

**Testimony of the
Department of Health and Human Services
Maine Center for Disease Control and Prevention**

Before the Joint Standing Committee on Health and Human Services

Support with Amendments LD 1661

Resolve, Regarding Legislative Review of Portions of Chapter 33: Rule Relating to the
Licensing of Family Child Care Providers, a Major Substantive Rule of the Department of
Health and Human Services, Maine Center for Disease Control and Prevention

Sponsored by: Representative Hymanson of York.

Opposed LD 1748

An Act Regarding Rules Governing Family Child Care Provider Licensing

Sponsored by: Senator Millett of Cumberland.

Cosponsored by: Representative Pouliot of Augusta and Senators: Carson of Cumberland,
Diamond of Cumberland, Langley of Hancock, Maker of Washington, Representative:
Farnsworth of Portland, Gattine of Westbrook.

Neither for nor Against LD 1423

An Act to Amend Certain Laws Governing Child Care Providers

Sponsored by: Senator Libby of Androscoggin.

Neither for nor Against LD 1474

An Act to Reduce the Regulation of Child Care Facilities

Sponsored by: Representative Espling of New Gloucester.

Cosponsored by: Senator Brakey of Androscoggin and Representatives: Hanington of Lincoln,
Hawke of Boothbay Harbor, Nadeau of Winslow, Pickett of Dixfield, Sanderson of Chelsea,
Stearns of Guilford, Wadsworth of Hiram.

Hearing Date: January 17, 2018 at 1:30

Senator Brakey, Representative Hymanson, and Members of the Joint Standing Committee on Health and Human Services, I am Janet Whitten, Program Manager, of Children's Licensing and Investigation Services in the Maine Center for Disease Control and Prevention, Department of Health and Human Services (DHHS). **I am here today to speak in support of LD 1661 and also to present proposed amendments to LD 1661, *Resolve, Regarding Legislative Review of Portions of Chapter 33: Rule Relating to the Licensing of Family Child Care Providers, a Major Substantive Rule of the Department of Health and Human Services, Maine Center for Disease Control and Prevention.*** I would like to offer the following information for your consideration.

The intent of this rulemaking is to increase access and affordability to family child care across Maine, by clarifying health and safety licensing requirements, as required by statute 22 M.R.S.

§8302-A(2).

The revised rule simplifies and streamlines, but does not impact the minimum health and safety standards for children cared for by family child care providers. The revisions were made to this rule as part of a much larger strategic initiative to improve the economy and support Maine people to live healthy and productive lives. While the overall capacity to serve children in child care settings across the State has increased slightly over the past five years, 46,316 in 2013 and 47,342 currently in 2018, there has been a shift with increased capacity and enrolment in center based care and a decrease in the overall number of family child care providers. In 2013 there were a total of 2,084 child care providers Statewide, currently there are 1,853. There is a crisis for working and want to be working families who are simply unable to secure safe and licensed care for their children. There are areas of the state with significant waiting lists and other areas in which there is no availability for care.

I will review major changes made to the rule, in some areas explain the rationale for change, and hopefully clarify misperceptions regarding some of the changes. Global Changes include; 1.) Removal of redundant requirements contained in statute. For example, previous rule, *Section 6.3.5 Compliance with ADA. The provider must be in compliance with applicable provisions of the Americans with Disabilities Act of 1990 (ADA), as set forth in 28 C.F.R. Part 36, revised as of July 1, 2007.* The removal of rules that are statutorily required does not diminish the requirement of the licensee to comply; 2.) Clarified subjective language in the Rule. For example, *2.5.4 Any information reasonably related to the ability to provide safe and developmentally appropriate child care.* Subjective rules that could be interpreted even with the slightest variation by family child care providers and licensing staff across the State welcomes inconsistent adherence and enforcement of rule. 3.) Removed requirements that exceeded minimum health and safety standards. For example, previous rule, *Section 6.2.1 Visits. The provider must allow parents to visit and observe anytime during the hours of operation.* The removal of this rule does not preclude parental visitation. However, the Department no longer views this as a requirement in which the State licensing should regulate. Parents and family child care providers can and should enter into contractual agreements that outline aspects of care such as, parental visitation.

Specific changes include the following:

Section 1: Purpose and Definitions

- Added relevant definitions and clarified existing definitions.
- Removed definitions that were in statute or irrelevant to this new rule.

Section 2: Application and Licensing

- Changed the term “certificate” to “license”.
- Eliminated first-year “provisional license” category: all full licenses issued now have a term of two years.
- Simplified (and reduced in many areas) the requirement for providers to create and maintain policies for review by Department, parents and staff.
- Eliminated requirement for personal references as part of the license application process.

Section 4: Inspection and Investigations

- Clarified process for routine inspections and investigations of complaints.

- Added Informal Dispute Resolution process for licensees to contest Department inspection findings.
- Added the current practices of the Department regarding a collaborative plan of action when the Department finds violations during an inspection.

Section 5: Records

- Unified and streamlined all records requirements into one section, to increase providers' understanding of these requirements.

Section 6: Background checks

- Incorporated the statutory requirement for providers to use the Maine Background Check Center for background checks.
- Added a specific list of disqualifying offenses.
- Added an appeal process for instances where the disqualifying offense is drug related.

Section 7: Reporting

- Unified all reporting requirements under one section for ease of use.

Section 8: Provider-Child Ratios and Supervision

- Relaxed ratios by excluding children, over the age of three (3), of the licensee. The prior rule excluded children over the age of five (5).
- Changed age grouping to expand availability of infant care.
- Simplified table of numbers/ages of children and required staff to improve ease of use.
- Relaxed eyes-on supervision by allowing use of monitors.

Section 9: Training

- Clarified training requirements and matched with online availability.
- First aid/CPR training hours included in total training hours which reduced the overall number of training hours required. First aid/CPR is required of a new applicant and must be completed prior to issuance of a license.

Section 10: Child guidance, Management, Discipline

- Reframed children's rights into specific provider responsibilities without decreasing or removing regulations essential to maintaining the health, safety, and well-being of children.
- Clarified prohibited actions.
- Eliminated redundant statutory language.

Section 12: Health and medical

- Clarified requirements around exclusion of children due to illness and use of Standard Precautions.
- Specified contents of a complete first aid kit, as well as medication administration requirements.
- Combined previously scattered handwashing requirements into one section.

Section 13: Drinking Water and Wastewater

- Added requirement for first-draw lead testing, regardless of whether the provider home is served by a water district.
- Clarified agreement for bottle water procedures.

Section 14: Environment and safety

- Clarified subjective terms and standards.

- Clarified requirements for fencing from hazards in outdoor play areas by adding both a 48-inch height requirement for the fence, as well as a latching gate, to allow for a fire exit.
- Clarified requirements for shock-absorbing materials in play areas.

Section 15: Swimming and Wading

- Condensed, clarified and merged requirements from three pages and two sections into one section.
- Eliminated training requirement for lifeguard training for home swimming pools.

Section 16: Food and Kitchen Facilities

- Streamlined requirements to condense while maintaining health and safety requirements.

Section 17: Transportation

- Updated child care seat/seat belt requirements to reflect current Maine Department of Transportation statute.

Section 18: Infant and Toddler care

- Added allowed use of bassinets.
- Changed use of cloth diapers requirement from a requirement for a medical note to whenever the parent wants cloth diapers to reflect this update to Maine statute.
- Clarified safe sleep language.
- Removed redundant requirements repeated elsewhere in rule.

Section 19: Nighttime care

- Restructured for clarity.

Section 20: Enforcement

- Replaced complex range of sanctions with simpler progressive administrative procedure that describes more clearly the Department's process, which includes fines for licensees failing to return to compliance after many chances.
- Added a fine structure of \$100 per non-critical violation and \$250 per critical violation.
- Defined "critical violation" in the Definitions section and named which violations are critical throughout rule within this definition.

The revised rule increases transparency regarding the inspection, investigation and enforcement procedures, so that providers can more easily understand what will happen in the course of a license, or if violations occur. Not only are these changes designed to increase statewide access to, and availability of, family child care, these changes are intended to improve the ability of licensees to comply with this rule. In time, the more concise rule may even result in shorter licensing inspections which will benefit providers, children served, and Department resources.

Since the provisional adoption of the Rule, on September 20, 2017, the Department has received specific feedback regarding Section 14 (E) Outdoor play areas. After applying significant analysis to this section of the provisionally adopted rule, the Department offers the following recommendations for amendment. The proposed removal of evidence-based measurable dimensions could re-introduce variation and subjectivity in the rule when determining compliance with these requirements. However, the proposed changes do not diminish the intent

of the rule which is to prevent children from sustaining injuries in play areas. It is a provider's responsibility to keep children safe while in their care.

The requirement to complete transportation training found in Section 9(C)(8) should also be stated in Section 17(A) Transportation, and does not change the requirement of this rule.

In Section 8 Provider –Child Ratios and Supervision, the Department suggest removal of language regarding developmental stages as this is not further defined in rule and the intent of the rule is based on chronological ages of children in care. Also, inadvertently omitted from the ratio chart was the allowance to care for 8 children ages two –five and 2 children over five years old.

