an appeal.

(2) The Investigator will have thirty (30) days to appeal the decision in accordance with Department Fair Hearing Regulations, South Carolina Regulation 114-35.1.

#### H. Code of Ethics

(1) Any act that is in violation of the spirit and purpose as well as the letter of the Code of Ethics shall be unethical practice.

(2) The Certified Investigator should maintain high standards of conduct in the capacity of Certified Investigator.

(3) Whenever conflict between the interests of the child, who is the primary subject of adoption, and adults is involved, the best interests of the child shall govern decisions.

(4) It is the responsibility of the certified person to protect the rights of vulnerable birth parents who are making decisions regarding their children regardless of the source of payment for services rendered. This principle must be clearly stated and understood in arrangements for payment for services rendered.

(5) When setting fees, certified persons should ensure they are fair, reasonable, and commensurate with the service performed and with due regard for the clients' ability to pay.

(6) Certified persons will perform duties and tasks in the time specified and never delay the adoption of a child without good cause.

- (7) Reports presented to the court will be complete and truthful.
- (8) Information in reports will be available upon request to the subject of the report.
- (9) All completed reports will be submitted to the court regardless of the recommendations.
- (10) All recommendations will be discussed with the applicant in advance of presentation to the court.
- (11) Before accepting a consent or relinquishment the certified person will ascertain the mental and physical condition of the birth parent and not accept their signature if their condition does not warrant.
- (12) The certified person must fully advise the birth parent of rights and responsibilities before accepting signatures and will not accept signatures unless fully satisfied that the consequences are fully understood by the birth parent.
- (13) Consultation from other professionals must be sought when the certified person is unsure of a course of action in any particular instance.
- (14) The certified person must maintain the confidentiality of the adoption process and protect the privacy of all parties.
- (15) The certified person must not discriminate on the basis of race, religion, gender, or handicap in professional relationships with clients or colleagues.
- (16) Persons employed by sectarian sponsored organizations may limit their practice to persons eligible for service from that organization.

#### I. Severability

If any provision of these Regulations or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of these Rules and Regulations which can be given effect without the invalid provision of application, and to this end the provisions of these Rules and Regulations are severable.

**HISTORY: Amended by State Register Volume 16, Issue No. 6, eff June 26, 1992.**

### **114-4380. Supplemental Benefits for Adoption and Medical Assistance.**

(Statutory Authority: 1976 Code §§ 20-7-1900 through 20-7-1970 and §§ 20-7-2610 et. seq.)

#### A. Definitions.

1. Supplemental Benefits: State funded payments for the care and support of an adopted child.
2. The Department: The South Carolina Department of Social Services.
3. Family: The adoptive family who is adopting or has adopted a child, or the caregiver.
4. Caregiver: The person who provides care and support after the death or disability of the adoptive parent(s).
5. Child: The adoptive child for whom Supplemental Benefits payments are authorized.
6. Adoption Assistance Agreement: An Adoption Subsidy Agreement or contract between an adoptive family and the Department or another adoption assistance state for ongoing or time limited financial support through federal or state public funds.
7. Special Needs Child: A legally free child for whom reasonable but unsuccessful efforts have been made to place without subsidy except where it would be against the best interest of the child because of significant emotional ties with foster parents and the child meets one or more of the following criteria:
  - (a) A white child ten years old or older;
  - (b) A black or mixed race child six years old or older;
  - (c) A physically, mentally or emotionally handicapped child or a child at risk for physical, mental or emotional handicaps due to a condition existing before adoption;
  - (d) A member of a white sibling group of three or more children, one of whom is at least six years of age, or a sibling group of four or more white children of any age;

(e) A member of a black or mixed race sibling group of two or more children, one of whom is at least six years of age, or a sibling group of three or more black or mixed race children of any age;

(f) A member of a sibling group that includes a special needs child.

8. ICAMA: The Interstate Compact on Adoption and Medical Assistance.

9. Medical Assistance Identification: Medicaid Card.

10. Prior Approval: Required authorization for payment of Supplemental Benefits funds for residential treatment and for purchases of medical or rehabilitative equipment which costs more than the amount specified in the adoption assistance agreement.

B. Eligibility Requirements for Supplemental Benefits.

1. The child has been placed for adoption by the Department.

2. The child must be legally free for adoption.

3. The child must have established significant emotional ties with his foster parents who are unable to assume financial responsibility for the full cost of the child's care, and the adoption by this family is deemed in the best interest of the child by the agency; or the child must be a special needs child.

4. The child must be financially dependent upon the family and under the age of 18, or a child between the ages of 18 and 21 shall be eligible if the child remains a full time student and financially dependent upon the family.

C. Eligibility Requirements for Medicaid Coverage.

1. The initial adoption assistance agreement for state or federal public funds must have been signed by the family and the authorized agency representative prior to adoption finalization.

2. The family must have a current adoption assistance agreement for federally funded adoption assistance or for state funded adoption assistance based on the child's medical or rehabilitative needs.

D. Family Responsibilities.

1. The family shall notify the Department within ten working days of changes in the child's condition or the family's circumstances that may affect the adoption assistance agreement in any way.

2. The family shall use all other available resources, including Medicaid, before using Supplemental Benefits payments for medical, rehabilitative or other treatment services.

3. The family shall cooperate with the Department by signing and returning the adoption assistance agreement promptly.

4. The family shall notify the Department within ten working days if they are no longer legally responsible for supporting the child or if they are no longer financially supporting the child.

5. The family must obtain prior approval to receive payment under Supplemental Benefits for residential treatment and for purchases of medical or rehabilitative equipment which costs more than the amount specified in the adoption assistance agreement.

6. The family that has an agreement with another state shall provide proof annually that the agreement is still in force to receive Medicaid or other services in South Carolina through ICAMA.

E. Supplemental Benefits Payments.

1. Payments may begin as soon as the child has been placed adoptively and agreements have been executed.

2. Payments may be delayed until the child's needs increase and the family can no longer meet those needs from their own resources.

3. Payments terminate at age 18 unless the child is still in school full time and financially dependent upon the family.

4. All Supplemental Benefits terminate when the child reaches 21.

5. All Supplemental Benefits terminate at the death of the child or at the death or disability of the adoptive parents, unless the disability results in placement of the child with a caregiver.

6. Supplemental Benefits may be paid to a caregiver with the approval of the Department.



7. Supplemental Benefits may not exceed that which is reasonable for treatment services or allowable for a child under foster family care.

8. Supplemental Benefits may be reduced, terminated or left the same, if the family begins receiving other cash benefits on behalf of the child, i.e., Social Security benefits. Any reduction or termination will be negotiated with the family, but the final determination will be made by the Department.

9. The family may be reimbursed for the child's medical expenses for conditions covered in the adoption assistance agreement and that are not paid by private insurance, Medicaid or other resources.

10. Providers may be paid directly for expenses incurred for the child in the same circumstances as stated above.

F. Overpayments.

1. The family who has received an overpayment shall be required to reimburse the Department.
2. The Department reserves the right to recoup overpayments from future payments.

G. Supplemental Benefits Appeals.

1. The family has the right to appeal any decision made by the Department on Supplemental Benefits both before and after finalization of the adoption, according to the Department's approved fair hearing appeal process.

2. The family will be informed of its right to a judicial review in accordance with the Administrative Procedures Act.

H. ICAMA Appeals.

The family has the right to appeal decisions made about adoption assistance and/or services as specified in the adoption assistance agreement according to the policies and procedures in the state which entered into the agreement or the state in which the child lives, if appropriate.

**HISTORY:** Added by State Register Volume 16, Issue No. 4, eff April 24, 1992.

## ARTICLE 45 CHILD PROTECTIVE SERVICES INVOLVING INSTITUTIONS GENERALLY

(Statutory Authority: 1976 Code §§ 20-7-670, 43-1-80, as amended)

### **114-4510. Purposes.**

A. The Department of Social Services (DSS) shall receive, investigate, and act on reports of suspected abuse or neglect of children residing in an institution, and where the person or persons alleged to be responsible are employees of that institution or are persons affiliated with that child caring institution.

