

**RULES
OF
DEPARTMENT OF HUMAN SERVICES**

CHAPTER 290-2-5

RULES AND REGULATIONS FOR CHILD CARING INSTITUTIONS

TABLE OF CONTENTS

290-2-5-. 02 Title and Purpose~~s~~

290-2-5-. 03 Definitions

290-2-5-. 05 Criminal History Background Checks, Licenses and Exemptions

290-2-5-. 06 Applications

290-2-5-. 07 Inspections and Investigations

290-2-5-. 08 Administration and Organization

290-2-5-.12 Child Care Services

290-2-5-.13 ~~Foster Home Care~~ Reserved

290-2-5-.14 Behavior Management and Emergency Safety Interventions

290-2-5-.17 Food Service

290-2-5-.20 Emergency Orders

290-2-5-.21 Disaster Preparedness

290-2-5-.22 Waivers and Variances

290-2-5-.23 Severability

290-2-5-.24 Repealed

290-2-5-.02 Title and Purposes

These rules shall be known as the Rules and Regulations for Child Caring Institutions. The purposes of these rules ~~are~~ is to provide for the licensing and inspection of child caring institutions within the state of Georgia, ~~and to establish foster care requirements applicable to those institutions that provide such services.~~

Statutory Authority: O.C.G.A. Secs. 49-5-3, 49-5-8.

290-2-5-.03 Definitions

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

- (a) "Adult" means a person eighteen (18) years of age or older.
- (b) "Applicant" means the following:
1. When the institution is owned by a sole proprietorship, the individual proprietor shall be the applicant for the license, complete the statement of responsibility and serve as the licensee;
 2. When the institution is owned by a partnership, the general partners shall be the applicant for the license, complete the statement of responsibility and serve as the licensee;
 3. When the institution is owned by an association, the governing body of the association shall authorize the application for the license and complete the statement of responsibility and the association shall serve as the licensee; and
 4. When the institution is owned by a corporation, the governing body of the corporation shall authorize the application for the license and complete the statement of responsibility and the corporation shall serve as the licensee.
- (c) "Behavior management" means those principles and techniques used by a facility to assist a resident in facilitating self-control, addressing inappropriate behavior, and achieving positive outcomes in a constructive and safe manner. Behavior management principles and techniques shall be used in accordance with the individual service plan, written policies and procedures governing service expectations, service plan goals, safety, security, and these rules and regulations.
- (d) "Chemical restraint" means drugs that are administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others; that have the temporary effect of restricting the resident's freedom of movement; and that are not being used as part of a standard regimen, as specified in the child's service plan, to treat current symptoms of a medical or psychiatric condition.
- (e) "Child caring institution" means a child-welfare agency that is any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides full-time care for children through 18 years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the Board of Human Resources Services. This full-time care is referred to as room, board and watchful oversight. For purposes of these rules, a child caring institution means any institution, society, agency, or facility that provides such care to six or more children.

(f) "Child-placing agency" means a child welfare agency that is any institution, society, agency, or facility, whether incorporated or not, that places children in foster homes for temporary care or in prospective adoptive homes for adoption. For purposes of this definition, agencies that engage in placement activities are required to be licensed as Child-Placing Agencies. This term does not apply to a licensed professional providing only home study preparation services as an evaluator.

(f)(g) "Criminal history background check" means a search as required by law of the criminal records maintained by law enforcement authorities to determine whether the applicant has a criminal record as defined in these rules.

(g)(h) "Commissioner" means the Commissioner of the Department of Human Resources Services.

(h)(i) "Criminal record" means:

1. Conviction of a crime; or
2. Arrest, charge, and sentencing for a crime where:
 - (i) A plea of nolo contendere was entered to the charge; or
 - (ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or
 - (iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or
 - (iv) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to O.C.G.A. Sec. 17-3-1 *et seq.*

(i)(j) "Department" means the Georgia Department of Human Resources Services.

(j)(k) "Director" means the chief administrative or executive officer of the institution.

(k)(l) "Emergency safety interventions" mean those behavioral intervention techniques that are authorized under an approved emergency safety intervention plan and are utilized by properly trained staff in an urgent situation to prevent a child from doing immediate harm to self or others.

(l)(m) "Emergency safety intervention plan" means the plan developed by the facility utilizing a nationally recognized, evidence-based, training program for emergency safety intervention, approved by the Department. The plan shall clearly identify the emergency safety interventions staff may utilize and those that may never be used.

~~(m)~~(n) "Employee" means any person, other than a director, employed by an institution to perform any duties at any of the institution's facilities which involve personal contact between that person and any child being cared for at the institution and also includes any adult person who resides at the institution or who, with or without compensation, performs duties for the institution which involve personal contact between that person and any child cared for by the institution.

~~1.~~ For purposes of these rules, an employee does not mean a child that resides at the facility and performs duties for the institution;

~~2. For purposes of criminal history background check determinations and if an institution provides foster care services, an "employee" means any person employed by the foster home or any adult person that resides at the home or who provides care to children placed in the home.~~

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

~~(o)~~(p) "Foster Care" means supervised care in a substitute home ~~or a child-caring institution~~ on a 24 hour full-time basis for a temporary period of time.

~~(p)~~(q) "Foster Home" ~~or "foster care home"~~ means a private home where the foster parent(s) live which has been approved by ~~the institution/a child-placing~~ agency to provide 24 hour care, lodging, supervision and maintenance for no more than six children under the age of 19.

~~(q)~~(r) "Foster Parent" means an adult person approved by ~~the institution a child-placing~~ agency who has a satisfactory criminal history background check determination and provides care, lodging, supervision, and maintenance on a 24 hour basis for a child who must receive care out of his own home.

~~(r)~~(s) "Human Services Professional" means the person(s) employed by the facility who is (are) responsible for providing oversight of services to children and their families in the home setting. The HSP is responsible for monitoring the residents' needs and ensuring that appropriate services are being provided and arranged for in order to meet those needs. Duties include, but are not limited to: the coordination of the facility's admission evaluation; the development of the service and Room, Board, Watchful Oversight plans; case work services as provided in the resident's service plans; and monitoring of the resident's educational and/or vocational needs.

~~(s)~~(t) "Living unit" means the physical location where residents live within the institution.

~~(t)~~(u) "Manual hold" means the application of physical force, without the use of any device, for the purpose of restricting the free movement of a child's body and is considered a form of restraint. A manual hold does not include briefly holding a child without undue force to calm or comfort the child, holding a child by the hand or by the shoulders or back to walk the child safely from one area to another where the child is not forcefully resisting the assistance, or assisting the child in voluntarily participating in activities of daily living.

~~(u)~~(v) "Mechanical restraint" means a device attached or adjacent to the child's body that is not a prescribed and approved medical protection device and that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. A mechanical restraint does not include devices used to assist a child with appropriate positioning or posture secondary to physical impairments or disabilities.

~~(v)~~(w) "Medicaid Rehabilitation Option Provider (MRO)" means that category of behavioral health services designed for the maximum reduction of impairments related to mental illness or addiction and restoration of a Medicaid recipient to his/her best possible functional level.

~~(w)~~(x) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater ownership interest in the business or agency licensed as a child caring institution and who:

1. Purports to or exercises authority of the owner in a caring institution;
2. Applies to operate or operates a child caring institution;
3. Enters into a contract to acquire ownership of a child caring institution.

~~(x) "Placement" means any activity by any person that provides assistance to a parent guardian in locating and effecting the move of a child to a foster home or adoptive home, including assessing suitability of homes for placement. Counseling with respect to options available, legal services, or services as an agent for purposes of notice or withdrawal of consent by the birth parent does not constitute placement activity.~~

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

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

(aa) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check, and

an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law; except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(bb) "Room, Board and Watchful Oversight" means providing a safe, comfortable room, adequately nutritious meals and oversight to ensure a child's basic safety needs are met.

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

(dd) "Seclusion" means the involuntary confinement of a child away from other children, due to imminent risk of harm to self or others, in a room or an area from which the child is physically prevented from leaving.

(ee) "Supervision" means the continued responsibility of the licensee to take reasonable action to provide for the health, safety, and well-being of a resident while under the supervision of the licensee or the agent or employee of the licensee, including protection from physical, emotional, social, moral, financial harm and personal exploitation while in care. The licensee is responsible for providing the degree of supervision indicated by a child's age, developmental level, physical, emotional, and social needs.

(ff) "Time-out" means a behavior management technique that involves the brief separation of a child from the group, not to exceed twenty (20) minutes, designed to de-escalate the child. During "time-out" a child's freedom of movement is not physically restricted.

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

(hh) "Variance" means a decision by the department to grant a modification to all or part of the literal requirements of a rule.

(ii) "Waiver" means a decision by the department not to apply all or part of a rule.

Statutory Authority: O.C.G.A. Secs. 49-5-3, 49-5-8, 49-5-12.

290-2-5-.05 Criminal History Background Checks, Licenses and Exemptions

(1) Criminal History Background Checks for Owners Required. Prior to approving any license for a new child caring institution and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application so as to permit the department to obtain criminal history background information on the owner.