SECTION 14: ENVIRONMENT AND SAFETY

E. Outdoor play areas. The provider must have access to an outdoor play area with sufficient space for safe play for all children.

1. Children must have regular time for outdoor play, barring weather that presents a risk to children. Indoor physical activity will be substituted for outdoor time when weather does not permit outdoor time.
2. A variety of equipment suitable for the age and needs of all children in care shall be available. Climbers, swings and slides must be:
 - a. Firmly secured, clean, in proper repair and safely constructed; and
 - b. Located a sufficient distance to prevent injury at least six feet from any hard surfaces, including poles, fences, sheds and other play equipment.
3. Equipment that exceeds 36 inches in height, at climbable or standing surface shall have energy-absorbing materials beneath it. Energy absorbing materials include loose-fill materials, such as playground wood chips, pea gravel or sand. Rubber tiles and mats approved by the American Society for Testing and Materials may be used.
 - a. Concrete or asphalt must not be used.
 - b. If using loose-fill energy-absorbing materials, all climbers, swings, and slides must have a minimum of six inches of a sufficient amount of energy absorbing materials to prevent injury or more, based upon equipment height.

- c. Energy-absorbing material must extend at least six feet from beyond the equipment in all directions in order to prevent injury protect children in the event of a fall.
4. Outdoor play areas must provide shade.
5. The provider shall ensure sun safety for children by keeping infants younger than six months out of direct sunlight, limiting sun exposure when UV rays are strongest, wearing hats, or applying sunscreen (unless directed otherwise by the child's parent).
6. Where hazardous conditions exist in the outdoor play area, the children shall be protected from those conditions by fencing or other appropriate barriers.
 - a. Hazardous conditions include, but are not limited to, a street, a road, any natural body of water, an active railroad track or crossing, sharp inclines or embankments or any dangerous area.
 - b. Fencing should be a minimum of 48 inches high. Any fully enclosed area must have at least one gate, which is secured with a childproof latching mechanism.

SECTION 17: TRANSPORTATION

- A. **Driver requirements.** A person assigned by the provider to drive children enrolled in care must have the proper license to drive the class of motor vehicle being used. The person assigned must complete transportation of children training every two years.

SECTION 8: PROVIDER-CHILD RATIOS AND SUPERVISION

- A. **Provider-child ratios.** Provider-child ratios in this section are based on the chronological ages of the children in care, ~~and are not based on the developmental stages in the definition section.~~
 1. The licensee must assure supervision in the following ratios, based on the ages of the children served:

CHILD AGES	PROVIDER:CHILD RATIO		
All children six weeks to two years old	1 Provider : 4 Children	2 Providers : 8 Children	3 Providers : 12 Children
All children two to five years old	1 Provider : 8 Children	2 Providers : 12 Children	Not applicable
All children over five years old	1 Provider : 12 Children	Not applicable	Not applicable

Mixed ages	1 Provider : 3 children under two years old + 3 children two to five years old + 2 children over five years old- <u>OR 8 children two –five years old + 2 children over five years old.</u>	2 Providers : 6 children under two years old + 6 children over two years old.	3 Providers : 12 children (No more than 9 children may be under two years of age).
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Additionally, **I am here to testify in Opposition to LD 1748, *An Act Regarding Rules Governing Family Child Care Provider Licensing***. This bill proposes that the scope of Rules for Family Child Care Providers be made more stringent by requiring Rules that require higher staffing ratios and require Rules directly related to quality of care provided. This bill further proposes to change the Family Child Care Provider Rule to be entirely major substantive.

As stated previously in my testimony regarding LD1661, revisions to the Family Child Care Provider Licensing Rule were made with a goal of reducing the regulatory burden, clarifying minimum health and safety standards, reducing barriers, and increasing affordability and accessibility of child care for Maine families. Requiring more rigorous rules will result in increased utilization of Department resources, in that inspections will require more on site time and may result in more violations equating to increased licensing action and technical assistance provided by the Department. Requiring an increase in staff – to- child ratio for toddlers will result in lost revenue to the Family Child Care Provider who will require additional staff or need to care for fewer children. More stringent rules may result in fewer Family Child Care Providers which would decrease accessibility and negatively impact affordability for Maine families.

Lastly, **I would like to speak briefly neither for nor against LD 1423 *An Act to Amend Certain Laws Governing Child Care Providers* and LD 1474 *An Act to Reduce the Regulation of Child Care Facilities***. Both bills include proposals with wide ranging changes to laws governing child care facilities and family child care providers. With respect to the areas specifically related to licensing and reduced regulation, the Department has made great strides at achieving this objective through the revisions made to the Family Child Care Provider Licensing Rule. Revisions to the Rules for the Licensing of Child Care Facilities and Rules for the Licensing of Nursery School are on the horizon and will also address many of the proposed objectives.

Thank you for your time and attention. I would be happy to answer any questions you may have and to make myself available for questions at the work session.



Department of Health and Human Services
286 Water Street, 3rd Floor
11 State House Station
Augusta, ME 04333-0011
Tel: (207) 287-8016; Fax: (207) 287-9304
TTY Users: Dial 711 (Maine Relay)

January 3, 2018

Senator Eric Brakey, Co-Chair
Representative Patricia Hymanson, Co-Chair
Joint Standing Committee on Health and Human Services
100 State House Station
Augusta, Maine 04330-0100

Re: LD 1177 An Act to Create an Appeals Process for Child Care Providers

Dear Senator Brakey, Representative Hymanson, and members of the Joint Standing Committee on Health and Human Services,

This bill proposes the establishment of a Child Care Appeal Review Panel to review disputes related to compliance with licensing and certification, complaints and disputes of Child Care Facilities, Family Child Care Providers and Nursery Schools.

The Department believes the creation of this panel is unnecessary, administratively burdensome and presents a risk to the health and safety of children. Maine already maintains a robust system of laws and rules that govern the Department's regulatory actions for child care providers. These laws and rules can be changed through formal legislative or rulemaking processes.

The Department's responsibility is to protect the health and safety of children in child care. The Department relies on research, data, and commonly accepted best practices to do this. Child care providers must meet a number of safety requirements and standards to be licensed to provide care. The on-site inspection conducted with the provider present is a transparent process. The Licensing Specialist reviews the inspection report with the provider at the end of the inspection and violations found are directly linked to a rule citation(s) which is documented on the inspection report. Violations are often corrected immediately; others may require time to correct. If circumstances allow, a plan of action to correct violations is developed on-site with the provider before the Licensing Specialist leaves the site. After the visit, a supervisor reviews each inspection report for completeness, consistency and clarity. If a supervisor has questions or concerns with any violation, the inspection is reviewed with the Department's Compliance Advisory Panel which consists of legal and policy staff, Licensing Specialists, and the management team.

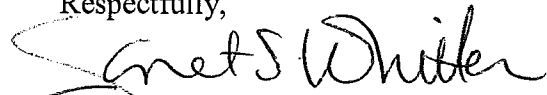
The Department recognizes that Government agencies such as, child care licensing are not immune from making mistakes and fully supports an appeals process for businesses and constituents that affords the opportunity for due process. LD 1177 is duplicative and unnecessary with respect to disputing the following: issuing of a conditional license; amendment or modification of a license; voiding of a conditional license; refusal to issue or renew a full license; refusal to issue a provisional license; and imposing a fine. A person aggrieved by the Department's decision to take any of the aforementioned licensing actions may request an administrative hearing to refute the basis of the Department's decision. As provided by the Maine Administrative Procedure Act, Title 5, Chapter 375. Administrative hearings regarding licensed and certified child care providers are held in conformity with the Department's Administrative Hearing Regulations. With respect to disputes regarding rule compliance

issues identified by a provider, the Department has recently established a process by which providers are afforded the opportunity for an Informal Dispute Resolution (IDR) conference. The process is outlined in Chapter 33: Family Child Care Provider Licensing Rule, Section 4(F). While not formally specified in Facility and Nursery School Rules, the Department has recently made the decision to afford IDR to such programs under the same criteria as outlined in the Family Child Care Provider Licensing Rule.

Lastly, allowing a review panel to have decision making authority regarding compliance with Child Care Rules will place children in danger and could negatively impact the livelihood of child care providers by loss of clientele and revenue. This bill proposes a process that is fundamentally inconsistent with the responsibility of the Department to ensure consistent application of rule to ensure the health and safety of Maine children.

Thank you for your consideration. Please do not hesitate to forward any questions that you may have.

Respectfully,

A handwritten signature in cursive script, appearing to read "Janet S. Whitten".

