

Title 15: Mississippi State Department of Health

Part 11: Bureau of Child Care Facilities

Subpart 55: Child Care Facilities Licensure

CHAPTER 1: REGULATIONS GOVERNING LICENSURE OF CHILD CARE FACILITIES

Subchapter 1: GENERAL

Rule 1.1.2 Purpose:

1. The purpose of these regulations is to protect and promote the health and safety of children in this state by providing for the licensing of child care facilities as defined herein to assure that certain minimum standards are maintained in such facilities. This policy is predicated upon the fact that a child is not capable of protecting himself, and when his parents for any reason have relinquished his care to others, there arises the probability of exposure of that child to certain risks to his health and safety that require the offsetting statutory protection of licensing. This document and its appendices constitute the "Regulations Governing the Licensure of Child Care Facilities."
2. A child care facility may exceed the minimum quality standards required in these regulations, but may not operate without meeting the minimum standards set forth in these regulations.
3. The maximum capacity of a child care facility is determined by the indoor square footage, kitchen square footage, outdoor playground area, and the number of toilets, urinals, and hand washing lavatories, with the lowest capacity determination being controlling. The maximum capacity of each room that is utilized by the children in a child care facility is calculated individually and may not be exceeded except when provided in these regulations.
4. A child care facility is subject to inspection at anytime at the discretion of the licensing agency.
5. The Mississippi State Department of Health shall maintain a complaint hotline to accommodate reporting of complaints. The department shall investigate each complaint and maintain a log of such complaints. The identity of the reporting party shall not be disclosed to any other person than the Child Care Licensing Bureau staff unless upon order of a court of competent jurisdiction.

Source: Miss. Code Ann. §43-20-8.

Subchapter 11 BUILDINGS AND GROUNDS

Rule 1.11.2 Indoor Square Footage:

1. Every license shall set forth the licensed facility's maximum licensed capacity, which shall be based upon a minimum of thirty-five (35) square feet of usable indoor space per child. Likewise, the capacity for each room where children are kept shall have a minimum of thirty five (35) square feet of usable space per child, measured on the inside, wall-to-wall dimensions, subject to the following exceptions:
 - a. During group activity periods such as film viewing, parties, dining, and sleeping, provided child-to-staff ratio is maintained;
 - b. During periods when child pick-up or delivery is normally done, provided child-to staff ratio is maintained;
 - c. In infant and toddler rooms as required in subsections 2-7 below;
 - d. In school age only and summer day camp programs as outlined in Subchapter 23 and Subchapter 24 of these regulations.

The usable space in determining the facility's maximum licensed capacity is measured exclusive of food preparation areas, kitchens, bathrooms, toilets, areas for the care of ill children, offices, staff room, corridors, hallways, stairways, closets, lockers, laundries, furnace rooms, fixed or permanent cabinets, fixed or permanent storage shelving spaces, and areas not inhabited and used by children.

2. Rooms in which infants both play and sleep shall have a minimum of 40 square feet of usable space per child. There shall be at least 24" between each crib. A minimum of 36" is recommended. Cribs with solid ends may be placed end-to-end.
3. Rooms where infants play but do not sleep shall have a minimum of 15 square feet of usable space per child.

NOTE: No other age group shall use this space nor can it be used for any purpose other than infant play.

4. Rooms where infants sleep but do not play shall have a minimum of 25 square feet of usable space per child. There shall be at least two feet between each crib. Cribs with solid ends may be placed end-to-end.
5. Rooms in which toddlers both play and sleep shall have a minimum of 45 square feet of usable space per child. There shall be at least 24" between each crib. A minimum of 36" is recommended. Cribs with solid ends may be placed end-to-end. However, if stackable cots, mats, or other storable sleeping equipment is utilized for sleeping the room shall be measured using the standard of 35 square feet per child. Should it be determined that the sleeping equipment is not properly stored when not in use the capacity of the room will be determined using 45 square feet per child
6. Rooms where toddlers play but do not sleep shall have a minimum of 25 square feet of usable space per child.