(a) An owner may not be required to submit a records check application if it is determined that the owner does not do at least one of the following:

1. Maintains an office at the location where services are provided to children;
2. Resides at a location where services are provided to children;
3. Has direct access to residents receiving care; or
4. Provides direct personal supervision of personnel by being immediately available to provide assistance and direction during the time services are being provided to children.

(b) In lieu of a records check application, an owner may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the owner has received a satisfactory criminal history background check determination.

(2) A child caring institution license shall not be issued, and any license issued shall be revoked where it has been determined that the owner has a criminal record involving any of the following covered crimes, as outlined in O.C.G.A. Sec. 49-2-14.1 *et seq.*:

- (a)** A violation of Code Section 16-5-1, relating to murder and felony murder;
- (b)** A violation of Code Section 16-5-21, relating to aggravated assault;
- (c)** A violation of Code Section 16-5-24, relating to aggravated battery;
- (d)** A violation of Code Section 16-5-70, relating to cruelty to children;
- (e)** ~~A violation of Code Section 16-5-100, relating to cruelty to a person 65 years of age or older~~Article 8 of Chapter 5 of Title 16, relating to crimes against elderly persons;
- (f)** A violation of Code Section 16-6-1, relating to rape;
- (g)** A violation of Code Section 16-6-2, relating to aggravated sodomy;
- (h)** A violation of Code Section 16-6-4, relating to child molestation;

- (i) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;
 - (j) A violation of Code Section 16-6-5.1, relating to ~~sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions~~ improper sexual contact by employee or agent and improper sexual contact by a foster parent;
 - (k) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;
 - (l) A violation of Code Section 16-8-41, relating to armed robbery; or
 - (m) ~~A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person; or~~ Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.
 - (n) ~~Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.~~
- (3) An owner with a valid child caring institution license issued on or before June 30, 2007 shall be required to obtain a criminal records check determination no later than December 31, 2008.
- (a) An owner with a valid child caring institution license issued on or before June 30, 2007 who is determined to have a criminal record for any of the crimes listed in Rule .05(2)(a)-~~(n)(m)~~ above, shall not have the license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."
 - (b) An owner with a valid child caring institution license who acquires a criminal record as defined in Rule .05(2)(a)-~~(n)(m)~~ above subsequent to the effective date of these rules shall disclose the criminal record to the department.
- (4) If at any time the department has reason to believe an owner holding a valid license has a criminal record for any of the crimes listed in Rule .05(2)(a)-~~(n)(m)~~ above, the department shall require the owner to submit a records check application immediately for determination of whether a revocation action is necessary. Prior to the revocation of the license becoming final, the owner is entitled to an administrative hearing unless the owner has not begun providing services under the license. Where services are not currently being provided under the license, the decision of the administrative hearing officer must precede the initiation of services.

(5) Criminal History Background Checks for Director and Employees Required. Prior to serving as a director of a licensed institution, a person shall submit a records check application and receive a satisfactory determination.

(a) A person with an unsatisfactory criminal history background check determination may not serve as a director of a licensed child caring institution if it is determined that such person has a criminal record involving any of the following covered crimes:

1. Any felony under Georgia law;
2. A violation of Code Section O.C.G.A. Sec. 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph;
3. A violation of Code Section O.C.G.A. Sec. 16-5-23, relating to simple battery; where the victim is a minor;
4. A violation of Code Section O.C.G.A. Sec. 16-6-1 *et seq.*, relating to sexual offenses, excluding the offenses of bigamy or marrying a bigamist;
5. A violation of Code Section O.C.G.A. Sec. 16-~~24~~12-1, relating to contributing to the delinquency of a minor; or
6. Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.

(b) Prior to serving as an employee other than a director of a licensed institution, a person must submit a preliminary record check application and receive a satisfactory determination. Provided however, should there be an unsatisfactory determination, the person must submit to a fingerprint record check and get a satisfactory determination or be determined eligible to be employed by the institution as a result of an administrative hearing.

(c) A person with an unsatisfactory background check determination may not serve as an employee of a licensed child caring institution if it is determined that such person has a criminal record involving any of the covered crimes outlined in Rule .05(5)(a)1.- 6. above.

(d) In lieu of a records check application, a director or employee may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the above personnel have received a satisfactory records check determination or a satisfactory preliminary records check determination.

~~(6) Criminal History Background Checks for Foster Parents Required. No facility that provides care in foster homes shall place a child in a foster home unless the foster parent(s) of the home and other adult persons that reside in the home or provide care to children placed in the home have obtained criminal records checks as required by law.~~

~~(7) No child shall continue to be placed in such foster care home unless the foster parent(s) also subsequently receive a satisfactory fingerprint records check determination.~~

(8)(6) Licenses. No person, partnership, association, corporation or entity shall operate a child caring institution in the state without first obtaining a license to operate the institution by demonstrating compliance with the necessary requirements set forth in these rules. No licensed child-caring institution first licensed after the effective date of these rules shall provide room, board and watchful oversight to more than 16 children on its premises.

(a) Institutions with a valid child caring institution license issued on or before December 31, 2019, that includes authorization to place children in private foster homes where foster parents live, shall be required to obtain a child-placing agency license no later than June 30, 2021 if the entity would like to continue placing children in foster care in private foster homes.

(a)(b) Institutions operated as a part of a local church ministry or religious nonprofit school or a nonprofit religious charitable organization may request to be commissioned in lieu of licensed. All provisions of these rules shall apply to institutions that request to be commissioned, and for the purposes of these rules, the term license shall have the same meaning as commission.

(b)(c) A license may be issued, upon presentation of evidence satisfactory to the department, that the facility is in compliance with applicable statutes and these rules. The license is valid for the period of time specified by the department, unless voluntarily surrendered by the holder, reduced to a restricted or temporary license or suspended or revoked by the department.

(9)(7) Temporary License. The department may in its discretion issue a temporary license if the health and safety of the children to be served by the institution will not be endangered. A temporary license will be valid for a specified period not to exceed one (1) year and may be issued in the following instances:

(a) If an institution complies with these rules but has not yet enrolled children; or

(b) If an institution is not in full compliance with these rules but has demonstrated satisfactory evidence that it is making progress toward meeting these rules and has submitted an acceptable plan of correction.

(c) If the department finds that any child caring institution applicant does not meet rules and regulations prescribed by the department but is attempting to meet such rules and regulations, the department may, in its discretion, issue a temporary license or commission to such child caring institution, but such temporary license or commission shall not be issued for more than a one-year period.

1. Upon presentation of satisfactory evidence that such institution is making progress toward meeting prescribed rules and regulations of the department, the department may, in its discretion, reissue such temporary license or commission for one additional period not to exceed one year.
2. As an alternative to a temporary license or commission, the department, in its discretion, may issue a restricted license or commission which states the restrictions on its face.

(40)(8) Restricted License. The department may in its discretion issue a restricted license in lieu of a temporary or regular license. The restricted license may be granted either in connection with the initial application process for a license or as a result of a subsequent determination made by the department concerning compliance with these rules. The restriction shall appear on the face of the license and shall restrict an institution from providing care or services which are beyond the capability of the licensee to provide. The restriction may include but is not limited to the number and/or age of the children served by the institution.

(41)(9) Qualifications Requirement. In order to obtain or retain a license, the director of the institution and its employees must be qualified, as defined in these rules, to administer or work in a institution. The department may presume that the director and employees are qualified, subject to satisfactory determinations on the criminal history background checks. However, the department may require additional reasonable verification of the qualifications of the director and employees either at the time of application for a license or at any time during the license period whenever the department has reason to believe that a director or employee is not qualified under these rules to administer or work in an institution.

(42)(10) License is Nontransferable. A license to operate an institution is not transferable in any way. Each license shall be returned to the department immediately upon the suspension, revocation, restriction of the license or termination of the operation.

(43)(11) Renewal of License. A license will be renewed upon a determination by the department that the institution presents satisfactory evidence of meeting the requirements set forth in these rules.

(44)(12) Exemptions. Anyone operating or desiring to provide a service believed to be exempt from licensure shall apply to the department for exemption. The exemptions

granted by the department are exemptions from licensure, and do not affect the authority of local, regional or state health department officials, the state fire marshal or local fire prevention officials to inspect facilities. These rules shall not apply to the following kinds of programs providing care to children:

- (a)** Child welfare agencies and other facilities and institutions wherein children and youths are detained which are operated by any department or agency of state, county, or municipal government.
- (b)** Any bona fide boarding school whose primary purpose of admission is education, provided that such facility in order to claim exemption shall operate under a published academic educational curriculum which meets the requirements of the State Department of Education, shall have classroom facilities which are not used for residential living and shall not have been granted nor have assumed legal custody of children attending the facility.
- (c)** ~~Facilities owned and operated by the state or federal government. Facilities or programs both owned and operated by any department or agency of federal, state, county, or municipal government. For purposes of this rule, facilities or programs are not exempt from licensure as a child caring institution if facility or program premises are leased, rather than owned, by federal, state, county, or municipal government. In addition, facilities or programs are not exempt from licensure if the government entity assumes or exercises no authority nor control over daily program services, functions or operations.~~
- (d)** Temporary recreational facilities and programs which limit residency to no more than three months, such as summer camps.

Statutory Authority: O.C.G.A. Secs. 49-5-8, 49-5-12, 49-2-14.1, 49-5-60 et seq.