Janet S. Whitten

Program Manager

Children's Licensing & Investigation Services

SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT'S RESPONSE & LIST OF CHANGES MADE TO THE FINAL RULE

FAMILY CHILD CARE PROVIDERS LICENSING RULE

10-144 CODE OF MAINE RULES CHAPTER 33

The Department of Health and Human Services, Maine CDC, held a public hearing on May 8, 2017 on the proposed routine technical and major substantive changes to the Family Child Care Provider Licensing Rule, which resulted in a repeal of rule 10-148 C.M.R. Chapter 33, replaced by rule 10-144 C.M.R. Chapter 33. Additional written comments were accepted through May 18, 2017. Comments were received from the following people:

TABLE OF COMMENTERS

ID #	Name	Date	Representing	Format
1	Helen Weigelt	4/19/17	Helen's Childcare	Written
2	Karen Ashton	4/19/17	<i>Child care provider; no business name provided</i>	Written
3	Michelle Pinkham	4/19/17	KidQuarters	Written
4	Lois Lunn	4/19/17	<i>Child care provider; no business name provided</i>	Written
5	Deborah Arcaro	4/20/17 5/1/17	Country Fun Child Care	Written
6	June Holman	4/22/17	Hug-A-Bug Childcare Services	Written
7	Courtney Roy	4/26/17	Happy Feet Child Care	Written
8	Dewey Meteer	4/27/17	<i>No affiliation given</i>	Written
9	Tanya Cadman	5/1/17 5/5/17	<i>Child care provider; no business name provided</i>	Written
10	Diane Dubois	5/2/17	Busy Little Beavers Daycare	Written
11	Kim Gore	5/8/17	Fight Crime Invest In Kids	Oral and Written
12	Miriam Dodge	5/8/17	Kennebec Valley Community Action Program	Oral
13	Rita Furlow	5/8/17	Maine Children's Alliance	Oral and Written
14	Sonja Carvalho	5/8/17	Catholic Charities	Oral
15	Lori Bozeman	5/8/17	<i>Child care provider; no business name provided</i>	Oral
16	Tara Williams	5/8/17	Maine Association for the Education of Young Children	Oral and Written
17	Tammy Dwyer	5/8/17	Mammy's Childcare and Preschool	Written
18	Tammy Dwyer	5/8/17	Family Child Care Association of Maine (Chair)	Written
19	Amy Hill	5/9/17	<i>Child care provider; no business name provided</i>	Written
20	Courtney-Jo Arrants	5/16/17	Cribs to Crayons	Written
21	Linda Barr	5/17/17	Little Stars Childcare	Written
22	Kathryn Colfer	5/18/17	Kennebec Valley Community Action Program	Written
23	Lori Kaley	5/18/17	<i>No affiliation given</i>	Written
24	Donna Hayes	5/18/17	Maine Women's Lobby	Written
25	Nancy Cronin	5/18/17	Maine Developmental Disabilities Council	Written
26	June Holman	5/18/17	Hug-A-Bug @Riverside	Written
27	Rita Furlow	5/18/17	Maine Children's Alliance	Written
28	Deb Cook	5/18/17	<i>No affiliation given</i>	Written
29	Noreen Morin	5/18/17	<i>No affiliation given</i>	Written
30	Andrea Imrie	5/18/17	<i>No affiliation given</i>	Written

31	Diana Hill	5/18/17	<i>No affiliation given</i>	Written
32	Melanie Collins	5/18/17	<i>No affiliation given</i>	Written

The Department's response follows each comment and explains whether the suggestions, (if any), were followed by the Department or not. If the Department made no change in response to the comment, then the response will include an explanation of the reasons why no changes were made. The summary list of changes following these comments and responses identify all new changes resulting from either public comment or Assistant Attorney General review of the Rule for form and legality.

GENERAL COMMENTS:

Comment 1: Commenter 5 stated that the Department's focus on health and safety in these proposed changes is appropriate for the rule. Commenter 5 stated that the Department's changes to streamline and clarify minimum requirements is important. Commenter 5 further stated that the Maine Quality Rating and Improvement System is a better option to increase the quality of child care programs. Commenter 5 stated that the rule needs to be clear for both licensees and licensing specialists, so that the rule is applied to licensees equally.

Response: The Department thanks the Commenter. ♦

Comment 2: Commenters 5, 9, 16, 17, and 18 suggested that providers need a clear timeline for implementation of the rule changes and the Department should consider how to support providers during this change.

Response: The routine technical rule must be adopted within 120 days of the comment deadline of May 18, 2017. Therefore, the Department intends for this rule to be provisionally adopted and finally adopted by September 15, 2017. The Department intends to provisionally adopt the major substantive elements of the rule concurrent with the routine technical elements as emergency rulemaking, so that the entire rule becomes effective on the same date. The major substantive elements will be provisional until reviewed and approved by the Maine State Legislature during the second session of the 128th Legislature. The Department shared the proposed rule with all licensees and interested parties beginning April 19, 2017, to allow sufficient time to prepare for this implementation. The Department made no changes in response to this comment.

Comment 3: Commenters 25 and 27 stated that they do not support the Department's proposed changes that remove content that addressed the quality and lowered the health and safety standards of family child care programs.

Response: The Department is limited to enforcing health and safety standards that provide adequate protection of children. Maine statute at 22 M.R.S. §8302-A(2) states, "Rules for family child care providers must include, and are limited to, rules pertaining to the following:..." Although the statute specifically grants the Department authority to create rules around the quality of the program provided for child care facilities in 22 M.R.S. §8302-A(1)(F), that is not the case for rules relating to family child care providers. The Department provides a means for developing family child care quality by contracts with Maine Roads to Quality and the Maine Quality Rating System. The Department made no changes in response to this comment.

Comment 4: Commenter 14 asked whether small facilities fit in this rule or another rule. Commenter 14 asked if the proposed rule changes intend to exclude the children of both licensees from capacity on a small facility license (in cases where there are two licensees named on a small facility license). Commenter 14 asked if the baseline for the requirement for licensure (3 children) had changed. Commenter 14 asked if the child/provider ratios proposed in this rule will be the same for small facilities.

Response: The rule governing small facilities may be located at 10-148 C.M.R. Chapter 32, Rules for the Licensing of Child Care Facilities. This rule will have no impact on those governing small facilities. This family child care provider rule being adopted does not change the baseline for the requirement for licensure, which is established in statute at 22 M.R.S. §8301-A. The Department made no changes in response to this comment.

Comment 5: Commenter 17 stated that the Department's clarification of minimum health and safety requirements is an improvement to the rule. Commenter 17 stated that the Department's work to clarify inspection and investigation procedures is an improvement to the rule.

Response: The Department thanks the Commenter.

Comment 6: Commenter 18 stated that the Department should not require a family child care provider to provide care to a specific child or family.

Response: There is no content in the rule that would require a licensee to provide care for a specific child or family. The Department made no changes in response to this comment.

Comment 7: Commenters 16, 17, and 18 suggested that the Department use Child Care and Development Block Grant funds to support providers in meeting the requirements of this rule.

Response: Provider financial supports and the use of federal funding lies outside the purview of this rule. These funds already subsidize child care costs by funding background checks conducted by the Department, provider training, the Maine Quality Rating and Improvement System, child care licensing inspections, and State Fire Marshal's Office inspections. The Department made no changes in response to this comment.

Comment 8: Commenters 8 and 27 pointed out several places where the proposed rule does not align with the approved State Child Care Development Fund plan, where the State plan includes content from the existing rule.

Response: The Department has reviewed these comments and determined that the Department of Health and Human Services' Office of Child and Family Services will update the State plan to reflect the language of the rule when it becomes effective. The Department made no changes in response to this comment.

Comment 9: Commenter 7 suggested that the Department mail a receipt to each provider when an application is received.

Response: This comment lies outside the scope of these rule changes. The Department made no changes in response to this comment.

Comment 10: Commenters 8, 24, 25, and 27 stated that the Department should not have removed the section titled "Rights of Children" from the rule.

Response: The Department has reframed the previous section entitled “Rights of Children” to assure that this licensing rule focuses specifically on provider requirements. The Department finds that the outcome of this shift continues to assure that a provider’s compliance with the rule will assure that children’s rights are preserved. The Department made no changes in response to this comment.

Comment 11: Commenter 25 opposed the Department’s removal of the definition for “developmentally appropriate” and requested that it be replaced.

Response: The Department finds that this term appears only once, and as a term in common usage, no definition is necessary. The term is defined in the prior rule as “suitable for the level of ability, interest and learning style of each child in care”. The Department made no changes in response to this comment.

Comment 12: Commenter 25 stated that “The proposed rules remove the requirement of licensure. License standards are based on numerous criteria, including a body of evidence identifying best practice and in response to incidents in which providers have failed to adequately protect children. In the current rules certification is required for any person who provides child care on a regular basis for three to twelve children. Without requiring licensure or certification then there will be significantly less ability for families to be confident childcare is safe and developmentally appropriate and no method for the State to ensure minimal standards of quality childcare are upheld. This is a foundational piece that has been omitted in the new regulations. Without it, the integrity of our childcare system is to be in jeopardy. Please return the explicit requirement of certification or licensure into the rule.”