B. For the purposes of this article, the following definitions shall apply:

- (1) Abuse and Neglect—All as defined in § 20-7-490, Code of Laws of S.C., 1982 amended.
- (2) Institution—any public or private residential facility and its affiliated group or foster homes which provides care or supervision to children under the age of eighteen.
- (3) Indicated report—a report shall be deemed indicated when the facts available to DSS indicates that abuse or neglect, as defined in S.C. Code 1976, § 20-7-490 *et seq.*, is more likely than not to have occurred.
- (4) Unfounded report—whenever the facts available to DSS do not indicate a finding in accordance with item (2) above, the referral shall be deemed unfounded.

C. Incidents of child abuse or neglect, or suspected abuse or neglect, must be reported to the State Department of Social Services, or to the County Department of Social Services. DSS shall promptly forward the report to the appropriate investigative unit as specified by regulations 114-4520 within 24 hours.

## **114-4520. Investigations.**

A. The State Department of Social Services shall investigate reports of child abuse or neglect when the facility under whose jurisdiction such as abuse or neglect is alleged to have occurred provides residential group care to children under the age of eighteen; the State Department of Social Services shall have the authority to request the assistance of a County Department of Social Services in conducting the investigation.

B. Investigations conducted by the agency:

(1) Shall be initiated within twenty-four hours of receipt of the referral; and

(2) May include, but not be limited to:

(a) A viewing of the physical premises where the incident is alleged to have occurred;

(b) Private interviews with the involved child(ren) and any other child(ren) as appropriate;

(c) Private interviews with the alleged perpetrator(s), administrative staff, and other individuals;

(d) The review of any documents or records related to the incident;

(e) A review of any statement or policy or procedure which may have impact on the current or former residents of the facility;

(f) Exit interview with proper administrative staff.

C. The staff of the institution and any other persons deemed necessary to its investigation by DSS shall make themselves available and cooperate fully with DSS in its attempt to discover the true facts of the incident which is alleged to have occurred.

DSS shall make its determination as to whether a reported incident is unfounded or indicated within sixty days of the initiation of the investigation.

D. In all cases, upon the completion of its investigation, DSS shall inform, by letter, the chief operating officer or chief executive officer of the institution and the alleged perpetrator of the results of its investigation. DSS may inform the chief executive officer of the institution, the board, and/or law enforcement officials of the results of an investigation.

E. Information relating to unfounded referrals shall be destroyed one year from the date that the referral was determined to be unfounded by DSS provided that no further referrals have been received in the interim on the perpetrator.

F. All reported incidents shall be processed as follows:

(1) Written notification of referrals will be forwarded to the institution's chief executive officer, and/or board chairperson when necessary to assure corrective action.

(2) Written notification of the results of the investigation shall be sent to the institution by regular mail. The notification may also include a request for a case conference to develop a corrective plan for remedial action. If a corrective plan for remedial action cannot be reached, the Department of Social Services may file a petition with the family court notifying them of the abuse and a request for a hearing within 90 days as provided by the South Carolina Protection Act.

(3) A child Abuse and Neglect Report shall be filed with the South Carolina State Department of Social Services' Central Registry.

G. In all indicated cases the involved institution shall, within a time limit prescribed by the agency, but not to exceed ninety days, develop a written course of action to remedy the problem areas identified by DSS; along with a schedule for the implementation of the course of action or shall notify DSS that corrective action has been concluded.

(1) The course of action and schedule for implementation shall be reviewed with DSS and amended as necessary to achieve remediation.

(2) The agency may submit the plan to the institution's staff and/or chief executive officer, and licensing agency, when necessary to assure corrective action.

H. If appropriate, the Department of Social Services shall conduct periodic visits to the institution to determine if the problem areas have been resolved as specified in the plan for remedial action. The institution shall cooperate fully with the Department of Social Services.

I. The matter shall be resolved when the appropriate institution staff or chief executive officer has notified the Department of Social Services of the implementation of the plan for remedial action, as provided in Section G.

J. Confidentiality

All parties shall be bound by the confidentiality statute. All records, information, and materials pertaining to a referral, investigation, and plan for remedial action, if any, shall be treated in a confidential manner by the involved agency, aiding organization, staff and/or chief executive, licensing authorities, their staff, and all other persons who participate in or have knowledge of the incident and consequent action. (§ 20-7-690)

K. Imminent Danger

If at any point during the investigative process or during the development and implementation of the written plan, the involved children or any other children are believed by the Department of Social Services to be in imminent danger of harm by reason of abuse or neglect, the Department of Social Services shall require the institution/facility to take the necessary steps to insure the safety of the children.

**114-4530. Agreements.**

DSS may enter into written agreements with other State Agencies as to procedures to be used in the conduct of Institutional Abuse or Neglect investigations and the issuance of reports; and such written agreements may vary the terms of these Regulations so long as they are not violative of any Statute.

**114-4540. Further Action.**

DSS may petition the appropriate Family Court, pursuant to the Child Protection Act for inspection orders and other relief that may be necessary to complete an investigation of a report of alleged child abuse or neglect.

**114-4550. Prior Regulation Repealed.**

All regulations concerning the provision of child protective services in institutions previously promulgated by DSS are hereby repealed.

**ARTICLE 47**  
**CHILD SUPPORT GUIDELINES**

(Statutory Authority: South Carolina Code § 43-5-580(b) and 45 CFR 302.56)

**114-4710. Use of the Guidelines.**

A. The Child Support Guidelines are available to be used for temporary and permanent orders, actions for separate maintenance and support, divorce and child support awards. Additionally, the guidelines are to be used to assess the adequacy of agreements for support and encourage settlement of this issue between parties.

1. In any proceeding in which child support is an issue, the amount of the award which would result from the application of these guidelines is the amount of the child support to be awarded. However, a different amount may be awarded upon a showing that application of the guidelines is inappropriate. When the court orders a child support award that varies significantly from the amount resulting from the application of the guidelines, the court shall make specific, written findings of those facts upon which it bases its conclusion supporting that award.

2. In cases where the parents' combined monthly gross income is less than \$750.00, the guidelines provide for a case-by-case determination of child support, which should ordinarily be set at no less than \$100.00 per month. In those cases, the court should take care to award an amount of child support that would not jeopardize the ability of the parent with the legal obligation to pay support to live at a minimum level of subsistence. However, the guidelines encourage that a specific amount of child support always be ordered to establish in the payer's mind the principle of the

parent's obligation to pay as well as lay the basis for increased/decreased orders if income changes in the future.

3. These guidelines provide for calculated amounts of child support for a combined parental gross income of up to \$30,000 per month, or \$360,000 per year. Where the combined gross income is higher, courts should determine child support awards on a case-by-case basis.

B. Deviation from the guidelines should be the exception rather than the rule. When the court deviates, it must make written findings that clearly state the nature and extent of the variation from the guidelines. These Child Support Guidelines do not take into account the economic impact of the following factors which can be possible reasons for deviation.

1. Educational expenses for the child(ren) or the spouse (i.e., those incurred for private, parochial, or trade schools, other secondary schools, or post-secondary education where there is tuition or related costs);

2. Equitable distribution of property;

3. Consumer debts;

4. Families with more than six children;

5. Unreimbursed extraordinary medical/dental expenses for either parent, or extraordinary travel expenses for court-ordered visitation;

6. Mandatory deduction of retirement pensions and union fees;

7. Child-related unreimbursed extraordinary medical expenses;

8. Monthly fixed payments imposed by court or operation of law;

9. Significant available income of the child(ren);

10. Substantial disparity of the parents' incomes;

11. Alimony. Because of their unique nature, lump sum, rehabilitative and reimbursement alimony may be considered by the court as a possible reason for deviation from these guidelines;

12. Agreements Reached Between Parties. The court may deviate from the guidelines based on an agreement between the parties if both parties are represented by counsel or if, upon a thorough examination of any party not represented by counsel, the court determines the party fully understands the agreement as to child support. The court still has the discretion and the independent duty to determine if the amount is reasonable and in the best interest of the child(ren).