290-2-5-.06 Applications

(1) An application for a license to operate an institution shall be submitted to the department on the forms provided by the department.

(a) Time for Filing. An application for a license shall be submitted at least thirty (30) days prior to the proposed opening date of the new institution.

(b) Records Check and Preliminary Records Check Applications. Accompanying any application for a new license for an institution, the applicant shall furnish to the department a records check application for the owner and director and a preliminary records check application for each employee ~~and any foster parents~~, if applicable as defined in these rules.

(c) Separate Licenses or Commissions. A separate license or commission application is required for each geographical location which an institution is proposed to operate even when all of the proposed institutions are owned by the same person or entity.

(d) Amended License. If there is to be a change in the name of the institution, change in ownership, changes in the ages of children to be served, or additions or changes in the uses of the buildings that will affect the facility's licensed capacity, an application for an amended license shall be submitted at least thirty (30) days prior to the changes or additions, except in cases of emergencies. In such cases of emergencies, which make it impossible to submit an application within thirty (30) days, the governing body or director shall notify the department by telephone and shall submit an application for the amended license as soon as the governing body or the director becomes aware of the change or addition.

(e) Notice of Denial. If the department determines that the applicant does not comply with these rules and determines that the issuance of a temporary or restricted license is not appropriate, the department will provide a written notice of the denial of licensure and the opportunity for a hearing to the applicant.

(f) False or Misleading Information. The application for a license including the application for a criminal history background check must be truthfully and fully completed. In the event that the department has reason to believe that any required application has not been completed truthfully, the department may require additional verification of the facts alleged. The department may refuse to issue a license where false statements have been made in connection with the application or any other documents required by the department.

(g) The department may deny a license or otherwise restrict a license for any applicant who has had a license denied, revoked, or suspended within one year of the date of the application or who has transferred ownership or governing authority of an agency, facility, institution, or entity subject to regulations by the

department within one year of the date of a new application when such transfer was made in order to avert denial, revocation, or suspension of a license.

(h) An institution shall not begin operation without departmental approval.

Statutory Authority: O.C.G.A. Secs. ~~31-2-6~~, 49-5-12, 49-5-60.

290-2-5-.07 Inspections and Investigations

The department is authorized and empowered to conduct investigations and ~~on-site~~ inspections of any institution required by these rules to be licensed. The proposed and current licensee and staff shall cooperate with any inspection or investigation by responding truthfully to any legitimate departmental inquiry.

(a) Initial Inspection. Following receipt and review of a complete application package, the department may conduct an ~~on-site~~ inspection of the institution to assess compliance with these rules.

(b) Consent to Entry Access. An application for a license or commission to operate an institution or the issuance of a license by the department constitutes consent by the applicant, the proposed holder of the license and the owner of the premises for the department's representative, after displaying picture identification to any institution staff, to enter the premises at any time during operating hours for the purpose of inspecting the facility. This includes both scheduled and unscheduled inspections and includes consent for meaningful access to all staff, parts of the premises, all children present, and all records required by these rules. ~~To the degree possible, inspections of records normally maintained in the institution's business office, such as financial records, will be conducted during normal business hours, e.g., 8:00 a.m. to 6:00 p.m. on Mondays through Fridays. The department shall have the authority to require the production of any books, records, papers, or other information related to the initial or continued licensing of any institution.~~

(c) Other Inspections. The department may conduct scheduled and unscheduled ~~on-site~~ inspections of an institution in the following instances:

1. Annually or at other regular intervals as the department may determine or at the expiration of the current license; or
2. Upon receiving a report, including a report submitted by the institution, alleging child abuse, neglect, or sexual exploitation, or deprivation as defined in O.C.G.A. § 15-11-2 which occurred while the child was in the care of the institution director or employees; or
3. Upon receiving information of alleged violations of these rules, including information provided by the institution, which, if true, could endanger the health, safety or welfare of the children in care; or
4. Upon receipt and review of a request for an amended license, where the department determines that an ~~on-site~~ inspection is advisable; or
5. Upon the department or its duly authorized representative being made aware of any flagrant abuses, derelictions or deficiencies during the course of the department's inspection or at any other time. The department shall immediately

investigate such matters and may ~~make~~ conduct an ~~on-site~~ inspection so as to take such actions as conditions may require; or

6. Subsequent to the receipt of a plan of correction, as determined necessary by the department, to monitor whether the plan of correction is being complied with by the institution's personnel.

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

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

Statutory Authority: O.C.G.A. Secs. ~~31-2-6~~, 49-5-8, 49-5-12.

290-2-5-.08 Administration and Organization

(1) Program Purpose. In accordance with these rules and regulations, a licensed child caring institution shall develop, implement and comply with written policies and procedures that specify its philosophy, purpose, and program orientation. Such policies and procedures shall identify the characteristics and ages of the children it serves, including the referral sources.

(2) Program Description and Implementation. In accordance with these rules and regulations, a licensed child caring institution shall develop, implement and comply with written policies and procedures that describe the range of services including room, board and watchful oversight and the manner in which such services will be provided by the facility. Such policies and procedures shall describe how identified services will be provided, the specific emergency safety intervention plan, including the emergency safety interventions, that will be used, and how such services will be assessed and evaluated. A program description must show what services are provided directly by the facility and how it will coordinate its services with those provided by any Medicaid rehabilitation option provider or other available community or contract resources.

(3) Director. The governing body of the institution shall designate a director who shall be authorized to manage the institution.

(a) Any director employed on or after the effective date of these rules shall possess at least one of the following qualifications:

1. A master's degree from an accredited college or university in the area of social sciences, social work, childhood education, or business or public administration or a related field plus two years of experience in the field of child care;
2. A bachelor's degree from an accredited college or university in the area of social sciences, social work, childhood education, or business or public administration or a related field plus four years of experience in the field of child care;
3. A licensed registered nurse, doctor or other health care professional where the child-caring institution chooses to serve primarily children with special medical needs.

(b) Any director employed on or after the effective date of these rules must meet the following additional minimum qualifications.

1. Never have been shown by credible evidence (e.g. a court or jury, a department investigation, or other reliable evidence) to have abused, neglected, or sexually exploited, or deprived a child as those terms are defined in O.C.G.A. § 15-11-2 or to have abused, neglected, or sexually

exploited an adult or to have subjected any person to serious injury as a result of intentional or grossly negligent misconduct as evidenced by an oral or written statement to this effect obtained at the time of application and evidence of having made efforts to obtain and evaluate references from previous employers;

2. Participate in the orientation and training required by these rules; and

3. Not have made any material false statements concerning qualifications requirements either to the department or the proposed licensee.

(c) When the director is absent from the institution at any time, there shall be an officially designated person to assume responsibility for the operation of the institution.

(4) Finances. The governing body shall provide for the preparation of an annual budget and approve such budget. Copies of the current year's budget and expenditure records shall be maintained for examination and review by the department.

(a) The director and all persons authorized to receive or disburse operating funds shall be bonded or insured.

(b) A schedule of fees shall be established and implemented and made available to a parent(s) or guardian(s), or representative(s) of children considered for admission to the institution. The schedule shall detail the basic cost of services and any additional costs for other services.

(5) Recordkeeping.

(a) Case Records. An institution shall maintain a written record for each child which shall include the following:

1. Identifying information including name, sex, and birth date or age;

2. Date of admission and source of referral including all documents related to the referral and admission of the child to the institution;

3. Name, address, and telephone numbers of the parent(s) or guardian(s) or representative(s);

4. Name and telephone number of placing agency and agency's contact, if applicable;

5. Documentation of current custody if not placed by natural or adoptive parents;

6. A copy of the child's birth certificate, or an appropriate record of birth;
7. Assessment plans;
8. Service plans and review and progress notes and collateral communications with MRO and/or other service providers;
9. Records of behavior management, emergency safety interventions, and written grievances, as described in Rule .14 and Rule .15;
10. Documentation of health history; as required at admission;
11. Medical records, including documentation of visits to physicians and dentists, records of prescriptions and administration of medicines, immunization records, and orders for modified diets;
12. Educational and vocational information such as report cards, progress reports, and related materials received during a child's residency in the institution; and
13. Discharge plans required by Rule .11, if applicable,

(b) Retention of Case Records. Case records shall be retained in the institution for at least one year following discharge of residents.

(c) Confidentiality of Case Records.

1. Written policies and procedures shall be established and implemented for the maintenance and security of case records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released and for what purposes.
2. An institution shall maintain the confidentiality of all children's case records. Employees of the institution shall not disclose or knowingly permit the disclosure of any information in a case record except to appropriate direct care staff, the parent(s) or guardian(s), their respective legal counsel, a court of legal jurisdiction, licensing staff, and other authorized public officials in the performance of their mandated duties, or the child's placing agency.