Response: The Department’s intent is to not repeat statutory requirements in rule. The specific requirement for family child care provider licensure is in statute at 22 M.R.S. §8301-A. In this rule, the Department changed the term “certificate” to “license” throughout. This change was made to reflect the Department’s functional equivalence in the inspection and enforcement practices between child care facilities licensed and family child care, formerly referred to as “certified”, and to acknowledge and respect the practical equivalence between the two types of care. The Department found that better consistency could be achieved by using the term “license” to apply to both child care facilities and family child care. The Department made no changes in response to this comment.

Comment 13: Commenter 25 stated that parent involvement and rights have been stripped out of the rule and stated that parents would lose the right to visit and observe the program without notice. Commenter 27 requested that the Department return current sections 6.2 on Parent Involvement and 6.3 on Admission to the final rule. Commenter 25 stated that parents would no longer be advised of high-risk activities or need to provide written permission for outings away from the program.

Response: The Department determined that parent involvement in child care, including visitation to the child care location, extends beyond the health and safety licensing requirements for a family child care provider. However, recognizing the right of parents to visit, the Department has added parental visitation to the list of items to be reviewed at the time of admission to the program in Section 5(C)(11). The Department still requires written permission for high-risk activities in Section 5(C)(19), which requires an annual update. The Department made no changes in response to this comment.

Comment 14: Commenter 25 stated that the explicit guidance for inclusion of children with disabilities, the requirement to make reasonable modification and accommodations, and the assurance that providers will adequately train their staff to provide quality childcare has been removed from the proposed rule.

Commenter 25 requests that the Department restore the language in the current rule at 6.3.5.1-2 and restore the Section 7.12 in its entirety.

Response: The Department is avoiding repeating statutory requirements in rule; therefore, any requirements for compliance with other State and federal laws is stated in rule at Section 2(A)(3) and includes the federal Americans with Disabilities Act. The Department made no changes in response to this comment.

Comment 15: Commenters 26, 28, 29, 30, 31, and 32 stated that the Department should not change the terminology used to refer to family child care providers from ‘certified’ to ‘licensed’ under the assumption that the requirements for child care facilities would then apply to family child care providers.

Response: In this rule, the Department changed the term “certificate” to “license” throughout. This change was made to reflect the Department’s functional equivalence in the inspection and enforcement practices between child care facilities licensed and family child care, formerly referred to as certified, and to acknowledge and respect the practical equivalence between the two types of care. The Department found that consistency could be achieved by using the term “license” to apply to both child care facilities and family child care. The Department revised the definitions of “license” and “licensee” in response to public comment, to provide better consistency and greater clarity of the term.

Comment 16: Commenter 27 stated that the Department appears to have removed a large number of rules that are statutory requirements, and urged the Department to maintain the previous rules that provide clarity around existing requirements in Maine law.

Response: The Department is avoiding repeating requirements of statutes in rule. The requirement to ensure compliance with all applicable statutes is stated in rule at Section 2(D)(6). The Department made no changes in response to this comment.

SECTION 1 Purpose and Definitions:

Comment 17: Commenter 27 stated that these definitions have a significant impact on Section 8. Staff-Child Ratios and Supervision, therefore, should be categorized as major substantive rules.

Response: The Department has reviewed this comment and determined that definitions only have functional meaning according to their use within the body of the rule; therefore, changes to this section are routine technical changes. All major substantive sections, as identified in 22 M.R.S. §8302-A, affected by changes to the definitions will be subjected to legislative review prior to final adoption. The Department made no changes in response to this comment.

Comment 18: Commenters 26, 28, 29, 30, 31, and 32 requested that the Department add wording to Section 1(B*)(6), to exclude actions taken with the intent to protect or prevent any individual from harm.

Response: The Department has reviewed this comment and determined that the examples given under “corporal punishment” all suppose the intention to cause harm. The Department made no changes in response to this comment.

* The outline of the rule was changed to make the “Purpose” section 1((A) and “Definitions Section 1(B). Comments included the original citations; but all summaries of such comments and responses within the Purpose and Definitions section of this document reflect the updated sequence and structure.

Comment 19: Commenters 26, 28, 29, 30, 31, and 32 questioned whether all of the rules cited in Section 1(B*)(7) are appropriately categorized as critical violations. Commenters 26, 28, 29, 30, 31, and 32 stated that all rules should be categorized, but none should require payment of a maximum fine of \$250. Commenters 26, 28, 29, 30, 31, and 32 suggested that the Department impose a fine on people who make repeated unsubstantiated claims that warrant an inspection or investigation. Commenters 26, 28, 29, 30, 31, and 32 suggest that revenue derived from fining be used to provide defenders for providers in an appeal process.

Response: The Department performed a thorough review of the critical violations and finds that failure to comply with any of these sections could result in serious harm to a child. Rather than affect a provider's license status, which requires the provider to notify all parents and potentially impact their current and prospective business, the Department determined that fining proves less punitive. The Department made no changes in response to this comment.

Comment 20: Commenter 30 opposed the Department's change to age ranges for infants and toddlers, because Commenter 30 finds that the change only happened as a result of parents' influence.

Response: The Department's interpretation of this comment is that Commenter 30 is opposed to the change in age related to the definition of a toddler. The Department finds that the change to age ranges are appropriate and reasonable. Therefore, The Department made no changes in response to this comment.

Comment 21: Commenter 5 stated that adding the term "licensee" at Section 1(B*)(13) reflects how most providers currently think of, and refer to, themselves.

Response: The Department thanks the Commenter.

Comment 22: Commenters 26, 28, 29, 30, 31, and 32 stated that licensed capacity in Section 1(B*)(15) should only apply to the building and not the entire premises.

Response: The Department has reviewed the rule and finds that it is appropriate to limit the capacity on the premises of the licensee. However, the Department clarified in this Section that only children in care for remuneration and children of the provider under the age of three are included in total capacity.

Comment 23: Commenters 26, 28, 29, 30, 31, and 32 stated that plan of action described in Section 1(B*)(18) must also include any information that the licensee wants to include in the legal record about the inspection. The Commenters stated that the licensee should have time to research the rule and to complete this process at a time when the licensee is not directly caring for children. Further, the Commenters stated that the licensee should never be forced to sign a document.

Response: The Department does not prohibit a licensee from adding comments to an inspection report. This rule (and the repealed rule) includes the requirement that the licensees be familiar with this rule prior to working as a family child care provider. Therefore, the request for time to research the content of the rule is not an appropriate request. In addition, the Department's staff can only complete a plan of action with a provider during its normal working hours. However, these staff will make every effort to be flexible within the time frame stated in the rule. The licensee is not required to sign the inspection report. The Department made no changes in response to this comment.

Comment 24: Commenters 26, 28, 29, 30, 31, and 32 stated that the definition of premises at Section 1(B*)(19) should not include parts of the licensee's real estate that are not used by children, and recommend that premises should mean all parts of the real estate that is used for care of children.

Response: The Department determined that this definition must include the entire premises, due to the requirements that the licensees act to protect children from harm from all dangers present on the physical property. The Department made no changes in response to this comment.

Comment 25: Commenter 5 stated that she agreed with the Department's proposed change at Section 1(B*)(21) to redefine staff who provide direct care as "providers" and stated that this change is clearer. Commenters 26, 28, 29, 30, 31, and 32 asked if the definition of "provider" at Section 1(B*)(21) includes volunteers.

Response: The Department thanks Commenter 5. In response to Commenters 26, 28, 29, 30, 31, and 32, the Department has removed the term "volunteer" from this rule based on further review. See comment 29 below.

Comment 26: Commenters 26, 28, 29, 30, 31, and 32 recommended that the definition of "swimming pool" at Section 1(B*)(25) be changed to read "a depth of more than 24 inches and a diameter of more than 48 inches".

Response: Based on this comment and further review of this definition, the Department made this suggested change.

Comment 27: Commenter 7 stated that the definition of "toddler" at Section 1(B*)(26) clarifies the age range of preschool children.

Response: The Department thanks the Commenter.

Comment 28: Commenters 26, 28, 29, 30, 31, and 32 stated that the definition of "toxic substance" at Section 1(B*)(27) is too broad.

Response: The Department reviewed this definition and finds it to be sufficiently specific. The Department made no changes in response to this comment.

Comment 29: Commenter 22 asked the Department to clarify the definition of "volunteer" at Section 1(B*)(28), in terms of staff/child ratio and stated that the use of volunteers under this rule is inconsistent with State of Maine Department of Labor regulations.

Response: The Department reviewed Department of Labor regulations. The Fair Labor Standards Act precludes the use of volunteers by for-profit private sector employers. The Department has removed all references to volunteers throughout the rule.

Comment 30: Commenters 26, 28, 29, 30, 31, and 32 requested that the waiver request described at Section 1(B*)(30) be completed within three business days. Commenters 26, 28, 29, 30, 31, and 32 also requested that an approved waiver be automatically submitted and reviewed, upon renewal of application without further submission by provider.

Response: The Department acts as soon as possible on waiver requests. The Department has considered the request for a timeline for review and response to written requests and will make every effort to respond in a timely fashion, but finds that adding a timeline is not necessary. The Department has determined that waivers may not exceed the term of the current license in order to assure the ongoing need for a waiver and to assure that the health and safety of children is preserved. The Department made no changes in response to this comment.