**HISTORY:** Amended by State Register Volume 18, Issue No. 5, eff May 27, 1994; State Register Volume 23, Issue No. 3, eff March 26, 1999; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 38, Issue No. 3, eff March 28, 2014.

## **114–4720. Determination of Child Support Awards.**

### **A. Income**

#### **1. Definition**

The guidelines define income as the actual gross income of the parent, if employed to full capacity, or potential income if unemployed or underemployed. Gross income is used in order to avoid contention over issues of deductibility which would otherwise arise if net income were used. The guidelines are based on the assumption that the parent with the legal obligation to pay support will have only one federal exemption and will have higher taxes than the parent to whom support is owed. Adjustments have been made in the Schedule of Basic Child Support Obligation for lower child support payments. Other factors included in the schedule are South Carolina taxes, FICA, and earned income.

#### **2. Gross Income**

Gross income includes income from any source including salaries, wages, commissions, royalties, bonuses, rents (less allowable business expenses), dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits (but not Supplemental Social Security Income), workers' compensation benefits, unemployment insurance benefits, Veterans' benefits and alimony, including alimony received as a result of another marriage and alimony which a party receives as a result of the current litigation. Unreported case income should also be included if it can be identified.

A. The court may also take into account assets available to generate income for child support. For example, the court may determine the reasonable earning potential of any asset at its market value and assess against it the current treasury bill interest rate or some other similar appropriate method of computing income.

B. In addition to determining potential earnings, the court should impute income to any non-income producing assets of either parent, if significant, other than a primary residence or personal property. Examples of such assets are vacation homes (if not maintained as rental property) and idle land. The current rate determined by the court is the rate at which income should be imputed to such nonperforming assets.

### 3. Gross income does not include:

A. Benefits received from means-tested public assistance programs, such as Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps and General Assistance;

B. Income derived by other household members; and/or

C. In-kind income; however, the court should count as income expense reimbursements or in-kind payments received by a parent from self-employment or operation of a business if they are significant and reduce personal living expenses, such as a company car, free housing, or reimbursed meals. With regard to military allotments, individuals not receiving Housing allotments should be imputed with the BAH-II amount for dependents. This differential is consistent and unrelated to the domicile location of the service member, as well as easily obtained.

### 4. Income from Self-Employment or Operation of a Business

For income from self-employment, proprietorship of a business, or ownership or a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation, including employer's share of FICA. However, the court should exclude from those expenses amounts allowed by the Internal Revenue Service for accelerated depreciation of investment tax credits for purposes of the guidelines and add those amounts back in to determine gross income. In general, the court should carefully review income and expenses from self-employment or operation of a business to determine actual levels of gross income available to the parent to satisfy a child support obligation. As may be apparent, this amount may differ from the determination of business income for tax purposes.

### 5. Potential Income

If the court finds that a parent is voluntarily unemployed or underemployed, it should calculate child support based on a determination of potential income which would otherwise ordinarily be available to the parent. If income is imputed to a parent to whom support is owed, the court may also impute reasonable day care expenses. Although Temporary Assistance to Needy Families (TANF) and other means-tested public assistance benefits are not included in gross income, income may be imputed to these recipients. However, the court may take into account the presence of young children or handicapped children who must be cared for by the parent, necessitating the parent's inability to work.

A. The court may also wish to factor in considerations of rehabilitative alimony in order to enable the parent to become employed.

B. In order to impute income to a parent who is unemployed or underemployed, the court should determine the employment potential and probable earnings level of the parent based on that parent's recent work history, occupational qualifications, and prevailing job opportunities and earning levels in the community.

### 6. Income Verification

Ordinarily, the court will determine income from verified financial declarations required by the Family Court rules. However, in the absence of any financial declaration, or where the amounts reflected on the financial declaration may be an issue, the court may rely on suitable documentation of current earnings, preferably for at least one month, using such documents as pay stubs, employer statements, or receipts and expenses if the parent is self-employed. Verification of current earnings, whether reflected on a financial declaration or not, can be supported with copies of the most recent tax returns filed by the payer. Income can also be verified through the Employment Security Commission or through the State Department of Revenue.

## 7. Monthly Alimony (this action)

Any award of alimony between the parties should be taken into consideration by the court when utilizing these guidelines as a deduction from the payer spouse's gross income, and as gross income received by the recipient spouse. Because of their unique nature, lump sum, rehabilitative reimbursement, or any other alimony the court may award, may be considered by the court as a possible reason for deviation from these guidelines. The purpose of this adjustment is not to give priority to alimony or child support payments, but to recognize that each parent's proportional share of total combined monthly income changes with the introduction of any alimony award between the parties, and to provide for a sharing of the Total Combined Monthly Child Support Obligation based upon each parent's actual percentage share of the total combined monthly income, taking into consideration the financial impact of any alimony award between them, rather than the parent's share of the total combined monthly income as it existed before any alimony award. Accordingly, the court, in its discretion, may consider any modification or termination of any alimony award between the parties of a child support award made under these guidelines. This adjustment does not affect the Total Combined Monthly Child Support Obligation of both parents as determined under these guidelines, which may be determined before any determination on the issue of alimony, as the total combined monthly income of both parties will remain the same irrespective of any income shifting between the parents as the result of an alimony award.

## 8. Other Monthly Alimony or Child Support Paid

Any previous or existing court orders requiring the payment of child support, alimony, or both, should be protected by any subsequent child support order. Alimony actually paid as a result of another marriage or child support actually paid for the benefit of children other than those considered in this computation, to the extent such payment or payments are required by a previous or existing court order, should be deducted from gross income.

## 9. Other Children in the Home

Either parent shall receive credit for additional natural or adopted children living in the home, but not for step-children, unless a court order establishes a legal responsibility. Such credit shall be given whether or not such children are supported by a third party. The basis of this is to recognize the responsibility of the parent to whom support is owed and share in supporting those other children in the home just like that parent's responsibility and share to the child or children in the present calculation.

Using the income of the parent with the additional child(ren) in the home only, the basic child support obligation for the number of additional dependents living with that parent (from the Schedule of Basic Child Support Obligations) is determined for that parent. This figure is multiplied by .75 and the resulting credit is subtracted from that parent's gross income.

## 10. Basic Child Support Obligation

The court can determine the basic child support obligation using the Schedule of Basic Child Support Obligations. "Combined gross income" refers to the combined monthly gross incomes of the parents. Where combined gross income amounts fall between the amounts reflected in the Schedule of Basic Child Support Obligations, the court is encouraged to extrapolate upwardly to set the basic award. The number of children refers to that number for whom the parents share support responsibility and for whom support is being sought.

## 11. Self Support Reserve

A self support reserve allows a low-income parent with the legal duty to pay support to retain a minimal amount of income before being assessed a full percentage of child support. This insures that the parent with the legal duty to pay support has sufficient income available to maintain a minimum standard of living which does not affect negatively his or her earning capacity, incentive to continue working, and ability to provide for him or herself. These Guidelines incorporate a self support reserve of \$748.00 per month. In order to safeguard the self support reserve in cases where the income of the parent with the obligation to pay support and corresponding number of children fall within the shaded area of the Schedule of Basic Child Support Obligations, the support obligation must be calculated using the obligor's income only. To include the income of the parent to whom support is owed in the calculation of such cases, or include any adjustments like medical insurance or day care expense, would

reduce the net income of the parent with the legal duty to pay support to an amount below the self support reserve.