(d) Personnel Records. An institution shall maintain written records for each employee and the director. Such records shall include the following:

1. Identifying information such as name, address, telephone number, and emergency contact person(s);

2. A 10-year employment history or a complete employment history if the person has not worked 10 years;
3. Records of educational qualifications;
4. Documentation of at least two professional, educational, or personal references that attest to the person's capabilities of performing the duties for which they are employed and to the person's suitability of working with or around children;
5. Satisfactory preliminary criminal history background check determination and a satisfactory fingerprint records check determination as required by law for the director ~~and foster parents~~, and a satisfactory determination on a preliminary records check and fingerprint records check for employees as required by law;
6. Documentation from a licensed physician or other licensed healthcare professional of a health screening examination within thirty (30) days of hiring sufficient in scope to identify conditions that may place the children at risk of infection, injury or improper care;
7. Date of employment;
8. The person's job description or statements of the person's duties and responsibilities;
9. Documentation of orientation and training, including dates of all such training, as required by Rule .08(6)(d) of these rules; and
10. Any documentation of the individual's performance, including all records of employee discipline arising from the inappropriate use of behavior management techniques and emergency safety interventions and grievance reports described in Rule .14 and Rule .15 related to children in care and the employee.

(6) Staffing. The institution shall have sufficient numbers of qualified and trained staff as required by these rules to provide for the needs, care, protection, supervision and room, board and watchful oversight of children. All staff and volunteers shall be supervised to ensure that assigned duties are performed adequately and to protect the health, safety and well-being of the children in care.

(a) All staff employed on or after the effective date of these rules must meet the following minimum qualifications:

1. Never have been shown by credible evidence (such as a decision of a court or jury, or a department investigation or other reliable evidence) to

have abused, neglected, or sexually exploited, ~~or deprived~~ a child as those terms are defined in O.C.G.A. Section 15-11-2 or to have abused, neglected, or sexually exploited an adult or to have subjected any person to serious injury as a result of intentional or grossly serious injury as a result of intentional or grossly negligent misconduct as evidenced by an oral or written statement to this effect obtained at the time of application;

2. Participate in the orientation and training as stated in subparagraph (d) of this Rule; and

3. Not have made any material false statements concerning qualifications requirements either to the department or the proposed licensee.

~~4. All prospective foster parents, adoptive parents or any adult living in the home must be checked against the child abuse and neglect registry for information, and must provide information from any other state in which any such prospective parent or other adult has resided in the previous 5 years to check any child abuse and neglect registry maintained by that state. Providers will need to comply with these requirements before they approve prospective homes when such information is available.~~

(b) Human Services Professionals. The institution shall have designated human service professionals to provide oversight of services to children and their families in the home setting. Within six months of the effective date of these rules, there shall be one human services professional employed for every 16 children in care or fraction thereof for those institutions first licensed after the effective date of these rules. For those institutions licensed prior to the effective date of these rules, there shall be one human service professional employed for every 30 children in care or fraction thereof. However, a human services professional assigned referral and intake duties and responsibilities shall provide oversight of services to not more than 16 children. The institution's director, if qualified by education, may perform the duties of a human services professional.

1. Any human services professional employed on or after the effective date of these rules shall either:

(i) Possess a bachelor's degree from an accredited college or university in social work, psychology, childhood education, education counseling and psychology, or a related field and either have two years experience in the field of child care or be supervised by another human service professional with a master's degree in one of the above disciplines; or

(ii) Possess a master's degree from an accredited college or university in one of the above disciplines.

(c) Child Care Workers. The institution shall have designated child care workers to supervise children and be responsible for living units where the children reside.

1. No institution shall admit or retain children whose needs for room, board and watchful oversight cannot be met. The institution shall have sufficient numbers of qualified and trained staff to provide for the room, board and watchful oversight of children pursuant to Rule .08(6).

2. Any child care worker shall be at least 21 years of age and possess a high school diploma or general education diploma (GED) and have current evidence of successful completion of a biennial training program in cardiopulmonary resuscitation (CPR) and a triennial training program in first aid which have been offered by certified or licensed health care professionals. Such training programs shall be completed within the first year of employment.

(d) Staff Training. Prior to working with children, all staff, including the director, who work with children and are hired after the effective date of these rules shall be oriented in accordance with these rules and shall thereafter periodically receive additional training in accordance with these rules.

1. Orientation shall include instruction in:

(i) The institution's purpose and description of services and its policies and procedures;

(ii) The employee's assigned duties and responsibilities;

(iii) Grievance policies and procedures;

(iv) Child abuse policies and procedures;

(v) Reporting requirements for suspected cases of child abuse and sexual exploitation and notifiable diseases and serious injuries;

(vi) The institution's policies and procedures for handling medical emergencies (life-threatening, limb-threatening, or function-threatening conditions), and managing use of medications by children in care; and

(vii) The institution's policies and procedures regarding appropriate behavior management and emergency safety interventions.

2. Additional training shall include twenty-four (24) clock hours of formal, annual training or instruction in child care issues related to the employee's job assignment and to the types of services provided by the institution.

(e) All direct care staff shall have at least one full day (24 hours) off each week and shall ~~also~~ have at least ~~one weekend~~ two consecutive days off each month.

(7) Reporting. Detailed written summary reports shall be made to the Department of Human ~~Resources, Office of Regulatory Services, Services~~ Residential Child Care Licensing Unit ~~via email electronically~~ or by fax on the required incident intake information form (IIIF) within 24 hours. ~~This report shall be made regarding of a~~ serious occurrences involving children in care, including but not limited to:

(a) Accidents or injuries requiring medical treatment and/or hospitalization;

(b) Death;

(c) Suicide attempts;

(d) Closure of the living unit due to disaster or emergency situations such as fires or severe weather;

(e) Emergency safety interventions resulting in any injury; ~~or~~

(f) Any incident which results in any federal, state or private legal action by or against the institution which affects any child or the conduct of the institution. However, legal action involving the juvenile justice system is not required to be reported.

(g) ~~A detailed investigative report which includes steps taken by the facility to prevent further incidents of a similar nature from occurring shall follow in five work days if not provided initially. Any illness of children or illness of facility staff having personal contact with children in care known to have resulted from an identified pandemic or infectious disease outbreak.~~

(8) Child Abuse Reports. Whenever the child caring institution has reason to believe that a child in care has been subjected to child abuse it shall cause a report of such abuse to be made to the child welfare agency of the county of occurrence providing protective services as designated by the Department of Human ~~Resources Services~~ (Division of Family and Children Services) or in the absence of such an agency to an appropriate police authority or district attorney in accordance with the requirements of O.C.G.A. Sec. 19-7-5. A copy of such report shall also be filed with the ~~Office of Regulatory Services~~ Department of Human Services Residential Child Care Licensing Unit.

Statutory Authority: O.C.G.A. Secs. 49-5-8, 49-5-12.

290-2-5-.12 Child Care Services

(1) Casework Services. All children in care and families of children in care shall receive case work services as provided in their service plan from their assigned Human Services Professional or other appropriate professionals (internal and external of facility) who shall meet with and counsel with the children. The results of such counseling shall be recorded in the children's case records. The purposes of such services are to identify and monitor the children's and families' progress relative to the needs, goals and objectives identified in child care assessments and service plans and to discuss any problems being encountered by or with the children in care.

(2) Educational and Vocational Services. An institution shall not admit a child unless an educational program commensurate with the specific educational and vocational needs of the child can be provided.

(a) Provisions shall be made for mandatory education of all children in care in accordance with O.C.G.A. 20-2-690 *et seq.* or its successor statute. For purposes of these rules, an on-campus school is defined as a private school, and must be in compliance with the above law.

(b) A child's assigned Human Services Professional shall monitor the child's educational or vocational progress in the course of providing case work services and planning. Progress reports, such as report cards, and other records or documentation of a child's educational or vocational performance while residing in the institution shall be maintained in the child's case record.

(c) Children attending public schools who wish to participate in extracurricular activities shall be provided such reasonable opportunities by the institution in accordance with the child's service plan.

(d) Children's daily activities as stated in their service plans shall provide for study time during the periods the children are attending school.

(3) Health Services. The facility shall provide for a comprehensive program of preventive, routine, and emergency medical and dental care for all children.

(a) Within thirty days of admission, an assessment of the children's medical and dental health shall be completed by the designated intake Human Services Professional.

1. A general physical examination of the child shall be provided within 72 hours (excluding weekends and holidays) of admission unless such an examination has been completed within one year prior to admission.

(i) Such examination shall be done by a medical doctor, physician's assistant, nurse practitioner or public health department

and shall include immunizations, vision and hearing tests, and basic diagnostic laboratory work, such as a Complete Blood Count (CBC) and basic urinalysis when recommended by a physician. ~~not limited to a Complete Blood Count (CBC) and basic urinalysis; required immunizations; and vision and hearing tests.~~

(ii) Required Immunization. All children shall have current immunizations as outlined in Rules and Regulations of the Department of ~~Human Resources for Immunization of Children as a Prerequisite to Admission to School or Other Facilities~~ Public Health, Immunization of School Children, Chapter 290-5-4 511-2-2.

2. A general dental examination of the child shall be provided for unless such an examination has been completed within six months prior to admission. Such examinations shall be done by either a dentist or a dental hygienist that is employed by the department and County Boards of Health to screen school pupils.