NOTE: No other age group shall use this space nor can it be used for any purpose other than toddler play.

7. Rooms where toddlers sleep but do not play shall have a minimum of 25 square feet of usable space per child. There shall be at least 24” between each crib. A minimum of 36” is recommended. Cribs with solid ends may be placed end-to-end.
8. The licensing agency may re-measure the square footage of licensed operating child care facilities, or such parts impacted by the following circumstances, for purposes of determining licensed facility or classroom capacity only under the following circumstances:
 - (a) Major renovations;
 - (b) Significant change in layout and use of space;
 - (c) A change of ownership of an existing facility should the layout or use of space change.
9. **“Grandfather Provision” for regulatory changes regarding maximum facility capacity or room capacity.** Whenever the Mississippi State Board of Health amends these rules regarding square footage and/or licensed maximum capacity of child care facilities, and such change would result in a reduction in the number of children to be served in a licensed and operating facility or any of its classrooms, any such facility in operation at the time of final adoption of said rule change, and in compliance with all other child care regulations, shall be “grandfathered” in and exempt from application of the new regulation regarding capacity. This exemption shall continue for said facility through changes of ownership so long as the building is used continuously as a licensed child care facility and so long as there is no change in the layout or use of the space, as set out in subsection 8 above. Any break in use of the building as a licensed child care facility shall moot the grandfather exemption, and thereafter, any child facility opened and operated in said building shall be required to comply with the square footage/capacity regulation in affect at the time of the new license.

Source: Miss. Code Ann. §43-20-8.

Subchapter 25: HEARINGS, EMERGENCY SUSPENSIONS, LEGAL ACTIONS AND PENALTIES

Rule 1.25.3 Notification:

Prior to the denial, refusal to renew, suspension, revocation or restriction of a license, and at the time of the imposition of any monetary penalty, written notice of the contemplated action shall be given to the applicant or person named on the license of the child care facility, at the address on record with the licensing agency. Such notice shall specify the reasons for the proposed action and shall notify the operator of the right to a hearing on the matter.

Rule 1.25.4 District Level Hearing for Monetary Penalties:

1. If requested in writing within ten calendar days of receipt of notice of the imposition of a monetary penalty, a district level hearing shall be provided in which the operator or applicant may show cause why the monetary penalty should not be imposed. The District Health Officer or his/her designee will preside at said hearing.
2. Any hearing requested pursuant to Subchapter 1.25.4(1) shall be held no less than five calendar days and no more than 20 calendar days from the receipt of any request for a hearing, unless both parties agree to an alternate period.
3. The district level hearing shall be informal. There will be no court reporter present and the Department will not be represented by counsel. However, the hearing officer will take notes of the proceedings and will provide the licensee with a written order outlining his decision within ten calendar days of conclusion of the district level hearing.
4. Within ten calendar days of the receipt of the district level decision the licensee may make a written request for a hearing at the state level.

Source: Miss. Code Ann. §43-20-8.

Rule 1.25.5 State Level Hearing:

1. If requested in writing within ten calendar days of receipt of a notice of revocation, non-renewal, probation, or suspension, or after a district level hearing has been held on a monetary penalty, a hearing shall be held at the state level. At the state level hearing a hearing officer shall be appointed by the State Health Officer. A court reporter shall transcribe the proceeding. The hearing shall be held within 30 calendar days of receipt of the request for such hearing, unless waived in writing by the licensee.
2. Within 30 calendar days of the hearing, or such period as determined during the hearing, written findings of fact, together with a recommendation for action, shall be forwarded to the State Health Officer. The State Health Officer shall decide what, if any, action is to be taken on the recommendation within 14 calendar days of receipt of the recommendation. Written notice of the decision of the State Health Officer shall be provided to the operator.
3. At the state level hearing, the licensee shall be entitled to legal representation at his or her own expense.
4. For the *Rules and Procedures for State Level Administrative Hearings* refer to APPENDIX J of these regulations.

Source: Miss. Code Ann. §43-20-8.