### 12. Health Insurance

The court shall consider provisions for the children’s health care needs through health insurance coverage and/or cash medical support. The court should require coverage by one or both parents who can obtain the most comprehensive coverage through an employer or otherwise, at the most reasonable cost. If either or both parents carry health insurance for the child(ren) who is to receive support, the cost of the coverage should be added. If the employer provides some measure of coverage, only that amount actually paid by the employee or contributed by the employee should be added. This amount should be determined by the difference between self-only coverage and family coverage, or the cost of private medical insurance for the child. If the amounts for self-only and family coverage cannot be verified, the total cost of the premium should be divided by the total number of persons covered by the policy and then multiplied by the number of children in the support order. The party responsible for paying the health insurance premium will receive a credit. The guidelines are based on the assumption that the parent to whom support is owed will be responsible for up to \$250.00 per year per child in uninsured medical expenses. The Schedule of Basic Child Support Obligations includes \$250 per child per year for uninsured medical expenses such as co-pays, over-the-counter medicines and similar expenses. Reasonable and necessary unreimbursed medical expenses in excess of this \$250 per child per year shall be divided in pro rata percentages based on the proportional share of combined monthly adjusted gross income. The determination of “reasonable and necessary”, e.g. orthodontia and professional counseling, would be at the discretion of the court.

### 13. Child Care Costs

The cost of day care the parent incurs due to employment or the search for employment, net of the federal and state income tax credit for such day care, is to be added to the basic obligation. This is to encourage parents to work and generate income for themselves as well as their children. However, day care costs must be reasonable, not to exceed the level required to provide high quality care for children from a licensed provider. As 1 parents to whom support is owed may be eligible for qualified tax credits, the actual day care expense should be adjusted to recognize this credit. This adjustment may take place in two ways. In cases where the primary residential parent’s gross income exceeds the thresholds listed below, the actual or allowed day care cost is multiplied by .27 to simulate the federal and state income tax credits. The lesser of the simulated amount and \$67.50 for one child and \$135 for two or more children is subtracted from the actual or allowed day care cost. It is entered as the adjusted amount on the appropriate line 6.c.

	One Child	Two Children	Three Children	Four Children	Five Children	Six Children
Primary Residential Parent’s Monthly Income	\$1,950	\$2,600	\$2,900	\$3,200	\$3,500	\$3,800

These thresholds are based upon the standard deduction for head-of-household, dependent exemptions, and the intricate application of the child care tax credit. While these will hold true in most cases, judges can always review child care costs with the actual credit method, below. The maximum amounts for the tax credits that can be subtracted from actual or allowed day care are based on the maximum qualifying child care expense according to federal and state tax code.

The other method would be to take the actual costs and subtract the actual value of the federal and state tax credit such as determined by the last filed IRS Form 2441 and SC 1040, Line 11. This adjusted amount would then be entered on line 6.c.

### 14. Computation of Child Support

The court can determine a total child support obligation by adding the basic child support obligation, health insurance premium (portion covering children), and work related child care costs.

A. The total child support obligation is divided between the parents in proportion to their income. Each parent’s proportional share of combined adjusted gross income must be calculated.

Compute the obligation of each parent by multiplying each parent's share of income by the total child support obligation, and give the necessary credit for adjustments to the basic combined child support obligation.

B. Although a monetary obligation is computed for each parent, the guidelines presume that the parent to whom support is owed will spend that parent's share directly on the child in that parent's custody. In cases of joint custody or split custody, where both parents have responsibility of the child for a substantial portion of the time, there are provisions for adjustments.

**HISTORY:** Amended by State Register Volume 18, Issue No. 5, eff May 27, 1994; State Register Volume 23, Issue No. 3, eff March 26, 1999; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 38, Issue No. 3, eff March 28, 2014.

## **114-4730. Unusual Custody Arrangements.**

### A. Shared Parenting Arrangements

When both parents are deemed fit, and other relevant logistical circumstances apply, active participation in the life of the child(ren) by the parent without custody should be encouraged in order to ensure the maximum involvement by both parents in the life of the child(ren). The amount of visitation, however, is left to the discretion of the judge in consideration of the various factors of the Children's Code, and the use of the calculation on Worksheet C in shared physical custody cases is advisory and not compulsory. The court should consider each case individually before applying the adjustment to ensure that it does not produce a substantial negative effect on the child(ren)'s standard of living.

For the purpose of this section, shared physical custody means that each parent has court-ordered visitation with the children overnight for more than 109 overnights each year (30%) and that both parents contribute to the expenses of the child(ren) in addition to the payment of child support.

If a parent with shared physical custody does not exercise it as ordered by the court, the parent to whom support is owed may petition the court for a reversion to the level of support calculated under the guidelines without the shared parenting adjustment. The shared physical custody adjustment is an annual adjustment only and should not be used when the proportion of overnights exceeds 30% for a shorter period, e.g., a month. For example, child support is not abated during a month-long summer visitation. This adjustment should be applied without regard to legal custody of the child(ren). Legal custody refers to decision-making authority with respect to the child(ren). If the 109 overnights threshold is reached for shared physical custody, this adjustment may be applied even if one parent has sole legal custody.

1. Child support for cases with shared physical custody shall be calculated using Worksheet C. This worksheet should be used only for shared physical custody as defined above.

2. The basic child support obligation shall be multiplied by 1.5 to arrive at a shared custody basic child support obligation. The shared custody basic child support obligation is apportioned to each parent according to his or her income. In turn, a child support obligation is computed for each parent by multiplying that parent's portion of the shared custody child support obligation by the percentage of time the child(ren) spend(s) with that parent. The respective basic child support obligations are then offset, with the parent owing more basic child support paying the difference between the two amounts, subject to the provisions below. The transfer for the basic obligation for the parent owing less basic child support shall be set at zero dollars.

3. If a parent has more than 109 overnights but less than 128 overnights, a graduated support obligation should be determined. The graduated support obligation reflects a transition between the full shared-physical custody obligation and the sole custody obligation, thus requiring the completion of both Worksheet A and Worksheet C. The sole custody amount is calculated from Worksheet A and the full shared-physical custody order is calculated from Worksheet C. The graduated support obligation is determined by subtracting an amount from the Worksheet A obligation. This amount is the difference between the worksheet A and worksheet C values, multiplied by the number of overnights more than 109 divided by the difference between 128 and 110 overnights. If positive, the graduated support obligation would then be treated as the basic child support obligation for that parent. Otherwise, it would be treated as the basic child support obligation for the other parent.



4. Adjustments for each parent's additional direct expenses on the child(ren) are made by adding child(ren)'s share of any reimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the tribunal, less any extraordinary credits agreed to by the parent or ordered by the tribunal according to their income share. In turn, each parent's net share of additional direct expenses is determined by subtracting the parent's actual direct expenses on the child(ren)'s share of any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the tribunal from their share. The parent with a positive net share of additional direct expenses owes the other parent the amount of his or her net share of additional direct expenses. The parent with the zero or a negative net share of additional expenses owes zero dollars for additional direct expenses.

5. The final amount of the child support order is determined by summing what each parent owes for the basic support obligation and additional direct expenses as defined in subsections (2), (3) and (4) of this section. The respective sums are then offset, with the parent owing more paying the other parent the difference between the two amounts.

#### B. Split Custody

Split custody refers to custody arrangements where there are two or more children and each parent has physical custody of at least one child. Using these guidelines, the court should determine a theoretical support payment for the child or children in the custody of the other. In split custody arrangements the guidelines arrive at separate computations for the child or children residing with each parent. The obligations are then offset, with the parent owing the larger amount paying the difference to the other parent.

**HISTORY:** Amended by State Register Volume 18, Issue No. 5, eff May 27, 1994; State Register Volume 23, Issue No. 3, eff March 26, 1999; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 38, Issue No. 3, eff March 28, 2014.

### 114-4740. Periodic Review.

Every three years, if there is an assignment under part A of Title IV of the Social Security Act, or upon the request of either parent where an assignment exists under part D of Title IV of the Social Security Act, the Department of Social Services shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved, review and, if appropriate, adjust the order in accordance with the guidelines if the amount of child support award under the order differs from the amount that would be awarded in accordance with the guidelines. Adjustments to support orders can only be done for those with assignments under part A of Title IV of the Social Security Act or part D of Title IV of the Social Security Act, and must be done pursuant to Article 5 of Chapter 17 of the South Carolina Children's Code.

**HISTORY:** Amended by State Register Volume 18, Issue No. 5, eff May 27, 1994; State Register Volume 23, Issue No. 3, eff March 26, 1999; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 38, Issue No. 3, eff March 28, 2014.