(b) An institution shall ensure that children receive timely, qualified medical and dental care when they are ill or injured and that they continue to receive necessary follow-up medical care. The child-caring institution shall take appropriate safety and sanitary precautions to ensure that underlying medical conditions are not exacerbated or infections not transmitted to others where required by the medical condition of the child. Arrangements shall be made with at least one physician and one dentist or a health care agency that provides physician and dental services for the medical care of the children. Children shall receive annual medical check-ups and semiannual dental check-ups.

(c) An institution shall ensure that children receive timely, qualified medical care in cases of medical emergencies (life-threatening, limb-threatening, or function-threatening conditions). Policies shall be in place for the emergency medical care of children with a local hospital or other health care facility that provides emergency services or with a local physician.

(d) Medications. The institutions shall develop and implement policies and procedures for the use and management of all types of medications. All direct care staff shall receive orientation on the policies and procedures. Such policies and procedures shall include the following:

- 1.** Non-prescription medications. No child shall be given a non-prescription medication by staff members of the institution unless the child exhibits symptoms that the medication is designed to relieve.
- 2.** Prescription medications. No child shall be given a prescription medication unless the medication is prescribed for the child by an authorized health care professional.

(i) Prescription medications shall only be given to a child as ordered in the child's prescription. An institution shall not permit such medications prescribed for one child to be given to any other child.

(ii) A child's attending physician shall be notified in cases of dosage errors, drug reactions, or if the prescription medication does not appear to be effective.

3. Psychotropic medications. No child shall be given psychotropic medications unless use is in accordance with the goals and objectives of the child's service plan developed by an external physician and/or MRO provider.

(i) Psychotropic medications must be prescribed by an external physician or MRO provider who has responsibility for the diagnosis and treatment of the child's conditions that necessitate such medication. Continued use of psychotropic medications shall be reviewed by the external prescribing Physician and/or MRO provider every sixty days.

(ii) Psychotropic medication shall only be given to a child as ordered in the child's prescription. An institution shall not permit such medications prescribed for one child to be given to another child.

(iii) The external prescribing physician and/or MRO provider shall be notified in cases of dosage errors, drug reactions, or if the psychotropic medication does not appear to be effective.

4. An institution shall designate and authorize classes of staff, such as Child Care Workers, to hand out medications and supervise the taking of medications. Only designated and authorized staff shall hand out and supervise the taking of medication.

5. An institution shall maintain a record of all medications ~~handed out by authorized staff and taken by children~~ administered by staff to include: name of child taking medication; name of prescribing physician and date of prescription (if the medication is prescription or psychotropic); required dosage; date and time taken, refused, or missed; dosage taken; and name and signature of staff member ~~that handed out and supervised the taking of the medication-~~ responsible for administering the medication.

6. All prescription and non-prescription medications shall be kept in a locked storage cabinet or container which is not accessible to the children

and stored separate from cleaning chemicals and supplies or poisons. The keys to the locked cabinets or containers shall not be accessible to residents.

7. All expired medications shall be discarded and not handed out for use.

(e) First Aid Supplies. Each living unit shall have a first aid kit and instruction manual; such kit shall contain scissors, tweezers, gauze pads, adhesive tape, thermometer, assorted band-aids, antiseptic cleaning solution, and bandages.

(4) Recreation and Leisure. The institution shall provide for a program of indoor and outdoor recreational and leisure activities. When providing these activities, it shall utilize the community's cultural, social, and recreational resources whenever possible and appropriate. Children's activities as stated in their service plans shall provide for leisure and recreational time. An institution shall procure and maintain a variety of recreational and leisure equipment and supplies such as games, sporting equipment, reading materials, and art supplies.

(5) Other Services.

(a) The institution shall ensure that all children have adequate, properly fitting, seasonable clothing as required for health, comfort and physical well-being. Clothes shall be appropriate to age, gender, and individual needs.

(b) Daily routines of children shall provide for appropriate personal care, hygiene, and grooming commensurate with age, gender, and cultural heritage. All necessary toiletry items and supplies, such as soap, shampoo, hair brushes, tooth brushes and paste, deodorant, and bath towels, shall be provided.

(c) Children shall not be held solely responsible for the accomplishments of any work activity of the institution such as food preparation, laundering, housekeeping, or facility maintenance. Children shall not be considered substitutes for employed staff.

(d) Children shall not be used for the purposes of soliciting funds for the institution, nor shall children be used in connection with any advertisement or publicity without the consent of the child and the parent(s) or guardian(s).

(e) Children shall be permitted to participate in religious and cultural activities in accordance with their cultural and ethnic heritage.

Statutory Authority: O.C.G.A. Secs. 20-2-690.1, 49-5-8, 49-5-12.

290-2-5-.13 ~~Foster Home Care Reserved.~~

~~(1) An institution shall not engage in temporary placement activities in Georgia unless licensed as a child caring institution and approved by the department to provide care and room, board and watchful oversight in foster homes.~~

~~(2) Foster care shall be considered only after it has been established that it is necessary for the physical and/or emotional well-being of the child.~~

~~(3) No more than 6 children under the age of 19 may reside in a foster home unless it is an intact sibling group and it is in the best interests of each of the children to be placed in the same foster home.~~

~~(4) Orientation Prior to Foster Care Application. The Agency shall provide orientation information in person or in written form to prospective foster parent(s) to assist them in making an informed decision about applying to become a foster parent. The format of the orientation must be documented in the applicant's file. The orientation information must include at least the following:~~

~~(a) The Agency's purpose and a listing of services provided;~~

~~(b) A description of the approval process for foster parenting;~~

~~(c) The minimum requirements for foster parenting including the limits to the number of children in the home;~~

~~(d) The roles and responsibilities of foster parent(s);~~

~~(e) A description of children served by the Agency;~~

~~(f) Support services available for foster parent(s);~~

~~(g) General information regarding financial reimbursement for expenses in foster care; and~~

~~(h) Policies and procedures regarding appropriate behavior management and emergency safety interventions.~~

~~(5) Training for Prospective Foster Parent(s). Once an application to become a foster parent has been submitted, and prior to the approval of an applicant for placement of a child in foster care, the agency shall provide and document training for the applicant in at least the following topics:~~

~~(a) The Agency's grievance policies and procedures;~~

~~(b) The annual training requirements for foster parent(s), including the requirement of at least fifteen (15) hours of training relevant to the type of child placed or to be placed in the foster home if the child is more than 12 months old. For parent(s) providing foster care for children under 12 months of age, the foster parent shall have at least eight (8) hours of training;~~

~~(c) The Agency's policies and procedures for behavior management techniques and emergency safety interventions for children in foster care;~~

~~(d) Child abuse recognition, reporting, and investigation procedures;~~

~~(e) Characteristics of children served and their developmental needs, including special needs when applicable;~~

~~(f) The Agency's policies and procedures for handling medical emergencies (conditions or situations which threaten life, limb, or continued functioning), and managing use of medications by children in care.~~

~~(6) Minimum Requirements for Prospective Foster Families. Home Study. The Agency shall make a thorough evaluation of each prospective foster family and document this evaluation in a foster home study report which shall be updated as changes in the required home study information occur and include at least the following:~~

~~1. The names of family members, the family address and telephone number, drivers' license numbers, and proof of automobile insurance as applicable;~~

~~2. The motivation for foster parenting, including but not limited to attitude toward childlessness;~~

~~3. A description of family members, including:~~

~~(i) Date and place of birth;~~

~~(ii) Physical description;~~

~~(iii) Family background and history;~~

~~(iv) Current relationships with immediate and extended family members;~~

~~(v) Education;~~

~~(vi) Social involvements;~~

~~(vii) Personal characteristics:~~

~~(l) Personality;~~

~~(II) Interests and hobbies; and~~

~~(III) Emotional stability.~~

~~4. Evaluation of marriages and family life:~~

~~(i) Verified date and place of marriage, if applicable;~~

~~(ii) Assessment of marital relationship;~~

~~(iii) Family interaction patterns; and~~

~~(iv) Previous marriages.~~

~~5. Evaluation of parenting practices:~~

~~(i) Description of parenting knowledge, attitudes and skills;~~

~~(ii) Current behavior management practices; and~~

~~(iii) Current child-rearing practices.~~

~~6. Physical and mental health:~~

~~(i) Health history and condition of family members;~~

~~(ii) Documentation of a physical examination of the foster parent applicants completed by a licensed physician, physician's assistant, or a registered nurse with advanced training working under the direction of a physician, or the public health department, within 12 months prior to the completion of the home study;~~

~~(iii) A statement from a licensed physician, physician's assistant, or public health department regarding the general health status of other members of the prospective adoptive family, obtained within the 12 months prior to the completion of the home study;~~

~~(iv) Evaluation of emotional and mental health status of each member of the prospective foster family; and~~

~~(v) Screening for tuberculosis and venereal disease for prospective foster parent(s) and children 16 years of age and older living in the prospective foster home.~~

~~7. Understanding of and adjustment to foster parenting:~~

~~(i) Understanding of the role of a foster parent and the issues in caring for foster children;~~

~~(ii) Foster family's attitude toward the parent(s) of the foster children including parental visits in their home;~~

~~(iii) Expectations of the foster child, including intellectual and physical achievement;~~

~~(iv) Anticipated adjustment of each foster family member to a foster child;~~

~~(v) Willingness to cooperate with the placement agency; and~~

~~(vi) Support network in place for the foster family, including support systems for single parent families, if applicable.~~