SECTION 2: Application and Licensing

Comment 31: Commenters 8 and 27 stated that the age of a provider in Section 2(A)(2) is younger than what is stated in the approved State Child Care and Development Fund (CCDF) State plan.

Response: The Department specifically distinguished between the term “licensee” and “provider.” The licensee must be over 18 years of age. A provider (paid employee providing care) may be between 16 and 18 years of age. The Department made this change to create parity with child care centers and to provide additional flexibility for family child care providers. The Department made no changes in response to this comment.

Comment 32: Commenters 26, 28, 29, 30, 31, and 32 requested that the site plan for the premises described in Section 2(A)(5)(b)(i) identify only where the children will be served.

Response: The Department has reviewed Section 2(A)(5)(b)(i) and determined that the requirement for a site plan for an initial application only requires both a plan of the premises and a floor plan that indicates all areas where children will be served. This requirement is necessary to determine whether any areas of risk exist on the premises, so that adequate protections are added to assure the health and safety of children. The floor plan serves to identify the areas within the home subject to inspection. The Department made no changes in response to this comment.

Comment 33: Commenters 26, 28, 29, 30, 31, and 32 recommended that the background check clearance required at Section 2(A)(5)(e) be limited to household members over the age of 18.

Response: The Department has reviewed Section 2(A)(5)(e) and determined that it states “regarding background checks for the applicant and all adult household members.” An adult is a person over the age of 18. The Department made no changes in response to this comment.

Comment 34: Commenter 7 asked where providers can find the rule cited at Section 2(A)(7).

Response: All rules in the Code of Maine Rules can be found at <http://www.maine.gov/sos/cec/rules/rules.html>. All rule chapters for the Department of Public Safety, including 16-219 C.M.R. Chapters 2, 5, 6, 17 and 20, can be found at <http://www.maine.gov/sos/cec/rules/16/chaps16.htm>. The Department made no changes in response to this comment.

Comment 35: Section 2(A)(8): Commenters 16 and 17 stated their support for the requirement for emergency plans.

Response: The Department thanks the Commenters.

Comment 36: Commenters 26, 28, 29, 30, 31, and 32 stated that the phrase “other threatening situation” at Section 2(A)(8), is too broad and could be construed to mean any unforeseen event.

Response: The Department has reviewed this comment and section and has determined that broad language is required, due to the extensive nature of situations that could impact the physical site of the family child care. The Department made no changes in response to this comment.

Comment 37: Section 2(B)(1): Commenters 26, 28, 29, 30, 31, and 32 requested that the Department mail a receipt of each application received for license renewal to the applicant.

Response: The Department does not have the resources or capacity at this time to mail an acknowledgement of each application for renewal received. The Department made no changes in response to this comment.

Comment 38: Section 2(D)(3): Commenter 5 asked if the license must be physically posted at the child care site and requested that posting of the license on-line meet the requirement of this rule requirement. Commenters 26, 28, 29, 31, and 32 stated that the inspection report should not be posted at the child care site.

Response: The Department determined that the posting of the license at the physical site is necessary to inform parents and others visiting the site that the site is currently licensed to operate a family child care. The Department finds that posting the inspection report at the physical location most readily notifies parents and others visiting the site of any rule violations, as well as the licensee’s plan of action. The Department made no changes in response to this comment.

Comment 39: Commenters 26, 28, 29, 31, and 32 requested that Section 2(D)(4) regarding “notification of parents of actions proposed or taken by the Department” be deleted.

Response: The Department finds that it is a reasonable expectation for parents to be informed of actions that could have an impact on the continuity of care, and to be informed of the rule violations leading to the Department’s decision to take action. However, the Department clarified language in this Section regarding the nature of the actions that require parent notification.

Comment 40: Commenter 7 suggested that the words “or decrease” be deleted from Section 2(D)(7). Commenters 26, 28, 29, 31, and 32 stated that the request for increased capacity should take no longer than 30 days to review, and a decrease in capacity could be done in five business days.

Response: The Department determined that a written request is necessary for both increasing and decreasing the licensed capacity of a child care. The Department has considered the request for timelines for review and response to written requests and will make every effort to respond in a timely fashion, but does not guarantee that these timelines can be met in all circumstances. The Department made no changes in response to this comment.

Comment 41: Section 2(D)(10): Commenters 5, 16, 17, 18, 22, 26, 28, 29, 31, and 32 recommended that fire evacuation drills be conducted monthly.

Response: The Department has reviewed these comments and agrees with this recommendation. Therefore, the Department amended the fire drill requirement to incorporate this recommendation.

Comment 42: Section 2(E)(2): Commenters 26, 28, 29, 31, and 32 stated that a decision on a waiver request must be completed within three business days and suggested that the Department automatically resubmit and review an ongoing waiver upon renewal of license application without further submission by provider.

Response: As noted in the Department's response to Comment 30, the Department acts as soon as possible on waiver requests. The Department has considered the request for a timeline for review and response to written requests and will make every effort to respond in a timely fashion, but finds that adding a timeline is not necessary. The Department has determined that waivers may not exceed the term of the current license in order to assure the ongoing need for a waiver and to assure that the health and safety of children is preserved. The Department made no changes in response to this comment.

SECTION 3: Fees

Comment 43: Section 3(A): Commenters 26, 28, 29, 31, and 32 stated that the approval date of a full license should be after the conditional status is completed, and if a license is not renewed, the fee should be refunded.

Response: The Department's current practice is that when a conditional license is issued, a full license is issued only upon the end of the term of the conditional license and when the licensee has successfully resolved the issues leading to the conditional license. License fees are non-refundable. The Department made no changes in response to this comment.

SECTION 4: Inspections and Investigations

Comment 44: Section 4(A): Commenter 8 stated that it is reasonable for the Department to inform providers of the identity of their licensor.

Response: In this context, the commenter is using "licensor" as it is used in common practice: the State inspector conducting the site visit. It is current Department practice to inform licensees in writing when there is a change of the licensor assigned to the site. The Department made no changes in response to this comment.

Comment 45: Section 4(A): Commenters 26, 28, 29, 31, and 32 stated interim inspections should not occur unless with very good cause and not be expanded to, or developed into, a full license inspection.

Response: The Department's authority to conduct inspections is at a frequency that is appropriate to the licensee's history of compliance with the rule. The Department finds that conducting a full inspection may be necessary whenever indicated by the observed compliance with the rule at the time of inspection. The Department made no changes in response to this comment.

Comment 46: Section 4(A)(2) and (3): Commenter 27 requested that the Department unequivocally state that they intend to conduct annual unannounced inspections. Commenters 26, 28, 29, 31, and 32 recommended replacing the word "change" with "increase" in Section 4(A)(3).

Response: The Department determined that the statement in Section 4(A)(2), referring to inspections occurring “Annually, after the date of initial licensure” is sufficiently clear to indicate an annual inspection. The Department made no changes in response to this comment. However, the Department has reviewed the recommended change in wording at Section 4(A)(3) from “change” to “increase,” and agrees with the Commenter that a site inspection is not necessary for a decrease in licensed capacity for a family child care site. Therefore the language was changed accordingly.

Comment 47: Commenters 26, 28, 29, 31, and 32 requested to add: “at any reasonable time, in order to determine the state compliance by the facility to the applicable laws” and “The department has the right of entry, at any reasonable time, to any licensed facility where children are being cared for pursuant to 22 M.R.S. §7804 only for the purpose of determining state of compliance by the facility to the applicable laws.” to Section 4(B)(1). Commenters 26, 28, 29, 31, and 32 also requested that inspections be limited to the facility and not the premises.

Response: The Department’s authority to inspect is clearly stated in 22 M.R.S. §7804, which is not required to be repeated in rule. The Department made no changes in response to this comment. The Department reviewed the Commenter’s request to limit Department inspections to the facility only. The Department determined that inspection of the entire premises is necessary, to assure that children are fully protected, due to the fact that they are not restricted to the inside a building at Section 14(E). The Department made no changes in response to this comment.

Comment 48: Section 4(B)(2): Commenters 26, 28, 29, 31, and 32 requested that the Department revert to previous language, or use this phrasing: “The Department may have right of entry of a facility which it knows or believes is operated without a license; the Department may enter only with the permission of the owner or person in charge or with a search warrant from the district court authorizing entry and inspection.”

Response: The Department determined that the reference to 22 M.R.S. §7702-B (7) in the rule is adequate. The Department made no changes in response to this comment.

Comment 49: Section 4(C) and Section 4(C)(1): Commenters 26, 28, 29, 31, and 32 requested that inspections be limited to any parts of the premises occupied by children, that licensees be able to call an assistant during any inspection or investigation, and that licensors [state inspectors] refrain from speaking with children, parents, and providers during inspection.