### 114-4750. Child Support Guidelines Schedule and Worksheets.

South Carolina Child Support Guidelines Schedule and worksheets are specifically incorporated into these regulations by reference. Copies of the Schedule and worksheets are on file with the Legislative Council and may also be obtained from the State Department of Social Services and local clerks of court offices.

**HISTORY:** Amended by State Register Volume 18, Issue No. 5, eff May 27, 1994; State Register Volume 23, Issue No. 3, eff March 26, 1999; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 38, Issue No. 3, eff March 28, 2014.

## ARTICLE 49 CHILD PLACING AGENCIES REGULATIONS

(Statutory Authority: 1976 Code Section 20-7-2250)

## **114–4910. Child Placing Agencies; Definitions and Application Procedures.**

### **A. Definitions**

(1) “Adoptive home” means a household of one or more persons which has been approved by a licensed child placing agency to accept a child for adoption.

(2) “Case plan” means the goal oriented, time limited individualized plan of action for a child and his family developed by the child placing agency in cooperation with the family and/or referring agency for the child.

(3) “Caseworker” means a person employed by the Agency who has a minimum of a Baccalaureate or an Associate degree and related experience.

(4) “Casework Supervisor” means a person who has a Masters in Social Work or a Baccalaureate in a related field approved by the Department with a minimum of two years of directly related casework experience in a Child Placing Agency.

(5) “Certified adoption investigator” means an individual, self employed or employed by an agency, corporation, or association who prepares a document addressing issues of concern and information necessary for a court to make a decision in adoption matters and is certified pursuant to applicable statutes and regulations.

(6) “Child” means a person under eighteen years of age.

(7) “Child placing agency” means any person or entity which is licensed under the requirements of 20-7-1650 (e), Code of Laws of South Carolina.

(8) “Client” means the individual(s) to whom a child placing agency is providing services. This includes, but is not limited to children, foster parents, biological parents, and adoptive parents.

(9) “Commissioner” means the chief administrator of the Department of Social Services.

(10) “Department” means the Department of Social Services.

(11) “Foster Family home” means a private household of one or more persons who provide full time care under licensure of the Department of Social Services for one (1) or more children living apart from their parent(s), guardian(s), or relative(s). A foster family home shall not be licensed for more than six (6) children, including the foster parents’ own children and/or other children who are household members.

(12) “Foster home licensing/relicensing study” means an assessment of whether or not the applicant or licensee meets foster home regulations.

(13) “Home study” means the joint assessment process entered into by the child placing agency and/or adoptive or foster family for the purpose of assessing the family’s strengths, and how they could best serve the children that the child placing agency has available for placement, and whether or not the applicant complies with the approval standards.

(14) “Person” means an individual, partnership, joint stock company, business trust, voluntary association, corporation, governmental organization, court operated program or any other type organization or profit or nonprofit business enterprise.

(15) “Post placement services” means to provide support, education and assistance to the family from the time of adoptive placement through consummation.

(16) “Substitute care” means twenty four (24) hour care provided to a child who must be separated from his/her own family/parents for a specific purpose and for a planned period of time. This could take the form of a foster family home, group home, child care facility, emergency shelter, residential treatment program, independent living program, wilderness camp or maternity home.

### **B. Application Procedures for Licensure**

(1) Child placing agencies who are subject to these regulations and are already operating on the effective date of these regulations shall not be exempt from licensure. A Temporary license for a period of 90 days will be issued by the Department to already existing child placing agencies for preparation and submission of their applications for licensure.

(2) If at the expiration date of the temporary license and/or upon completion and submission of the licensing study, the agency is unable to comply with a regulation, a second temporary license may be issued in accordance with R. 114-4930 F.

(3) Applications for licensure as a child placing agency shall be made on forms prescribed and furnished by the Department.

(4) All applications and supporting documentation shall be considered public information.

(5) An application is not considered complete unless all required supporting documentation is attached. Failure to supply all required documentation may result in denial of a license.

C. Procedure for Licensure. With the initial application for a license, the following information shall be forwarded to the Department:

(1) Statement of Purpose: The child placing agency shall submit to the Department a written statement which shall contain a description of the geographical area to be served and the specific services to be provided. The statement shall be available to the referral sources and the public on request.

(2) A copy of its charter, if applicable.

(3) Governance.

(a) A copy of the by laws and/or statute by which the agency was created;

(b) A list of officers and Board or Advisory Committee members and their addresses;

(4) Personnel.

(a) A list of job descriptions of administrative and program staff shall be submitted to the Department;

(b) A list of Certified Adoption Investigators who will be utilized or employed by the child placing agency shall be submitted to the Department;

(c) A copy of resumes for program staff.

(5) A copy of the proposed/current procedural manuals shall be submitted to outline policies including, but not limited to, the following areas:

(a) Finance;

(b) Personnel;

(c) Intake and content of records for planning and caring for children;

(d) Replacement, placement, and postplacement services to children, foster families, adoptive families and biological parents, if applicable;

(e) Recruitment for both foster and adoptive homes;

(f) Family assessment formats for both foster and adoptive homes;

(g) Qualification criteria for foster and adoptive families;

(h) Procedures for closing cases;

(i) Schedule of payment for services;

(j) Copies of all forms used by the child placing agency in the foster care and adoption process i.e., application, financial forms, medicals, renewal, etc.

(k) Statement of clients' rights.

(6) A notarized statement attesting that a Central Registry check has been done and that staff members and volunteers who work directly with children have not had a case of child abuse or neglect indicated against them. If a case has been indicated and the individual continues to be employed by the child placing agency or continues to serve in a volunteer capacity, the agency must provide documentation that a waiver as provided for in R. 114-4930 G(1)(c) has been granted. Notarized statements must be signed by the staff member or volunteer. Upon request of the child placing agency, the Department shall provide such information at no charge from the Central Registry. If staff members and volunteers have resided in South Carolina for three (3) years or less, last state of residency checks must be completed.

## **114-4920. Administration and Organization of Child Placing Agencies.**

### **A. Administration**

(1) The child placing agency shall meet the following requirements:

(a) Have an office and staff located within the state, or within a twenty five (25) mile radius, and

(b) Shall be incorporated in South Carolina, or shall be lawfully doing business in this state in accordance with all applicable statutes and regulations.

(2) When the corporate offices of a child placing agency are located out of state:

(a) There shall be a local advisory board composed of residents of South Carolina;

(b) If the corporate office is licensed by the State in which it is located, a copy of this license shall be submitted to the Department at the time of issuance and at the time of each renewal thereafter;

(c) Documentation shall be provided as to the supervision and evaluation of the South Carolina office by the corporate office.

**B. Governance.** The child placing agency shall have a governing body of the agency and the governing body shall exercise authority over and have responsibility for the operation, policy, and practices.

### **C. Organization Chart**

(1) The child placing agency shall maintain a current organizational chart showing the administrative structure and staffing, including the lines of authority.

(2) A copy of this shall be submitted to the Department.

### **D. Fees and Payments**

(1) If fees are charged, the child placing agency shall have a written policy on fees for services which shall be submitted to the Department.

(2) A copy of the foster or adoptive parent payment schedule shall be submitted to the Department.

(3) The child placing agency shall provide the Department, foster parent(s), or adoptive parent(s) with written notification of changes in the payment schedule ninety (90) days prior to the implementation of any change.

### **E. Monitoring Child Placing Agencies**

(1) The Department shall monitor all child placing agencies. The Department reserves the right as part of its monitoring function to visit the individual foster, group and adoptive homes as well as the primary offices of the child placing agency.

(2) Child placing agencies shall monitor all of their licensed foster homes and adoptive homes for compliance with the regulations established by the Department.

## **114-4930. Requirements for Licenses and Types of Licenses.**

**A. Application.** After the receipt of the application for licensure/relicensure by the Department, the Department shall initiate a licensing study within two (2) weeks and shall complete the study within ninety (90) days.