~~8. Finances and occupations of family members:~~

~~(i) Employment history, including whether the home is a registered family day care home or operating any other business or service out of the home that might have an impact on health and safety of the children in care;~~

~~(ii) Financial stability of the family; and~~

~~(iii) Possible financial impact of the addition of a foster child to the home.~~

~~9. A description of the home and community:~~

~~(i) Description of the neighborhood;~~

~~(ii) Physical standards of the home, including space, and water supply and sewage disposal systems which, if other than public systems, have been approved by appropriate authorities;~~

~~(iii) A statement to verify that any domestic pets owned or residing with the family have been inoculated against rabies as required by law;~~

~~(iv) A statement verifying that all firearms owned and in the home are locked away from children;~~

~~(v) A statement verifying that if a swimming pool is present at the home, it is fenced with a locked gate to prevent unsupervised access and that it meets all applicable community ordinances;~~

~~(vi) A statement that smoke alarms are present and functioning on each level in the home;~~

~~(vii) Verification that gas heaters are vented to avoid fire and health hazards, with any unvented fuel-fired heaters equipped with oxygen depletion safety shut-off systems; and~~

~~(viii) Assessment of community resources, including accessibility of schools, religious institutions, recreation, and medical facilities.~~

~~10. Religion;~~

~~11. Results of the criminal history background check for family members as required by Georgia law;~~

~~12. Pre-service training the prospective foster parent and/or family may have received;~~

~~13. A minimum of three (3) character references:~~

~~(i) At least one reference shall be from an extended family member not residing with the prospective foster family, and~~

~~(ii) If the prospective foster parent has either served previously as a foster parent for another agency, and/or been employed within the past five (5) years in a job involving the care of children, at least one reference must be from the former agency or employer;~~

~~14. A description of the type of child desired by the prospective foster family;~~

~~15. The date the study is completed and the name and signature of the person completing the study.~~

~~(i) Notification of Approval. Potential foster parent(s) shall be notified in writing as to whether or not their application has been approved.~~

~~(ii) Location of Foster Homes. Foster homes used by the Agency shall be located within a reasonable travel distance from the Agency so as to be accessible for regular visits by family and Agency staff.~~

~~(7) Services Prior to Foster Care Placement.~~

~~(a) The selection of a foster home for a particular child shall be based on an assessment of the child's total needs and how well a particular home can meet the child's needs.~~

~~(b) Children of the same family shall be kept together when possible unless it has been determined through casework services that this is not desirable.~~

~~(c) Placement considerations shall include the potential for children's participation in religious and cultural activities in accordance with their cultural ethnic heritage.~~

~~(d) The Agency shall discuss the prospective foster placement with the foster family and shall prepare the foster family for the placement of a particular child by anticipating the adjustments and problems that may arise during placement and any specialized services to be provided. This discussion shall be documented in the case record.~~

~~(e) Pre-placement activities between child and foster family shall be documented in the case record of the child and family.~~

~~(f) Complete written placement agreement(s) shall be developed with the involvement of the child, the foster parent(s), the parent(s) or guardian(s), and the placing agency representative and signed by all adult parties; such agreement(s) shall include the following:~~

~~1. Written authorization to care for the child;~~

~~2. Written authorization to obtain medical care for the child;~~

~~(g) Home visits shall be conducted by the Agency at least monthly in order to verify that the foster parent(s) are delivering care in a safe and healthy environment to the children, in accordance with these rules and regulations and agency policies and procedures. Such visits shall include observation of the foster child with at least one of the foster parent(s).~~

~~(h) The Agency shall provide an annual evaluation of the strengths and needs of the foster family and assessment of the best way to maximize the foster care experience for the foster family and the children placed with them. This evaluation shall be shared with the foster family as evidenced by the signature of the foster parent(s) on the evaluation. Documentation of supervision of the placement by the agency shall include:~~

~~(i) Adjustment of the child to the foster family and vice versa;~~

~~(ii) Progress made on treatment plan goals;~~

~~(iii) Any new problems that have arisen and the actions taken toward a solution of those problems;~~

~~(iv) Contacts and issues with other resources serving the child;~~

~~(v) Agency updates reassessing the appropriateness of the foster care placement whenever a significant change occurs in the home, to ensure that care continues to be delivered in a safe and healthy environment in accordance with these rules and regulations and agency policies and procedures.~~

~~(vi) Documentation that the foster parent(s) have received the required clock hours of training annually following the initial foster placement, with the training being relevant to the type(s) of children placed in the foster home.~~

~~(10) Maintenance of Foster Care Records.~~

~~(a) The Agency shall maintain separate records for each foster home. The record shall be started at the time of application and shall be kept current.~~

~~(b) The foster home record shall contain:~~

~~1. The application;~~

~~2. Home study;~~

~~3. Medical reports for each member of the foster family;~~

~~4. Summary narrative containing the dates as well as the content material from the caseworker's contacts;~~

~~5. References;~~

~~6. The annual evaluations of the foster home, family, and placements;~~

~~7. Documentation of required annual training hours per .13(5)(b);~~

~~8. Placement history of the foster home, children placed, date(s) admitted, date(s) discharged and reason for discharge;~~

~~9. Documentation of satisfactory criminal history background checks in accordance with Georgia law.~~

~~10. Phone numbers of foster parent(s) including day, cell & evening phone numbers and the days of the week and times of day the foster parent is likely to be accessible at the foster home.~~

~~11. Foster children currently in the foster home including the child's name & county of custody.~~

~~(c) Foster home records shall be maintained for at least 3 years following the Agency's last placement in said foster home.~~

~~(d) The Agency shall maintain separate records for each child placed in foster care. The record for each child shall include:~~

~~1. Name, sex, race, birth date and birthplace of child;~~

~~2. Name, address, telephone number and marital status of parent or guardian of the child;~~

~~3. Name, address, telephone number of the foster parent with whom the child is currently placed;~~

~~4. Legal documents including verified birth record, court status, agreements, consents, etc.;~~

~~5. Social history of the family and parent background;~~

~~6. Medical history and cumulative health record, psychological and psychiatric reports;~~

~~7. Education records and reports;~~

~~8. Plan of care pursuant to these rules;~~

~~9. Summary of each 6 month case review conference which reflects the contacts with and the status of all family members in relation to the placement plan as well as the achievements or changes in the goals or services;~~

~~10. Summary of child's contacts with the family, the quality of the relationships and the child's progress in coping;~~

~~(e) Upon termination of placement of the child, the following shall be placed in the record of the child and the foster home:~~

~~1. Date of termination, reason for termination, the name, telephone number, address, and relationship of the person or Agency assuming responsibility for the child.~~

~~2. A termination summary describing the services provided during care, growth and accomplishments, and assessed needs which remain to be met with the service possibilities which might meet those needs.~~

~~3. Aftercare plans that determine the responsibility for follow through.~~

~~(f) Family/child records shall be maintained for at least 3 years following completion of service.~~

~~(11) Agency Records and Reports.~~

~~(a) Each Agency shall maintain records and submit on a timely basis reports required by the Department.~~

~~(b) Each Agency shall maintain a permanent listing with identifying information of all children accepted for service or placement.~~

~~(c) Records shall be confidential and protected from unauthorized use, fire, damage or theft. Records and files shall be kept current and be available for review by the Department.~~

~~(d) The Agency shall submit on a timely basis such financial, statistical reports, and Board minutes and other information as may be required by the Department.~~

~~Statutory Authority: O.C.G.A. Secs. 49-5-8, 49-5-12.~~

Reserved

290-2-5-.14 Behavior Management and Emergency Safety Interventions**(1) Behavior Management.**

(a) Every institution shall develop and implement policies and procedures on behavior management. Such policies and procedures shall set forth the types of children served and room, board and watchful oversight capacities in accordance with its program purpose, the anticipated behavioral problems of the children, and acceptable methods of managing such problems.

(b) Such Behavior management policies and procedures shall incorporate the following minimum requirements:

1. Behavior management principles and techniques shall be used in accordance with the individual service plan and written policies and procedures governing service expectations, service plan goals, safety, security, and these rules and regulations.
2. Behavior management shall be limited to the least restrictive appropriate method, as described in the child's service plan pursuant to Rule .10(b)6. and in accordance with the prohibitions as specified in these rules and regulations.

(c) The following forms of behavior management shall not be used:

1. Assignment of excessive or unreasonable work tasks;
2. Denial of meals and hydration;
3. Denial of sleep;
4. Denial of shelter, clothing, or essential personal needs;
5. Denial of essential program services;
6. Verbal abuse, ridicule, or humiliation;
7. Chemical restraint, manual holds, and seclusion used as a means of coercion, discipline, convenience, or retaliation;
8. Denial of communication and visits unless restricted in accordance with Rule .10(b)7.;
9. Corporal punishment; and

10. Seclusion not used appropriately as an emergency safety intervention.

(d) Residents shall not be permitted to participate in the behavior management of other residents or to discipline other residents, except as part of an organized therapeutic self-governing program in accordance with accepted standards of practice that is conducted in accordance with written policy and is supervised directly by designated staff.