Response: As stated in the response to comment 47, the Department has determined that inspection of the entire premises is necessary, but inspection of the interior of the home is limited to the areas identified as potentially being used by children on the floor plan submitted with the initial application. The Department does not prohibit licensees from inviting others to be present during an inspection but will not delay an inspection contingent upon a licensee’s desire to have another person present. The Department has determined that speaking to children, parents, and providers is an essential component of inspection. The Department made no changes in response to this comment.

Comment 50: Section 4(C)(2): Commenters 26, 28, 29, 31, and 32 requested that licensees be afforded time to supply the department with all the requested records and that licensees be granted 24 to 48 hours to obtain coverage or witness(s) to complete an inspection process.

Response: The Department has determined that documentation required by rule must be present at the time of inspection, as ongoing compliance with the rule at all times is a requirement of licensure. In accordance

with 22 M.R.S. §7804, an inspection may occur at any reasonable time. However, it is the intention of the Department to work collaboratively with licensees to assure that inspections are minimally disruptive to child care services. The Department has determined that unannounced inspections are necessary to yield accurate assessment of license compliance with rule. The Department made no changes in response to this comment.

Comment 51: Section 4(C)(3): Commenters 21, 26, 28, 29, 31, and 32 requested that the option for licensors to take photographs of conditions observed on site be removed from the proposed rule.

Response: The Department has determined that a photographic record establishes an accurate account of the licensor's observations and contributes to a consistent application of rule by all licensors, because staff may review the photographs to affirm the licensor's findings. In addition, the Department finds that photographs may also serve licensees by documenting progress and improvements from each inspection. The Department made no changes in response to this comment.

Comment 52: Section 4(D): Commenters 26, 28, 29, 31, and 32 expressed appreciation for the opportunity to correct all violations at the time of inspection. Commenters 26, 28, 29, 31, and 32 stated that corrected violations should not be placed on inspection reports and inspection reports should not be posted publicly anywhere. Commenters 26, 28, 29, 31, and 32 requested that the Department adopt this language: "The Department will document all remaining violations of this rule that are not corrected at the time of the inspection on an inspection report, and will explain any violation noted at the time of inspection on the report. The licensee shall be given an opportunity to correct all violations at the time of the inspection. All violations corrected on-site will NOT be noted on the inspection report."

Response: The Department thanks Commenters 26, 28, 29, 31, and 32. In response to the other comments regarding Section 4(D), the Department has determined that an accurate recording of violations noted at the time of inspection, even if immediately corrected, establishes a full record and is essential to demonstrating compliance with this rule over time. The Department has determined that even when a violation is corrected on site, it may have otherwise remained uncorrected if there is no record to document the full inspection and inform the licensee for future inspections. The Department made no changes in response to this comment.

Comment 53: Section 4(D)(1): Commenters 26, 28, 29, 31, and 32 asked what will happen if a licensee and the licensor cannot concur on a plan of action.

Response: The Department developed a collaborative plan of action, as described in the rule that is a reasonable expectation of a licensee. The addition of a process in the rule for Informal Dispute Resolution provides an opportunity for a licensee to challenge findings, if a violation occurred. The Department made no changes in response to this comment.

Comment 54: Section 4(D)(2): Commenters 26, 28, 29, 31, and 32 requested that the rule allow for continued development of a plan of action occurring at a time that is convenient for the provider and allows the provider to insure the safety of the children in care. Commenters 26, 28, 29, 31, and 32 stated that no provider should ever be forced to sign anything with which they do not agree.

Response: The Department has determined that five business days following the date of inspection is a reasonable time frame for a licensee and licensor to develop a plan of action. The signature of the licensee does not indicate agreement with the inspection summary but serves to confirm that the results were

reviewed with the licensee and that an opportunity to discuss the results was offered. The Department made no changes in response to this comment.

Comment 55: Section 4(D)(4): Commenters 24 and 27 stated that federal law requires the Department to post this information in an easily understandable and accessible format for parents to be able to make educated decisions about care providers for their children. Commenter 8 asked the Department to explain what is meant by the use of the term “may” in rule 4(D)(4), who in the Department would make the decision to post results, and for additional details about the process, and suggested that the Department develop and include a policy regarding posting of both inspection and investigation results. Commenters 7, 21, 26, 28, 29, 31, and 32 stated that child care licensing staff should not post inspection results online until the informal dispute resolution process is complete, or not at all.

Response: The Department has opted to use the term “may” in the scope of the rule, to acknowledge the authority to post inspection results but to retain the flexibility to post or not. The Department would not post inspection results online until any requested informal dispute resolution process is complete. The Department added Section 4(D)(5) to the rule, in order to clarify that inspection results would not be posted until after final decisions are made at the Informal Dispute Resolution level.

Comment 56: Section 4(E)(1): Commenters 26, 28, 29, 31, and 32 stated that the licensee should have an opportunity to address, dispute or appeal alleged violations, including those documented by the out of home investigation unit.

Response: The rule provides a process for informal dispute resolution. An investigation completed by the Department’s Out of Home Investigation Unit that results in a substantiated finding of child abuse and/or neglect is subject to the right of appeal as stated in Section 20(J). The Department made no changes in response to this comment.

Comment 57: Section 4(E)(2): Commenters 26, 28, 29, 31, and 32 requested that the licensee be able to call an assistant during any inspection or investigation.

Response: As stated in the response to Comment 49, the Department does not prohibit licensees from inviting others to be present during an inspection; however, no delay of an inspection may occur as a result of a licensee’s desire to have another person present. The presence of another individual during an investigation of child abuse and/or neglect is outside of the scope of this rule and is described in statute at 22 M.R.S. Chapter 1674. The Department made no changes in response to this comment.

Comment 58: Section 4(F): Commenter 15 stated that there is no unbiased appeal process for providers to disagree with inspection results. Commenters 26, 28, 29, 31, and 32 requested that providers have 30 days to request informal dispute resolution. Commenters 26, 28, 29, 31, and 32 stated that the details of the violation must be documented on the inspection report. Commenters 26, 28, 29, 31, and 32 stated that the licensee should be able to dispute anything that is documented on summaries, inspection reports or notations in the file. Commenters 26, 28, 29, 31, and 32 stated that the licensee should have free access to all records, notes including anything in the file, within 2 business days for informal dispute of inspection reports and within 5 business days for other less restrictive dispute processes. Commenters 26, 28, 29, 31, and 32 stated that any other content of the licensee’s file should be open to dispute at any time without time limit, for any content of which the provider was not aware. Commenters 26, 28, 29, 31, and 32 requested that licensees be given free and timely access to the licensee’s complete record, at all times, including, but not limited to, all prior inspection reports, the most current inspection report, inspection notes and

summaries, violations, photographs, complaints, telephone notes and the childcare licensing rules; and that the licensee must receive all information in their public record, at no cost to the licensee, within 10 business days. Commenters 26, 28, 29, 31, and 32 stated that any blank places on the inspection report should be crossed through, so that nothing can be added to the report at a later date.

Response: A process for informal dispute resolution is included in this rule. The Department determines this process to be fair and reasonable. The Department finds that 10 working days is an appropriate time frame for requesting informal dispute resolution, as any difference of opinion regarding a rule violation would emerge during the exit interview at the time of inspection. The Department's practice is to list all observed violations on the inspection report.

A licensee may dispute any violation noted on an inspection report at the time of Informal Dispute Resolution. If, after the Informal Dispute Resolution, the licensee continues to violate the plan of action, or the amended plan of action, then the Department may issue a directed plan of action. If the licensee disputes the directed plan of action, fails to comply with that directed plan of action, then the Department may assess a fine. At that time, the licensee may appeal the fine assessment through the Department's administrative hearing process, which is decided by a hearing officer from the Department's Administrative Hearings Unit. If, after the final decision of the administrative hearing is rendered, then the licensee may appeal to Maine Superior Court, which is presided over by a judge.

The narratives in the Department's database are not the basis for licensing action and, therefore, are not subject to dispute. Licensees may request records kept by the Department by exercising their rights under Maine's Freedom of Access Act, which does authorize the Department to charge \$15 per hour and 15 cents per page, to recover a portion of the costs entailed with allocating Department resources to respond to FOAA requests. It is the practice of the Department to strike out any elements of standard inspection forms that are not relevant to the specific site being inspected. The Department made no changes in response to this comment.

Comment 59: Section 4(F)(1): Commenters 26, 28, 29, 31, and 32 requested that anything that is on the inspection report should be able to be disputed.

Response: The Department finds that the informal dispute resolution process allows for dispute of any violation noted on an inspection summary. The Department made no changes in response to this comment.

Comment 60: Section 4(F)(2): Commenters 26, 28, 29, 31, and 32 requested that licensees be allowed to present evidence of compliance with licensing requirements subsequent to the inspection and have them to be considered valid at the time of inspection.

Response: The Department has determined that licensees must be able to demonstrate compliance with the requirement of rule at the time of inspection. The Department made no changes in response to this comment.

Comment 61: Section 4(F)(3)(a): Commenters 26, 28, 29, 31, and 32 noted that a paper review which supports the licensee's case will result in the removal of violation(s) or other documentation or notations.