**B. Issuance.** Upon completion and submission of the licensing/relicensing study to the Department, the Department shall issue a Temporary license or a Standard license or deny the application/reapplication.

**C. Display of License.** The license is the property of the Department and shall be prominently displayed at all times.

**D. Compliance.** Any child placing agency which operates any form of child care program, whether day care or residential in nature, must comply with all applicable State regulatory requirements for that type of child care program.

**E. Standard License.** The Department shall issue a Standard License when a child placing agency meets all the regulations. A Standard License is in effect for one (1) year from the date of issuance unless cancelled, modified to a Temporary License, revoked or suspended.

#### F. Temporary License

(1) The Department may grant a Temporary License to a child placing agency that is temporarily unable to comply with a regulation(s).

(2) The licensee shall have a written plan, approved by the Department, to correct the areas of noncompliance within the probationary period.

(3) A Temporary License may be issued for up to six (6) months. It may be extended once for an additional six (6) months after consideration of noted deficiencies.

(4) A Temporary License that states the condition of the probation may be issued at any time; provided, however, that a Temporary License may only be issued when the Department is satisfied that:

(a) The regulations can and will be met within a reasonable time, and;

(b) The deviations do not seriously threaten the health and safety of children, or otherwise adversely affect clients.

(5) Any existing license is invalid when a Temporary License is issued.

(6) At the expiration date of the Temporary License, if the provider wishes to continue or remain open the Department shall reinstate the original license to the end of its term, issue a new license, or revoke the license.

(7) To request a change from a Temporary License to a Standard License, the child placing agency shall notify the Department that all deficiencies which required the Temporary License have been corrected.

(8) After the Department determines that the areas of noncompliance have been corrected, a Standard License shall be issued.

#### G. Denial or Revocation of a License

(1) Any of the following actions by a child placing agency or any employee thereof may be grounds for denial or revocation of a license:

(a) An intentional act or omission violating the South Carolina Child Protection Act, or any other act or omission in violation of professional social work standards and threatening the health or safety of clients;

(b) A violation of the provisions of the Licensing Law, S. C. Code 20-7-2230 through 20-7-2290 or any regulation pursuant to that law, or any violation of the adoption law or its regulations;

(c) The employment of any individual who has been determined to have committed any act referenced in R. 114-4910 C(6) of these regulations, where that individual has direct contact with children as a result of employment. However, the child placing agency may request a waiver of this requirement. The individual must submit written documentation regarding the type of rehabilitation program they might have undergone and the effects of the rehabilitative efforts on their behavior/lives. An evaluation by the involved counselor or therapist must also be submitted to the Department. The Commissioner or his designated representative(s) will review this data and determine if a license can be issued;

(d) A failure to comply with licensing regulations with a determination by the Department that compliance cannot be accomplished within established or reasonable time limits;

(e) False information given during the application or relicensing process;

(f) Material misrepresentations to clients during the course of child placing agency business;

(g) A judicial determination of a violation of the South Carolina Unfair Trade Practices Act;

(2) The decision to deny or revoke a license is made by the Department.

(3) A license which has been revoked must be returned to the Department within ten (10) working days.

#### H. Appeal of Denial of Application or Revocation of a Child Placing Agency License

(1) Any child placing agency whose application has been denied or whose license has been revoked may request a hearing pursuant to the same provisions applicable to private child day care centers found in 20-7-2760, Code of Laws of South Carolina, except that any judicial review of a

final agency decision shall be based upon a review of the administrative hearing record, rather than a trial de novo. The Department will be responsible for documenting violations which warrant denial of an application/revocation of a license. If the Department is not represented by an attorney, the Department staff will be responsible for presenting the case, cross examining witnesses, etc.

(2) If the child placing agency does not appeal a denial or revocation within thirty (30) days, the Department may proceed to require immediate cessation of business by the child placing agency, including injunctive action where necessary. Where harm to clients is imminent, the Department may proceed to seek an injunction prior to the expiration of thirty (30) days.

#### I. License Amendments

(1) Amendments must be requested in writing to the Department prior to a change in location, name change, or in the case of foster homes, the number of children served.

(2) Upon receipt and approval of the amendment, a new license shall be issued within thirty (30) calendar days. The original license must be returned to the Department within five (5) working days after receipt of the new license.

### **114-4940. Relicensing Procedures.**

A. Renewal Process. Each year, all licensed child placing agencies shall receive written notification from the Department within ninety (90) days prior to the renewal date of the license. Where the Department has failed to so notify, the license shall be valid for an additional ninety (90) days from the date of actual notification unless revoked for other reasons.

B. Application Requirements. When the child placing agency submits an application for renewal prior to the current expiration date, the current license shall remain in effect until the Department issues a new license or denies the renewal application. An application is not considered complete unless all required supporting documentation is attached. Failure to supply all required documentation may result in denial of a license. The complete relicensing application shall be submitted to the Department at least sixty (60) days prior to the expiration date of the current license.

C. Application Content. The following information shall be submitted to the Department along with the application for renewal:

(1) DSS Form 1536, Original Licensing/Relicensing/Changes for Residential Facility and Child Placing Agency Form;

(2) DSS Form 1520, Annual Report of Children Under Care or Supervision of Licensed Child Placing Agencies;

(3) Copy of the financial report certified by a Certified Public Accountant (CPA) for the fiscal year prior to current licensing period;

(4) A list of job descriptions including qualifications of current administrative and program staff;

(5) For any new program staff since the previous licensing/relicensing, a statement complying with R. 114-49-10 C(6);

(6) A written report of any major changes in program since the last license was issued or any changes planned for the new license period;

(7) All fee schedules.

### **114-4950. Confidentiality Requirements.**

A. Child placing agencies and their personnel are subject to 20-7-690 and 20-7-1780, Code of Laws of South Carolina.

B. Except as provided below, without written consent of the parent or legal guardian of the child, no officer, agency or employee of the Department or of a licensed facility, agency, group home or foster home shall directly or indirectly disclose personally identifiable information learned about the children placed in their care, their parents, or relatives or other persons having custody or control of them. Such information must be made available upon written request to appropriate Department staff, local child protection agencies, ombudsman of the Governor's office, Foster Care Review Board, person or agency having legal responsibility or authorization to care for, treat, or supervise the child or the child's family, multidisciplinary evaluation teams impaneled by agencies, and law-enforcement

agencies investigating suspected cases of abuse and neglect, Family Court, the child, his parents, guardian, or adoptive parents, child's guardian ad litem or attorney.

## **114-4960. Personnel Requirements.**

### **A. Policies and Practices**

(1) The child placing agency shall make available written personnel procedures and practices conducive to recruitment, retention, and effective performance by qualified personnel. These procedures and practices shall include, but not be limited to the following:

(a) Written job descriptions and titles for each position defining the qualifications, duties, and lines of authority;

(b) Provisions for activities which shall encourage professional growth through supervision, orientation, in-service training, and staff development;

(c) An evaluation of job performance at the end of a probationary period and at least annually thereafter for each staff member.

(2) A personnel file shall be maintained for each employee which includes, but is not limited to:

(a) The application for employment, including record of previous employment; social security number, personal information, and a signed notarized statement attesting to the information required in R. 114-4910 C(6);

(b) A notarized statement signed by the applicant;

(c) Qualifications for position;

(d) Required professional credentials/certifications;

(e) Copy of annual job performance evaluations;

(f) Training record and conferences attended including dates and topics;

(g) Commendations, disciplinary notices;

(h) Date(s) of employment and termination date(s);

(i) Reason(s) for termination;

(j) Forwarding address of former employer, if available;

(3) The employee shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes at any given time. The personnel file of all employees who leave the child placing agency shall be maintained for a period of at least three (3) years.

### **B. Staff Functions and Qualifications**

(1) Staff shall be employed who have education, training and experience to equip them for duties assigned. An adequate number of staff shall be employed to perform administrative, supervisory and child care functions.

(2) The child placing agency must request the Department to perform a Central Registry check prior to employment of all employees and volunteers working with children. These checks along with notarized statements shall show them to be in compliance with R. 114-4910, C (6).