(e) Institutions shall submit to the Department electronically or by facsimile a report within 24 hours whenever an unusual incident occurs regarding behavior management, including any injury requiring medical treatment **beyond first aid** that is received by a child as a result of any behavior management.

(f) All forms of behavior management used by direct care staff shall also be documented in case records in order to ensure that such records reflect behavior management problems.

(2) Emergency Safety Interventions.

(a) Emergency safety interventions may be used only by staff trained in the proper use of such interventions when a child exhibits a dangerous behavior reasonably expected to lead to immediate physical harm to the child or others and less restrictive means of dealing with the injurious behavior have not proven successful or may subject the child or others to greater risk of injury.

(b) Emergency safety interventions shall not include the use of any physical or chemical restraint or manual hold that would potentially impair the child's ability to breathe or has been determined to be inappropriate for use on a particular child due to a documented medical or behavioral condition.

(c) The institution shall have **and comply with** written policies and procedures for the use of emergency safety interventions, a copy of which shall be provided to and discussed with each child and the child's parents and/or legal guardians prior to or at the time of admission. Emergency safety interventions policies and procedures shall include:

1. Provisions for the documentation of assessments (which will include social, emotional, behavioral and room, board and watchful oversight needs) at admission and at each annual exam by the child's physician, a physician's assistant, **a nurse practitioner** or a registered nurse with advanced training working under the direction of a physician, or a public health clinic that states there are no medical issues that would be incompatible with the appropriate use of emergency safety interventions on that child. Such assessments and documentation must be re-evaluated following any significant change in the child's medical condition; and

2. Provisions for the documentation of each use of an emergency safety intervention including:

- (i)** Date and description of the precipitating incident;
- (ii)** Description of the de-escalation techniques used prior to the emergency safety intervention, if applicable;
- (iii)** Environmental considerations;
- (iv)** Names of staff participating in the emergency safety intervention;
- (v)** Any witnesses to the precipitating incident and subsequent intervention;
- (vi)** Exact emergency safety intervention used;
- (vii)** Documentation of the 15 minute interval visual monitoring of a child in seclusion;
- (viii)** Beginning and ending time of the intervention;
- (ix)** Outcome of the intervention;
- (x)** Detailed description of any injury arising from the incident or intervention; and
- (xi)** Summary of any medical care provided.

3. Provisions for prohibiting manual hold use by any employee not trained in prevention and use of emergency safety interventions.

(d) Emergency safety interventions or the use of physical or chemical restraints may be used to prevent runaways only when the child presents an imminent threat of physical harm to self or others, or as specified in the individual service and room, board and watchful oversight plan.

(e) Facility staff shall be aware of each child's medical and behavioral conditions, as evidenced by written acknowledgement of such awareness, to ensure that the emergency safety intervention that is utilized does not pose any undue danger to the health and well-being of the child.

(f) Residents shall not be allowed to participate in the emergency safety intervention of another resident.

(g) Immediately following the conclusion of the emergency safety intervention and hourly thereafter for a period of at least four hours where the child is with a staff member, the child's behavior will be assessed, monitored, and documented to ensure that the child does not appear to be exhibiting symptoms that would be associated with an injury.

(h) At a minimum, the emergency safety intervention program that is utilized shall include the following:

1. Techniques for de-escalating problem behavior including child and staff debriefings;
2. Appropriate use of emergency safety interventions;
3. Recognizing aggressive behavior that may be related to a medical condition;
4. Awareness of physiological impact of a restraint on the child;
5. Recognizing signs and symptoms of positional and compression asphyxia and restraint associated cardiac arrest;
6. Instructions as to how to monitor the breathing, verbal responsiveness, and motor control of a child who is the subject of an emergency safety intervention;
7. Appropriate self-protection techniques;
8. Policies and procedures relating to using manual holds, including the prohibition of any technique that would potentially impair a child's ability to breathe;
9. Agency policies and reporting requirements;
10. Alternatives to restraint;
11. Avoiding power struggles;
12. Escape and evasion techniques;
13. Time limits for the use of restraint and seclusion;
14. Process for obtaining approval for continual restraints and seclusion;
15. Procedures to address problematic restraints;

16. Documentation;
17. Investigation of injuries and complaints;
18. Monitoring physical signs of distress and obtaining medical assistance; and
19. Legal issues.

(i) Emergency safety intervention training shall be in addition to the annual training required in Rule .08(6)(d)2. and shall be documented in the staff member's personnel record.

(j) All actions taken that involve utilizing an emergency safety intervention shall be recorded in the child's case record showing the cause for the emergency safety intervention, the emergency safety intervention used, and, if needed, approval by the director, the staff member in charge of casework services, and the external physician and/or MRO provider who has responsibility for the diagnosis and treatment of the child's behavior.

(k) Institutions shall submit to the Department electronically or by facsimile a report, in a format acceptable to the Department, within 24 hours whenever an unusual incident occurs regarding emergency safety interventions, including:

1. Any injury requiring medical treatment ~~beyond first aid~~ that is received by a child as a result of any emergency safety intervention;
2. Whenever an institution utilizes emergency safety interventions three or more times in one month with the same child and/or whenever the institution utilizes more than 10 emergency safety interventions for all children in care within a 30-day period.

(l) Institutions shall submit a written report to the program's director on the use of any emergency safety intervention immediately after the conclusion of the intervention and shall further notify the child's parents or legal guardians regarding the use of the intervention. A copy of such report shall be maintained in the child's file.

(m) At least once per quarter, the institution, utilizing a master agency restraint log and the child's case record, shall review the use of all emergency safety interventions for each child and staff member, including the type of intervention used and the length of time of each use, to determine whether there was an appropriate basis for the intervention, whether the use of the emergency safety intervention was warranted, whether any alternatives were considered or employed, the effectiveness of the intervention or alternative, and the need for

additional training. Written documentation of all such reviews shall be maintained. Where the institution identifies opportunities for improvement as a result of such reviews or otherwise, the institution shall implement these changes through an effective quality improvement plan.

(n) No later than January 1, 2007 and ongoing thereafter, all direct care staff who may be involved in the use of emergency safety interventions, shall have evidence of having satisfactorily completed a nationally recognized training program for emergency safety interventions to protect residents and others from injury, which has been approved by the Department and taught by an appropriately certified trainer in such program.

(o) Manual Holds.

1. Emergency safety interventions utilizing manual holds require at least one trained staff member to carry out the hold. Emergency safety interventions utilizing prone restraints require at least two trained staff members to carry out the hold.
2. Emergency safety interventions shall not include the use of any chemical or physical restraint or manual hold that would potentially impair the child's ability to breathe or has been determined to be inappropriate for use on a particular child due to a documented medical or behavioral condition.
3. When a manual hold is used upon any child whose primary mode of communication is sign language, the child shall be permitted to have his or her hands free from restraint for brief periods during the intervention, except when such freedom may result in physical harm to the child or others.
4. If the use of a manual hold exceeds 15 consecutive minutes, the facility director or his or her designee, who possesses at least the qualifications of the director and has been fully trained in the facility's emergency safety intervention plan, shall be contacted by a two-way communications device or in person and determine that the continuation of the manual hold is appropriate under the circumstances. Documentation of any consultations and outcomes shall be maintained for each application of a manual hold that exceeds 15 minutes. Manual holds shall not be permitted to continue if the restraint is determined to pose an undue risk to the child's health given the child's physical or mental condition.
5. A manual hold may not continue for more than 30 minutes at any one time without the consultation as specified in subparagraph (2) of this subparagraph, and under no circumstances may a manual hold be used for more than one hour total within a 24-hour period.

6. If the use of a manual hold on a child reaches a total of one hour within a 24-hour period, the staff shall reconsider alternative strategies, document same, and consider notifying the authorities or transporting the child to a hospital or other appropriate facility for evaluation.

7. The child's breathing, verbal responsiveness, and motor control shall be continuously monitored during any manual hold. Written summaries of the monitoring by a trained staff member not currently directly involved in the manual hold shall be recorded every 15 minutes during the duration of the restraint. If only one trained staff member is involved in the restraint and no other staff member is available, written summaries of the monitoring of the manual hold shall be recorded as soon as is practicable, but no later than one hour after the conclusion of the restraint.

(p) Seclusion.

1. If used, seclusion procedures in excess of thirty (30) minutes must be approved by the director or designee. No child shall be placed in a seclusion room in excess of one (1) hour within any twenty-four (24) hour period without obtaining authorization for continuing such seclusion from the child's external physician and/or MRO provider and documenting such authorization in the child's record.

2. A seclusion room shall only be used if a child is in danger of harming himself or herself or others.

3. A child placed in a seclusion room shall be visually monitored at least every fifteen (15) minutes.

4. A room used for the purposes of seclusion must meet the following criteria:

(i) The room shall be constructed and used in such ways that the risk of harm to the child is minimized;

(ii) The room shall be equipped with a viewing window on the door so that staff can monitor the child;

(iii) The room shall be lighted and well-ventilated;

(iv) The room shall be a minimum fifty (50) square feet in area; and

(v) The room must be free of any item that may be used by the child to cause physical harm to himself/herself or others.