Rule 1.25.9 Violations and Penalties:

In the event of an emergency occurring at a child care facility which makes it difficult or impossible to comply with any of these Rules, the facility shall not be considered to be in violation of those specific Rules. For purposes of this Rule 1.25.9, the term “emergency” shall include only the following:

- (a) Inclement weather;
- (b) Damage to the facility and/or structure which might require moving, transferring or consolidation of children;
- (c) Traumatic injury or acute illness of a caregiver or the caregiver’s immediate family while the caregiver is on-site resulting in the caregiver having to leave the premises;
- (d) During any declaration of emergency by local or state officials;
- (e) An injury or illness of a child at the facility requiring the immediate attention of one or more caregivers, resulting in non-compliance with child-to-staff ratio or room capacity; and
- (f) During a period when Department inspectors or other government official require facility staff to temporarily not be able to perform their normal supervisory duties.

Source: Miss. Code Ann. §43-20-8.

CHAPTER 2: REGULATIONS GOVERNING LICENSURE OF CHILD CARE FACILITIES FOR 12 OR FEWER CHILDREN IN THE OPERATOR’S HOME

Subchapter 1: GENERAL

Rule 2.1.2 Purpose:

1. The purpose of these regulations is to protect and promote the health and safety of children in this state by providing for the licensing of child care facilities as defined herein to assure that certain minimum standards are maintained in such facilities. This policy is predicated upon the fact that a child is not capable of protecting himself, and when his parents for any reason have relinquished his care to others, there arises the probability of exposure of that child to certain risks to his health and safety that require the offsetting statutory protection of licensing. This document and its appendices constitute the "Regulations Governing the Licensure of Child Care Facilities."
2. A child care facility may exceed the minimum quality standards required in these regulations, but may not operate without meeting the minimum standards set forth in these regulations.

3. The maximum capacity of a child care facility is determined by the indoor square footage, kitchen square footage, outdoor playground area, and the number of toilets, urinals, and hand washing lavatories, with the lowest capacity determination being controlling. The maximum capacity of each room that is utilized by the children in a child care facility is calculated individually and may not be exceeded except when provided in these regulations.
4. A child care facility is subject to inspection at anytime at the discretion of the licensing agency.
5. The Mississippi State Department of Health shall maintain a complaint hotline to accommodate reporting of complaints. The department shall investigate each complaint and maintain a log of such complaints. The identity of the reporting party shall not be disclosed to any other person than the Child Care Licensing Division staff unless upon order of a court of competent jurisdiction.

Source: Miss. Code Ann. §43-20-8.

Subchapter 11 BUILDINGS AND GROUNDS

Rule 2.11.2 Indoor Square Footage:

1. Every license shall set forth the licensed facility's maximum licensed capacity, which shall be based upon a minimum of thirty-five (35) square feet of usable indoor space per child. Likewise, the capacity for each room where children are kept shall have a minimum of thirty five (35) square feet of usable space per child, measured on the inside, wall-to-wall dimensions, subject to the following exceptions:
 - a. During group activity periods such as film viewing, parties, dining, and sleeping, provided child-to-staff ratio is maintained;
 - b. During periods when child pick-up or delivery is normally done, provided child-to staff ratio is maintained;
 - c. In infant and toddler rooms as required in subsections 2-7 below.

The usable space in determining the facility's maximum licensed capacity is measured exclusive of food preparation areas, kitchens, bathrooms, toilets, areas for the care of ill children, offices, staff room, corridors, hallways, stairways, closets, lockers, laundries, furnace rooms, fixed or permanent cabinets, fixed or permanent storage shelving spaces, and areas not inhabited and used by children.

2. Rooms in which infants both play and sleep shall have a minimum of 40 square feet of usable space per child. There shall be at least 24" between each crib. A minimum of 36" is recommended. Cribs with solid ends may be placed end-to-end.
3. Rooms where infants play but do not sleep shall have a minimum of 15 square feet of usable space per child.

NOTE: No other age group shall use this space nor can it be used for any purpose other than infant play.