(3) Agencies operating multistate programs under the supervision of an Executive Director shall serve or employ an assistant Director to whom the responsibility for administration of the South Carolina program shall be delegated.

(4) The Executive Director or Assistant Director shall have as a minimum a Bachelor's Degree and two years administrative experience in the field of human services. If the Executive Director or Assistant Director is responsible for direct supervision of casework services or provides direct placement services he/she shall have a Master's Degree in Social Work or a related field and at least two years administrative experience.

(5) The Executive Director or the Assistant Director shall:

(a) Be a full time resident of the State of South Carolina or a resident of a city located within twenty five (25) miles of the State's border;

(b) Be responsible for administration of policies and procedures established by the Board for operation of the Agency;

(c) Be responsible for preparation, or assisting in the preparation of the annual budget, and control of expenditures according to budget allowance;

(d) Be responsible for personnel matters including hiring, assigning duties, in service training, supervision, evaluation of staff and terminations;

(e) Be responsible for professional leadership and technical consultation to the Board, and for periodic evaluations of the Agency's performance in terms of the conditions of licensure;

(f) Represent the Agency in the community, maintain a good working relationship with other social agencies, services and resources within the community;

(g) Shall demonstrate through confidential references, an acceptable professional standard of ability and integrity. In determining the qualifications of the Director, the Department may inquire into relevant information concerning the Director's background, including but not limited to inquiries into complaints of unprofessional and unethical conduct.

(6) There shall be at least one Casework Supervisor. The Executive Director or assistant Director may perform this function if qualified. The Casework Supervisor shall be responsible for the supervision of the placement services.

(7) There shall be a minimum of one Casework Supervisor for every eight (8) Caseworkers.

(8) There shall be sufficient clerical staff to keep correspondence, records, bookkeeping and files current and in good order.

C. Staffing Requirements. Each supervisor shall be responsible for no more than eight (8) caseworkers. Caseworker's caseloads shall be limited to allow for all the required contacts with the children, biological families, foster families, adoptive families, and collateral parties.

#### D. Staff Development

(1) The child placing agency shall have a written plan for the orientation, ongoing training and development of all staff members.

(2) The child placing agency shall ensure that placement supervisors and child placement workers receive at least ten hours of training activities during each full year of employment. Activities related to supervision of the staff member's routine tasks shall not be considered training activities for the purpose of this requirement.

#### E. Volunteers

(1) A child placing agency which utilizes volunteers on a regular basis shall:

(a) Develop a description of duties and specify responsibilities for volunteer positions;

(b) Designate a staff member to supervise and evaluate volunteers;

(c) Have volunteers sign a statement indicating their understanding and compliance with confidentiality requirements.

(2) If volunteers are working directly with children, they shall:

(a) Be oriented and trained in the philosophy of the agency, the needs of the children served, the needs of their families, and the methods of meeting these needs.

(b) Be subject to reference checks under R. 114-4910, C (6);

(c) Be instructed as to their specific duties and be informed of a child's special needs as appropriate.

(3) Records shall be kept on the hours and activities of volunteers.

F. Certification Requirements. All certified Adoption Investigators and persons certified to take relinquishments must meet the requirements of 20-7-1750, South Carolina Code of Laws.

## **114-4970. Child Placing Agency Records.**

### A. Child's Record

(1) The child placing agency shall maintain records for each child or sibling group placed in substitute care or in an adoptive home which shall include, but not be limited to:

(a) Demographic information including the name, address, sex, race, birth date, and birth place of the child;



(b) The name, address, telephone number, and marital status of the parent(s) or guardian(s) of the child;

(c) Unless precluded by statute, the name, address, and telephone number of siblings, if placed elsewhere, and other significant relatives;

(d) The name, address and telephone number of the caseworker/supervisor for the child;

(e) Copies of legal documents of importance to the child, such as birth record and any court dispositions, where available;

(f) The medical history, cumulative health record, and available psychological and psychiatric reports;

(g) The social assessment and background of the family and parent(s);

(h) Case notes which reflect the dates of contact, initial assessment, family contacts, placement, case review, administrative reviews, and content of the placement worker's visits;

(i) The circumstances leading to the decision to place a child into substitute care or into an adoptive home, the agency's involvement with the parent(s) or legal guardian(s), including services offered, delivered, or rejected; and

(j) Relevant educational records and reports, where available.

(2) The child placing agency shall ensure that upon the child's discharge from foster care, a child's records contain the following:

(a) A discharge summary showing services provided during care, the growth and accomplishments, assessed needs which remain to be met, and recommendations of the services needed to meet these goals;

(b) Dates of discharge, reason for discharge, and the name, address, telephone number and relationship of the person(s) or agency to whom the child was discharged;

(c) Aftercare plans which specify the responsibility for follow through.

(3) The child placing agency shall ensure that there shall be a report pursuant to 20-7-1740, (B), Code of Laws of South Carolina prior to the finalization of adoption.

#### B. Biological Family Records Maintained by the Agency

(1) The child placing agency shall maintain a record of the family of every child whom the agency places into care which contains:

(a) Demographic information including address, birth dates, race, religion, family composition, and significant others;

(b) The social history, including any psychological or psychiatric reports and medical histories;

(c) Strengths and needs of the family and the services required;

(d) Worker's assessment and initial case plan;

(e) Signed agreements between the child placing agency and family or the Department;

(f) Summary of dates of contact and progress toward goals;

(g) Case review reports; and

(h) Discharge summary.

(2) The child placing agency shall keep all records current and shall record the following events within thirty (30) days of occurrence: intake study, case plan, reviews, and major events in the lives of the child or family members.

C. Foster Home Records. The child placing agency shall keep separate records for each foster home which contain:

(1) The application;

(2) Family assessment;

(3) Child Protective Services Registry Report;

(4) Summary of dates and content of worker's contacts;

(5) References from at least three sources;

(6) Annual assessment of strengths and weaknesses of the foster family relative to the care of individual children placed with them;

(7) Annual relicensing compliance study and reports connected with compliance with foster home regulations;

(8) Summary of the care given by the family, children placed, dates admitted and discharged from care; and

(9) A termination summary for homes which are closed containing the reasons for the closing;

(10) Any fire or health records otherwise required by law or regulation for foster homes.

#### D. Adoptive Study Records

(1) The child placing agency shall keep separate records for each adoptive family which contain:

(a) The application;

(b) The adoptive assessment study;

(c) Current medical records of the family;

(d) References from at least three sources;

(e) A summary of contacts following approval for adoption until placement of a child;

(f) Summary containing the placement decision, pre-placement and post-placement contacts with the adoptive child.

(2) In the event a family was not accepted or did not have a child placed with them, a narrative clearly indicating the reason and the manner in which the decision was presented to the family shall be made a part of the record prior to case closure.

### **114–4980. Procedures and Practices of Child Placing Agencies.**

#### A. Foster Home Licensing/Relicensing

(1) Child placing agency foster homes shall be licensed/relicensed in accordance with R. 114–550 C(1).

(2) Foster Home Licensing procedure is as follows:

(a) The child placing agency shall utilize the regulations established by the Department to conduct the foster home investigations;

(b) The child placing agency shall record the licensing study in their foster home records and make results available to the applicant(s);

(c) The child placing agency shall notify the applicant(s) in writing if the license is denied or revoked;

(d) The Department may issue a license based on the foster home study and retains the sole authority for issuing, denying and revoking that license.

(3) Foster Home Relicensing procedure is as follows:

(a) The child placing agency shall conduct annual relicensing studies on all licensed foster homes to determine continued compliance with the regulations;

(b) The Department may issue, deny or revoke a license based on the relicensing study.

(4) Monitoring Foster Homes. The child placing agency shall monitor all of its licensed foster homes for compliance with the foster home regulations established by the Department.