Response: The Department thanks the Commenters.

Comment 62: Section 4(F)(3)(b): Commenters 26, 28, 29, 31, and 32 requested that the rule include a grace period for submitting CPR certification or training certificates, due to their statements that such records are verifiable by the date of the class and oftentimes are not available or mailed after the class.

Response: The Department has determined that it is crucial for licensees to demonstrate compliance with this requirement at the time of inspection. The Department made no changes in response to this comment.

Comment 63: Section 4(F)(4)(a): Commenters 26, 28, 29, 31, and 32 requested that informal dispute resolution be held within 30 days of the receipt of the request and scheduled at a time and location that is convenient for the provider (via telephone conference if warranted).

Response: The Department will make every effort to complete informal dispute resolution in a timely fashion, contingent upon available resources and the availability of the licensee. The Department notes that telephone conferencing is part of the current procedure for informal dispute resolution and encourages licensees to utilize this option when appropriate. The Department made no changes in response to this comment.

Comment 64: Section 4(F)(4)(b): Commenters 26, 28, 29, 31, and 32 expressed their support for the inclusion of an informal dispute resolution process.

Response: The Department thanks the Commenters.

Comment 65: Section 4(F)(5): Commenters 26, 28, 29, 31, and 32 stated that disagreement with the outcome of an informal dispute resolution should be subject to a formal right of appeal.

Response: The actions subject to formal right of appeal are available under 22 M.R.S. §7801 and 5 M.R.S. Chapter 375 and explicitly stated in Section 20(J). The Department made no changes in response to this comment.

SECTION 5: Records

Comment 66: Section 5(A): Commenter 5 stated that retaining child records for a longer period of time is a positive addition to the proposed rule.

Response: The Department thanks the Commenters.

Comment 67: Section 5(C)(3): Commenters 26, 28, 29, 31, and 32 recommended the removal of the requirements to record the child's parent's employer's mailing address and the address of the child's physician.

Response: The Department agrees with the Commenters that the licensee does not need to record the child's parent's employer's mailing address and has amended the rule. The Department has determined that situations may arise when it would be necessary to contact the child's physician by mail or provide emergency transportation to that location. The Department made no changes in response to this comment.

Comment 68: Section 5(C)(11): Commenter 5 stated that adding the requirement to inform parents of child guidance practices and expulsion and suspension practices is a positive addition to the proposed rule.

Commenter 5 suggested adding the requirement that the provider obtain permission of the parent to use the likeness of the child. Commenter 7 asked how the Department will determine compliance with this rule.

Response: The Department thanks Commenter 5. The Department finds that the written permission for the use of likeness of a child is stated in the rule at Section 5(C)(15). The Department has determined that the licensee is responsible for demonstrating that the information listed in Section 5(C)(11) has been shared with the child's parent, but suggests that a signed form in the child's record would indicate that the information had been provided. The Department made no changes in response to this comment.

Comment 69: Section 5(C)(13): Commenters 26, 28, 29, 31, and 32 recommended deleting Section 5(C)(13) from the rule because the Commenters find it vague.

Response: The Department reviewed this section and determined the examples to give sufficient direction ("including, but not limited to, aggression, withdrawal, sexual acting out and prolonged tantrums"). The Department made no changes in response to this comment.

Comment 70: Section 5(C)(17): Commenter 5 asked what constitutes a developmental assessment and in what format must they be maintained.

Response: The Department changed this rule to require only developmental assessments completed by a professional and supplied by the child's parent. The Department finds that virtually all child records are maintained in paper copy but does not exclude other forms of record retention, so long as they meet the requirements of rule: "available for inspection by the Department for licensing and investigative purposes." The Department made no changes in response to this comment.

Comment 71: Section 5(C)(19): Commenters 26, 28, 29, 31, and 32 stated the rule needs a better definition of high-risk activities. Commenter 5 suggested adding a requirement for annual parental permission for high-risk activities.

Response: The Department determined that the examples of high-risk activities provided in this Section of the rule provide sufficient direction in terms of activities that pose a significant risk of bodily injury or death. The Department directs Commenters to the requirements that state: "the authorization must be updated at least annually and must list the child's name, type of activity, location of activity, parent's signature and date." The Department made no changes in response to this comment.

Comment 72: Section 5(D) and (D)(2): Commenters 5, 26, 28, 29, 31, and 32 stated that personnel records should not be required for anyone who is not a paid employee with unsupervised access to children, including volunteers, interns, family members, or substitutes.

Response: The Department has determined that personnel records must be kept for employees that may only have supervised access to children, including substitutes. The rule does not require a personnel record for family members. As noted previously, the Department has removed the term volunteer from the rule. No other changes were made to the rule as a result of this comment.

Comment 73: Section 5(D)(4): Section Commenters 26, 28, 29, 31, and 32 recommended the following wording: "Contingency employment as long as State of Maine background checks have cleared and

fingerprinting has been initiated within 10 business days of hire. Unsupervised Employees and employees who have lived in the state of Maine for the past 5 years are not required to have FBI fingerprinting.”

Response: The Department has reviewed the comment and determined that residency within the State does not provide justification for an exclusion from a background check. The Department made no changes in response to this comment.

Comment 74: Section 5(E)(1) and (2): Commenter 5 stated that keeping a record of hours worked is unnecessary. Commenters 26, 28, 29, 31, and 32 stated that it is very time consuming for a provider to record child arrival and departure times, unless it is done by way of a sign-in sheet, and that use of a sign-in sheet breaches confidentiality.

Response: The Department has determined that a record of hours worked by providers demonstrates a licensee’s compliance with the staff:child ratios mandated by rule. The Department has determined that a daily attendance record for children need not contain any personal information that would breach confidentiality. The Department made no changes in response to this comment.

SECTION 6: Background Checks

Comment 75: Commenter 17 stated that the changes and detail in this section are an improvement to the existing rule. Commenter 8 suggested including detail from the CCDF plan regarding background checks. Commenters 26, 28, 29, 31, and 32 stated that the requirements for supervision of substitutes or new employees pending background checks cannot work.

Response: The Department thanks Commenter 17. In response to the other comments received regarding Section 6, the Department has determined that the requirements for background checks are sufficiently described in the rule, as well as in the statutes referenced in the rule. The Department has determined that compliance with the background check process described in the rule is necessary to preserve the health and safety of children. The Department made no changes in response to this comment.

Comment 76: Section 6(A)(2): Commenters 26, 28, 29, 31, and 32 suggested that the following language be added to the rule: “Contingent employees can have unsupervised access to children as long as basic state background checks including sex offender registry, child protective services and state bureau of investigation for the state of Maine, have been cleared. If fingerprinting is required then the individual can start working and count in the ratio with children as long as fingerprint process has been initiated in the first 10 business days of employment. Supervised Employees and volunteers and employees and volunteers who have lived in the state of Maine for the past 5 years are not required to have FBI fingerprinting.”

Response: The Department has determined that the description of individuals who require background checks in the rule is accurate and sufficient. Background checks are required for substitute employees who have unsupervised access to children. The elements of a comprehensive background check are described in Section 6(E): “Components of a comprehensive background check pursuant to the adoption of 22 M.R.S. §9054.” The Department’s rule complies with the requirements of the Maine Background Check Center Act (22 M.R.S. Chapter 1691). The Department made no changes in response to this comment.

Comment 77: Section 6(B): Commenters 26, 28, 29, 31, and 32 suggested that the following language be added to the proposed rule: “Licensees must obtain comprehensive background checks for individuals who have unsupervised access in care, anyone who is supervising individuals who are providing care and anyone

who is 18 and residing in the home where services are provided and has not lived in the State for the past 5 years.” Commenter 7 stated that the State should continue to pay for background checks, and that background checks should not be required for volunteers, interns, family members or irregular substitutes.

Response: The Department has determined that the description of individuals who require background checks in the rule is accurate and sufficient. Background checks are required for substitute employees who have unsupervised access to children. The elements of a comprehensive background check are described in Section 6(E): “Components of a comprehensive background check pursuant to the adoption of 22 M.R.S. §9054.” The Department’s rule complies with the requirements of the Maine Background Check Center Act (22 M.R.S. Chapter 1691). It is the intention of the Department to continue to fund background checks for family child care licensees, pending availability of funds. As noted previously, the Department has removed references to volunteers from the rule.

Comment 78: Section 6(C): Commenters 26, 28, 29, 31, and 32 suggested that the following language be added to the rule: “Individuals who are not subject to a comprehensive background check may have supervised access to children who are served by the provider. Unsupervised Employees and employees who have lived in the state of Maine for the past 5 years and have cleared the Maine SBI Background check are not required to have FBI fingerprinting. Comprehensive background checks are not required for individuals who are not providers and who only have infrequent and irregular supervised access to children, including but not limited to volunteers, parents, delivery persons, contractors, guests, substitute teachers performing maintenance and repairs and waste removal persons.” Commenters 26, 28, 29, 31, and 32 suggested that guests and substitutes who are supervised be added to the list of individuals for who background checks are not required. Commenter 7 asked if this rule means that substitutes that don’t come often and volunteers do not need background checks, and asked what is meant by comprehensive background checks.