- 5.** No more than one child shall be placed in the seclusion room at a time.
- 6.** A seclusion room monitoring log shall be maintained and used to record the following information:
 - (i)** Name of the secluded child;
 - (ii)** Reason for child's seclusion;
 - (iii)** Time of child's placement in the seclusion room;
 - (iv)** Name and signature of the staff member that conducted visual monitoring;
 - (v)** Signed observation notes; and
 - (vi)** Time of the child's removal from the seclusion room.

Statutory Authority: O.C.G.A. Secs. 49-5-8, 49-5-12.

290-2-5-.17 Food Service

(1) An institution shall provide each child with meals and snacks of serving sizes dependent upon the age of the child based upon nutrition guidelines as established by the United States Department of Agriculture Child Care Food Program.

(a) Meals and snacks shall be varied daily.

(b) Additional serving of food shall be offered to children over and above the required daily minimum if not contraindicated by modified diets.

(c) Modified diets based on medical or religious reasons shall be served to children as needed. Modifications due to medical reasons shall be based on the written order of a physician and the order shall be placed in the child's case record.

(2) ~~Food services of a~~An institution licensed to care for thirteen or more children ~~are subject to the provisions of the Rules and Regulations of the Department of Human Resources for Food Service, Chapter 290-5-14, if the institution provides food services in a centralized kitchen area. Such an institution~~ must obtain a valid food service permit and remain in compliance with Department of Public Health food service requirements. Institutions licensed to care for twelve or less children, ~~or are~~ not required to obtain a food ~~S~~service permit but shall meet the following requirements:

(a) Food shall be stored, prepared, and served in a safe and sanitary manner commensurate with generally accepted and recognized food service standards.

(b) Each institution shall have designated space for food preparation and storage areas separate from rooms used by children.

(c) All perishable and potentially hazardous foods shall be refrigerated at a temperature of forty- five (45) degrees Fahrenheit or below and served promptly after cooking. Freezer temperature shall be maintained at zero (0) degrees Fahrenheit or below.

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

(e) All raw fruits and vegetables shall be washed thoroughly before being cooked or served. Food not subject to further washing or cooking before serving shall be stored in such a manner as to be protected against contamination.

(f) Containers for food storage other than the original containers or packages in which the food was obtained shall be impervious and nonabsorbent and have tight fitting lids or covers.

- (g)** Eggs, pork, pork products, poultry, and fish, shall be thoroughly cooked.
- (h)** Meats, poultry, fish, dairy products, bakery products and processed foods shall have been inspected under an official regulatory program.
- (i)** Food service equipment and preparation areas shall be kept clean and free of accumulations of dust, dirt, food particles and grease deposits.
- (j)** Non-disposable dishes, glasses and silverware shall be properly cleaned by pre-rinsing and scraping, washing, sanitizing and drying.

Statutory Authority: O.C.G.A. Secs. ~~206~~-2-370 *et seq*, 49-5-8, 49-5-12.

290-2-5-.20 Emergency Orders

(1) In accordance with O.C.G.A. 49-5-90 *et seq.*, notwithstanding other remedies available to the department which may be pursued at the same time, the commissioner or his/her designee may issue emergency orders. Such orders may include the following:

(a) Emergency relocation of residents when it is determined that the residents are subject to an imminent and substantial danger.

(b) Emergency placement of a monitor or monitors in an institution upon a finding that the department's rules and regulations are being violated which threaten the health, safety, or welfare of children in care and when one or more of the following conditions are present:

1. The institution is operating without a license; or
2. The department has denied the application for the license or has initiated action to revoke the existing license; or
3. Children are suspected of being subjected to injury or life-threatening situations or the health or safety of a child or children is in danger.

(c) Emergency prohibition of admissions to an institution when residents are in imminent and substantial danger and the institution has failed to correct a violation of rules and regulations within a reasonable time, as specified by the department. Such violation giving rise to the prohibition could jeopardize the health and safety of the residents if allowed to remain uncorrected or is a repeat violation over a twelve month period.

(2) An emergency order shall contain the following:

- (a)** The scope of the order;
- (b)** The reasons for the issuance of the order;
- (c)** The effective date of the order if other than the date the order is issued;
- (d)** The person to whom questions regarding the order are to be addressed; and
- (e)** Notice of the right to a preliminary hearing.

(3) Unless otherwise provided in the order, an emergency order shall become effective upon its service to the owner, the director, or any other agent, employee, or person in charge of the institution at the time of the service of the order.

(4) Prior to issuing an emergency order, the commissioner or his/her designee may consult with persons knowledgeable in the field of child care and a representative of the institution to determine if there is a potential for greater adverse effects on children in care as a result of the emergency order.

Statutory Authority: O.C.G.A. Secs. ~~31-2-6~~, 49-5-8, 49-5-12.

290-2-5-.21 Disaster Preparedness

The facility shall prepare for potential emergency situations that may affect the care of children by ~~the development of~~ developing and complying with an effective disaster preparedness plan that identifies emergency situations and outlines an appropriate course of action. The plan must be reviewed annually and revised annually, as appropriate, including any related written agreements.

(a) The disaster preparedness plan shall include at a minimum plans for the following emergency situations:

1. Local and widespread weather emergencies or natural disasters, such as tornadoes, hurricanes, earthquakes, ice or snow storms, or floods;
2. Manmade disasters such as acts of terrorism and hazardous materials spills;
3. Unanticipated interruption of service of utilities, including water, gas, or electricity, either within the facility or within a local or widespread area;
4. Loss of heat or air conditioning;
5. Fire, explosion, or other physical damage to the facility; and
6. Pandemics, infectious disease outbreaks and illnesses or other situations where the community's need for services may exceeds the availability of beds and services regularly offered by the facility.

(b) There shall be plans to ensure sufficient staffing and supplies to provide room, board and watchful oversight during the emergency situation.

(c) There shall be plans for the emergency transport or relocation of all the facility children, should it be necessary, in vehicles appropriate to the children's needs. Additionally there shall be written agreements with any facilities which have agreed to receive the facility's children in these situations.

(d) The facility shall document participation of all areas of the facility in quarterly fire drills.

(e) In addition to fire drills, the facility shall have its staff rehearse portions of the disaster preparedness plan, with a minimum of two rehearsals each calendar year either in response to an emergency or through planned drills, with coordination of the drills with the local Emergency Management Agency (EMA) whenever possible.

(f) The plan shall include the notification to the department of the emergency situation as required by these rules and notification of the lawful custodians of the children's whereabouts and condition.

(g) The facility shall provide a copy of the internal disaster preparedness plan to the local Emergency Management Agency (EMA) and shall include the local EMA in development of the facility's plan for the management of external disasters.

(h) The facility's disaster preparedness plan shall also include the following additional items in efforts to limit and contain health hazards to children, staff, and the general public due to pandemic or infectious disease outbreaks:

1. Contact information for sources of public health information and guidance (e.g. Centers for Disease Control (CDC), state/local public health authorities),
2. Name and contact information of facility staff designated to provide updates to the Department, upon request, regarding the status of the outbreak or illness,
3. Process in place for providing notice of the outbreak or illness and any other necessary updates to parents/guardians,
4. Plan for immediate isolation of affected children and staff from unexposed children and staff,
5. Plan for minimizing the risk of exposure to unexposed children or staff, and
6. Plan for addressing business continuity and programmatic issues relevant to pandemic or infectious disease outbreaks.

(h)(i) The facility's disaster preparedness plan shall be made available to the department for inspection upon request.

(i)(i) The department may suspend any requirements of these rules and the enforcement of any rules where the Governor of the State of Georgia has declared a public health emergency.

Statutory Authority: O.C.G.A. Secs. ~~31-2-6~~, 49-5-8, 49-5-12, 49-5-90.

290-2-5-.22 Waivers and Variances

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

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

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

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

(2) The department may grant a variance or waiver to a rule when an institution demonstrates that the purpose of the underlying statute upon which the rule is based can be or has been achieved by other specific means and that strict application of the rule would create a substantial hardship. For purposes of this rule, a substantial hardship means a significant, unique, and demonstrable economic, technological, legal, or other type hardship which impairs the ability to continue to function as a child caring institution.

(3) Variance and waiver applications submitted to the department shall include, but are not limited to the following:

(a) The rule from which a variance or waiver is requested;

(b) The type of action requested (i.e. granting of waiver or variance);

(c) Specific facts detailing substantial hardship which would justify the variance or waiver;

(d) Alternative standards which the requestor agrees to meet with a showing that alternative standards will provide adequate protection for health, safety, and welfare; and

(e) The reason why a variance or waiver would serve the purpose of any underlying law.

(4) The institution must implement and comply with any terms and conditions established by the department in order to operate under any waiver or variance granted.

(5) Variances or waivers shall not be sought or authorized when the granting of a waiver or variance would be harmful to public health, safety, or welfare or contrary to state law provisions.

Statutory Authority: O.C.G.A. Secs. ~~31-2-4~~, ~~31-2-6~~, 50-13-9.1, 49-5-8, 49-5-12.

290-2-5-.23 Severability

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

Statutory Authority: O.C.G.A. Secs. ~~31-2-6~~, 49-5-8, 49-5-12.

290-2-5-.24 Repealed

Statutory Authority: O.C.G.A. Secs. ~~31-2-6~~, 49-5-8, 49-5-12