(5) Complaints in Licensed Foster Homes. When receiving a complaint which may indicate possible violations of the foster home regulations, the child placing agency shall:

(a) Conduct an investigation to assess compliance with applicable licensing rules;

(b) Send a written report to the foster home stating findings, conclusions, and any anticipated action affecting the license;

(c) Notify the Department of the complaint with pertinent information and the identity of both the complainant and the foster home;

(d) Notify the Department of its recommendation as to revocation or continuation of the license;

(e) The Department will investigate complaint(s) according to established policy and procedure.

(6) With regard to child protective services, the child placing agency shall report any suspected cases of abuse or neglect to the local Department of Social Services, as required by law.

(7) Amendments to a Foster Home License. The child placing agency shall utilize the regulations established by the Department whenever there is an amendment to the foster home license.

(8) Recommendations to Revoke a License. The child placing agency shall maintain on file an assessment that includes the specific regulation(s) violated and the act of violation to support their recommendation for revocation.

(9) Selection of Home

(a) The child placing agency shall select the most appropriate home for a child consistent with the family assessment, the child's needs, and the terms of the license;

(b) If the child is placed, must be placed with a licensed provider;

(c) The child placing agency shall not place children in licensed foster homes which are in use by another agency without written permission of that agency.

B. Intake Procedures and Practices

(1) At the time of a referral or application, the child placing agency shall assess the needs and strengths of the child and/or the adoptive family.

(2) A comprehensive written intake study shall be completed, and this intake study shall contain sufficient information to substantiate the formation of a case plan.

(3) The child placing agency shall provide referral assistance to persons requesting services not provided by the agency.

C. Case Plan

(1) The child placing agency shall develop a written case plan upon completion of the intake study and prior to placement. The assessment and case plan shall be completed within sixty (60) days of placement. The plan shall include, but not be limited to, specific initial case goals for the clients, a clear designation of responsibilities for those goals, and appropriate time frames for the completion of those responsibilities and achievement of those goals.

(2) The child placing agency shall include the parent(s), other significant persons, and the child (twelve years or older) in the development of placement and care plans. The parent(s) and child must sign the placement and case plan. The child does not have to sign if she/he is unable to do so because of physical and/or mental impairments.

(3) The child placing agency, prior to accepting a child for placement, shall secure from the parent(s), guardian(s), or agency holding custody, written authority to place the child adoptively.

(4) The child placing agency, prior to accepting a child for adoptive placement, shall secure from the parent(s), guardian(s), or agency holding custody, written authority to provide routine medical care and to sign educational plans.

(5) The child placing agency shall help the parent(s) or legal guardian to understand the legal rights and obligations that they retain and those delegated to the child placing agency, and shall document this in writing.

(6) The child placing agency shall have a signed agreement with the parent(s) or legal guardian(s) of the child in care which includes, but is not limited to, the expectations and responsibilities of the child placing agency and the parent(s) or legal guardian(s) for carrying out the steps to meet the case plan goals, in the financial arrangements for the child in care, and visitation plans.

D. Supervision and Review of the Case Plan

(1) The child placing agency shall complete a review of the case plan at least every six (6) months indicating progress toward goal achievement and changes made in the service plan.

(2) The child placing agency shall include in the review an assessment of the child in care, the progress of the growth and development of the child, the relationships between the child and caregivers, and any problems which have occurred.

(3) The parent(s) and the child shall participate in these reviews.

E. Adoptive Services

(1) The child placing agency shall provide information to prospective adoptive parent(s) about the adoption process, the agency's policies and practices, legal procedures, adoptive record content, types of children available, the fees, structure and the availability of subsidy.

(2) Adoptive Home Application

(a) The child placing agency shall provide an application form or prospective adoptive parent(s);

(b) The child placing agency in response to an application for adoption and acceptable screening interview shall conduct an adoptive study to assess the applicant(s) appropriateness to be an adoptive parent(s).

(3) Adoptive Study

(a) The child placing agency should include in any home study at least two (2) face to face interviews. These interviews may be in the form of one (1) office visit if possible and one (1) home visit or two (2) home visits. Separate face to face interviews with each member of the household must be conducted. The study process shall be a joint effort of the child placing agency and the applicant(s).

(b) The child placing agency shall also study the following areas and shall record the information in the adoptive applicant(s) record:

(1) Motivation for adoption;

(2) Strengths and weaknesses of each member of the household;

(3) The attitudes and feelings of the family, extended family, and significant others involved with the family toward accepting adoptive children, and parenting children who are not born to them;

(4) Attitudes of the applicant(s) toward the birth parent(s) and the reason(s) the child is in need of adoption;

(5) The applicant's plan for discussing adoption with the child;

(6) Record of arrests and criminal convictions and checks with the Central Registry for Child Abuse and Neglect.

(7) Adjustment of birth children, foster children or previously adopted children, including school reports, if applicable;

(8) A report of a physical examination for members of the adoptive family living in the household within six (6) months of the study which verifies that each person suffers no communicable disease, specific illness, or disabilities which would interfere with the family's ability to parent a child;

(9) Ability to provide financially for the child or children to be adopted with or without agency financial assistance through adoption subsidy;

(10) Personal and community character references;

(11) Religious orientation, if any;

(12) Location and physical environment of the home;

(13) Plan for child care if parent(s) work; and

(14) Recommendations for adoption in regard to number, age, sex, characteristics, and special needs of children best served by the family.

(4) Notification Regarding Application

(a) The child placing agency shall notify applicant(s) in writing within thirty (30) days of completion of the adoption investigation of the acceptance or denial of their application;

(b) When applicant(s) are not accepted, the child placing agency shall inform them of the reasons why the application is denied.

(5) Service to Adoptive Parent(s)

(a) The child placing agency shall prepare the adoptive family or the placement of a particular child. Preparation shall include:

- (1) Information about the needs, characteristics, expectations of the child, the child's biological family and foster family, excluding identifying information on the child's biological family;
- (2) Review of medical histories of the child and of the child's biological family; and
- (3) Visits with the child prior to placement, where age appropriate to the child.

(b) The caseworker shall be in contact with the adoptive family at least monthly after the placement of a child prior to final decree. Information obtained from the contact shall be used in making recommendations for the finalization of the adoption.

#### F. Services to Families

(1) The child placing agency shall make appropriate agency services available to parent(s). When custody of the child is held by another agency, these services may only be made available upon that agency's approval.

(2) The child placing agency shall make every reasonable effort to help the parent(s) to assume or to prepare them to resume their parental roles and responsibilities.

(3) The child placing agency shall help the family gain access to the services necessary to preserve and strengthen the family and to accomplish the case plan goals. While the child is in care, the child placing agency shall assist parent(s) or legal guardian(s) with the problems and needs that led to the necessity for placement.

(4) The child placing agency shall encourage contacts between parent(s) or legal guardian(s) and children after placement, in accordance with the case plan.

(5) The child placing agency shall have a signed agreement with the parent(s) or legal guardian(s) of the child in care which includes, but is not limited to, the expectations and responsibilities of the child placing agency and the parent(s) or legal guardian(s) for carrying out the steps to meet the case plan goals, the financial arrangements for the child in care, and visitation plans.

#### G. Services to Unmarried Parents

(1) Upon request, the child placing agency shall make counseling services available to unmarried parents considering adoptive placement both prior to and after the birth of the child.

(2) After the birth of the child, counseling services shall continue for a reasonable period of time to assist the unmarried parent(s) to accept their decision to release the child for adoption or to keep the child.

#### H. Selection of Care

(1) The child placing agency shall select the most appropriate form of substitute care for the child consistent with the child's and family's needs. In choosing such care, the child placing agency shall arrange for any specialized services the child may need and shall make every placement effort to select the most appropriate setting for the child and within as close proximity to the family as possible.

(2) The child placing agency shall select substitute care that has the capacity to assist in the achievement of the steps and goals in the child's case plan.

#### I. Aftercare Service

(1) The child placing agency shall make supportive services available for children and families for at least six (6) months following an adoption or a child's return to his/her family in order to strengthen and support new or renewed family functioning.

(2) The child placing agency shall offer referral services to parent(s) who decide not to place their child.

**HISTORY: Amended by State Register Volume 32, Issue No. 2, eff February 22, 2008.**