4. Rooms where infants sleep but do not play shall have a minimum of 25 square feet of usable space per child. There shall be at least two feet between each crib. Cribs with solid ends may be placed end-to-end.
5. Rooms in which toddlers both play and sleep shall have a minimum of 45 square feet of usable space per child. There shall be at least 24" between each crib. A minimum of 36" is recommended. Cribs with solid ends may be placed end-to-end. However, if stackable cots, mats, or other storable sleeping equipment is utilized for sleeping the room shall be measured using the standard of 35 square feet per child. Should it be determined that the sleeping equipment is not properly stored when not in use the capacity of the room will be determined using 45 square feet per child
6. Rooms where toddlers play but do not sleep shall have a minimum of 25 square feet of usable space per child.

NOTE: No other age group shall use this space nor can it be used for any purpose other than toddler play.

7. Rooms where toddlers sleep but do not play shall have a minimum of 25 square feet of usable space per child. There shall be at least 24" between each crib. A minimum of 36" is recommended. Cribs with solid ends may be placed end-to-end.
8. The licensing agency will re-measure the square footage of licensed operating child care facilities for purposes of determining licensed facility or classroom capacity only under the following circumstances:
 - (a) Major renovations;
 - (b) Significant change in layout and use of space;
 - (c) A change of ownership of an existing facility should the layout or use of space change.
9. **“Grandfather Provision” for regulatory changes regarding maximum facility capacity or room capacity.** Whenever the Mississippi State Board of Health amends these rules regarding square footage and/or licensed maximum capacity of child care facilities, and such change would result in a reduction in the number of children to be served in a licensed and operating facility or any of its classrooms, any such facility in operation at the time of final adoption of said rule change, and in compliance with all other child care regulations, shall be “grandfathered” in and exempt from application of the new regulation regarding capacity. This exemption shall continue for said facility through changes of ownership so long as the building is used continuously as a licensed child care facility and so long as there is no change in the layout or use of the space, as set out in subsection 8 above. Any break in use of the building as a licensed child care facility shall moot the grandfather exemption, and thereafter, any child facility opened and operated in

said building shall be required to comply with the square footage/capacity regulation in affect at the time of the new license.

Source: Miss. Code Ann. §43-20-8.

Subchapter 22: HEARINGS, EMERGENCY SUSPENSIONS, LEGAL ACTIONS AND PENALTIES

Rule 2.22.3 Notification:

Prior to the denial, refusal to renew, suspension, revocation or restriction of a license, and at the time of the imposition of any monetary penalty, written notice of the contemplated action shall be given to the applicant or person named on the license of the child care facility, at the address on record with the licensing agency. Such notice shall specify the reasons for the proposed action and shall notify the operator of the right to a hearing on the matter

Rule 2.22.4 District Level Hearing For Monetary Penalties:

1. If requested in writing within ten calendar days of receipt of notice of the imposition of a monetary penalty, a district level hearing shall be provided in which the operator or applicant may show cause why the monetary penalty should not be imposed. The District Health Officer or his/her designee will preside at said hearing.
2. Any hearing requested pursuant to Subchapter 22, Rule 2.22.4(1) shall be held no less than five calendar days and no more than 20 calendar days from the receipt of any request for a hearing, unless both parties agree to an alternate period.
3. The district level hearing shall be informal. There will be no court reporter present and the Department will not be represented by counsel. However, the hearing officer will take notes of the proceedings and will provide the licensee with a written order outlining his decision within ten calendar days of conclusion of the district level hearing.
4. Within ten calendar days of the receipt of the district level decision the licensee may make a written request for a hearing at the state level

Source: Miss. Code Ann. §43-20-8.

Rule 2.22.5 State Level Hearing:

1. If requested in writing within ten calendar days of receipt of a notice of revocation, non-renewal, probation, or suspension, or after a district level hearing has been held on a monetary penalty, a hearing shall be held at the state level. At the state level hearing a hearing officer shall be appointed by the State Health Officer. A court

reporter shall transcribe the proceeding. The hearing shall be held within 30 calendar days of receipt of the request for such hearing, unless waived in writing by the licensee.

2. Within 30 calendar days of the hearing, or such period as determined during the hearing, written findings of fact, together with a recommendation for action, shall be forwarded to the State Health Officer. The State Health Officer shall decide what, if any, action is to be taken on the recommendation within 14 calendar days of receipt of the recommendation. Written notice of the decision of the State Health Officer shall be provided to the operator.
3. At the state level hearing, the licensee shall be entitled to legal representation at his or her own expense.
4. For the *Rules and Procedures for State Level Administrative Hearings* refer to APPENDIX J of these regulations.

Source: Miss. Code Ann. §43-20-8.

Rule 2.22.9 Violations and Penalties:

In the event of an emergency occurring at a child care facility which makes it difficult or impossible to comply with any of these Rules, the facility shall not be considered to be in violation of those specific Rules. For purposes of this Rule 2.22.9, the term “emergency” shall include only the following:

- (a) Inclement weather;
- (b) Damage to the facility and/or structure which might require moving, transferring or consolidation of children;
- (c) Traumatic injury or acute illness of a caregiver or the caregiver’s immediate family while the caregiver is on-site resulting in the caregiver having to leave the premises; or
- (d) During any declaration of emergency by local or state officials.
- (e) An injury or illness of a child at the facility requiring the immediate attention of one or more caregivers, resulting in non-compliance of child-to-staff ratio or room ratio; and
- (f) During a period when Department inspectors or other government officials requires facility staff to temporarily not be able to perform their normal supervisory duties.

Source: Miss. Code Ann. §43-20-8

APPENDIX J

**RULES AND PROCEDURES
FOR STATE LEVEL ADMINISTRATIVE HEARINGS**

1. Hearing Officer - The Hearing Officer shall be appointed by the State Health Officer or his/her designee. The Hearing Officer shall preside at the hearing, shall be charged with maintaining order at the hearing, and shall rule on all questions of evidence and procedure in accordance with the provisions of these rules.
2. Appearance by Licensee/registrant - The licensee/registrant shall appear at the date and time set for the hearing, and failure to do so without reasonable notice to the Department may result in admission of the charges and adverse action taken against the licensee/registrant.
3. Representation by Counsel - The licensee /registrant may, but is not required to be, represented by counsel at the hearing and shall have the right to cross-examine all witnesses, present evidence, written or oral, on his or her own behalf, and to refute any testimony or evidence presented by the Department. The Department shall be represented by the Office of the Attorney General.
4. Rules of Evidence and Discovery - Formal rules of evidence and procedure, including Discovery, do not apply in administrative hearings; however, the rules of evidence may be used as a guide during the hearing. A record of the hearing shall be made by a court reporter.
5. Attendance of Witnesses - The licensee/registrant or counsel for the Department may make a written request to the Hearing Officer at least 10 days prior to the hearing to ensure the attendance of a witness or the production of documents through the issuance of an administrative subpoena. The issuance of the subpoena shall be at the discretion of the Hearing Officer.
6. Order of Proceedings - The Department shall present its case first, followed by the licensee/registrant, and any rebuttal evidence by either party. At the request of either party, all prospective witnesses shall be excluded from the proceedings except while actually testifying.
7. Standard of Proof - In order for the Department's decision to be upheld, the Hearing Officer must find that the regulatory violation has been proved by clear and convincing evidence and that the disciplinary action is supported by substantial evidence.
8. Recommendation and Final Decision - At the conclusion of the hearing, or within a reasonable time thereafter, considering the amount of testimony and evidence and the complexity of the issues, the Hearing Officer shall submit his/her "Findings of Fact, Conclusions of Law and Recommendation" to the State Health Officer, outlining the proof presented and containing his/her recommendation to the State Health Officer as to the appropriate action to be taken. The State Health Officer shall in a reasonable time thereafter issue his/her Final Order adopting, modifying, or rejecting the Recommendation. This Final Order becomes the final appealable order of the Mississippi State Department of Health as to those proceedings.

9. Appeal of the Department's Final Order shall be accomplished as provided by the appropriate statute.

Source: Miss. Code Ann. §43-20-8