Response: The Department’s rule complies with the requirements of the Maine Background Check Center Act (22 M.R.S. Chapter 1691). The Department has determined that the description of individuals who require background checks in the rule is accurate and sufficient. Background checks are required for substitute employees who have unsupervised access to children. The elements of a comprehensive background check are described in Section 6(E): “Components of a comprehensive background check pursuant to the adoption of 22 M.R.S. §9054.” As noted previously, the Department has removed reference to volunteers from the rule.

Comment 79: Section 6(E): Commenter 16 stated that fingerprint background checks should be required. Commenter 1 stated that cost of background checks will make services unaffordable. Commenters 5, 8, 11, 16, and 27 requested additional details about background check procedures and funding. Commenter 5 stated that fingerprinting should only be required on individuals who have unsupervised access to children, and requested that those requiring fingerprinting be clearly listed. Commenter 5 asked if a fingerprinting card will be issued as proof of employability. Commenter 8 asked for clarification of the meaning of the phrase “upon notification.” Commenters 26, 28, 29, 31, and 32 suggested adding that comprehensive background check means FBI fingerprinting.

Response: The Department thanks Commenter 16. In response to the other comments regarding Section 6(E), the Department intends to continue funding background checks for family child care licensees. Additional details about the process related to background checks will be forthcoming with the adoption of 10-144 C.M.R. 60, Rule Relating to the Maine Background Check Center. The proposed Background Check Center Rule contains the requirements for background checks prior to, and subsequent to, the adoption of 22

M.R.S. §9054 and lists the individuals subject to background checks. The Department made no changes in response to this comment.

Comment 80: Section 6(E)(1): Commenters 11 stated that including fingerprint background checks will assure the safety of children and Commenter 27 supported the Department's acknowledgement of this federal requirement and State law.

Response: The Department thanks these Commenters.

Comment 81: Section 6(E)(a)(3): Commenter 6 asked why the State background check is still required if there is FBI fingerprinting.

Response: The Department has determined that these databases do not always contain matching information and that a thorough and accurate result can best be reached by searching both sources. The Department made no changes in response to this comment.

Comment 82: Section 6(H) and (I): Commenter 8 asked that the Department include a timeline for the completion of background checks in the rule.

Response: The Department has determined that the timely completion of background checks is determined by many factors, including the number of individuals at any given family child care site. The Department will continue to complete background checks as rapidly as possible within existing constraints. The Department made no changes in response to this comment.

Comment 83: Section 6(I)(2): Commenter 8 asked that Section 6(I) include additional information on conditional employment procedures and challenging the report resulting from a background check.

Response: Additional details about the process related to background checks will be forthcoming with the adoption of 10-144 C.M.R. 60, Maine Background Check Center Rule. The Department made no changes in response to this comment.

Comment 84: Section 6(I): Commenters 26, 28, 29, 31, and 32 requested that the Department develop a process to have an emergency waiver completed within two hours to allow potential employees to work without fingerprint results as long as all other background checks are cleared and the employee has lived in the State of Maine for the last 5 years.

Response: The Department cannot waive the requirements for a background check, which is required in statute at 22 M.R.S. Chapter 1691 and 22 M.R.S. §7706. The provisions of the Maine Background Check Center Act allow for provisional employment during the period that a background check is being completed. The Department made no changes in response to this comment.

SECTION 7: Reporting

Comment 85: Commenters 26, 28, 29, 31, and 32 stated that Section 7(D) is vague and could include a broken toilet.

Response: The Department has reviewed this section: “Wastewater disposal system” is a commonly used synonym for a septic system, and the intent of the Department in the rule is to assure the health and safety of children through the requirement to report failure of such systems and the ensuing exposure of children to harmful conditions. The Department made no changes in response to this comment.

SECTION 8: Staff-Child Ratios and Supervision

Comment 86: Commenters 26, 28, 29, 31, and 32 stated that the staff:child ratios in the proposed section makes more sense than current ratio requirements and are reasonable.

Response: The Department thanks these Commenters.

Comment 87: Section 8(A): Commenter 5 suggested that the proposed rule replace “staff:child ratios” with “provider:child ratios” to be consistent with proposed definitions.

Response: The Department has reviewed the rule and determined that the current language was initially retained due to its common use. However, the Department has made this change throughout the rule for consistency with the definitions.

Comment 88: Section 8(A): Commenter 7 asked the Department if the only change to staff:child ratios is that the provider’s own children will not be included in ratios.

Response: Additional changes were included in the proposed rule to the age ranges of children within the table in Section 8(A)(1) the rule, and the rule was simplified for ease of use. The Department made no changes in response to this comment.

Comment 89: Section 8(A)(1): Commenters 2 and 4 stated that the ratios need to be clarified.

Response: The Department determined the ratios to be clearly stated. The Department made no changes in response to this comment.

Comment 90: Commenter 5 stated that changing one age range from 30 months to 2 years old is positive. Commenter 13 does not support the change in ratios. Commenters 8, 11, 16, 17, 22, 24, and 27 expressed concerns over the change in age ranges and numbers of children that could be supervised by one adult, including negative impact on children and inconsistency with the approved State CCDF plan.

Response: The Department thanks Commenter 5 for her comment. In response to Commenters 8, 11, 16, 17, 22, 24, and 27, the Department finds that the ratios are sufficient to protect health and safety of children. The Department made no changes in response to this comment.

Comment 91: Commenters 5 and 9 asked for clarification on the term “prohibited.”

Response: The Department agrees and replaced the term “prohibited” with “not applicable” in Section 8(A)(1) as a more relevant term.

Comment 92: Commenters 26, 28, 29, 31, and 32 asked if the limitation of seven infants with two teachers is gone.

Response: The Department notes that the ratios require two providers for five to eight children under the age of two, and three providers for nine to 12 children under the age of two. The Department made no changes in response to this comment.

Comment 93: Section 8(A)(3)(a) and (b): Commenters 7, 19, 26, 28, 29, 31, and 32 stated that they support the change excluding children of the licensee from determination of staff:child ratios. Commenter 4 stated that grandchildren of the provider should also be excluded from ratios. Commenter 20 supported the change but suggested that the rule include limitations of the number of children that could be excluded.

Response: The Department thanks Commenters 7, 19, 26, 28, 29, 31, and 32. In response to the other comments regarding Section 8(A)(3)(a) and (b), the Department has determined that grandchildren of the provider may not be excluded from ratios. The Department has reviewed the rule and has set a limit on the number of children that could be excluded by adding an age range (see response to Comment 94 below).

Comment 94: Section 8(A)(3)(a) and (b): Commenters 3, 5, 8, 10, 11, 12, 13, 16, 24, 25, 26, 27, 28, 29, 31, and 32 expressed opposition to the change. Commenters 16, 17, 18, and 22 stated that only school-aged children of the licensee should be excluded from ratios. Commenter 12 requested clarification if exclusion of children of the provider applies to group size, maximum capacity, or both. Commenters 26, 28, 29, 31, and 32 stated that the rule conflicts with Section 8(A)(5), which allows for capacity to be exceeded in certain circumstances.

Response: The Department has reviewed the rule and has decided to include only children of the provider that are under the age of three in the determination of ratios, and has clarified the capacity of a licensed provider in rule.

Comment 95: Section 8(A)(5): Commenters 26, 28, 29, 31, and 32 stated that other situations where licensee's capacity is exceeded should be allowed. Commenter 8 stated that the rule conflicts with the approved State CCDF plan.

Response: The Department has reviewed the rule and finds that the exceptions included are sufficient. As noted previously, the State plan will be amended to reflect the rule changes when the rule becomes effective. The Department made no changes in response to this comment.

Comment 96: Section 8(A)(6): Commenters 26, 28, 29, 31, and 32 suggested that children who are in the care of an adult who is not working or counted as staff in the ratio, should not be counted toward ratio or capacity.

Response: The Department has reviewed the rule and finds that "children served" excludes children in the care of others. The Department made no changes in response to this comment.

Comment 97: Section 8(A)(7): Commenters 26, 28, 29, 31, and 32 requested clarification on the term capacity in the context of the term premises.

Response: The Department has reviewed the rule and finds that "capacity" refers to children served by the provider on the premises. The Department made no changes in response to this comment.

Comment 98: Section 8(B): Commenter 5 stated that the proposed clarification of “see or hear” is an improvement.

Response: The Department thanks the Commenter.

Comment 99: Section 8(B): Commenters 26, 28, 29, 31, and 32 suggest replacing the word “may” with “shall” in the phrase “both audio and video may be considered...”

Response: The Department has reviewed the rule and decided that the use of the term “may” is appropriate for the context. The Department made no changes in response to this comment.

Comment 100: Section 8(B): Commenters 26, 28, 29, 31, and 32 asked if both audio and video monitoring is necessary during quiet indoor activities.

Response: The Department has reviewed the rule and decided that both audio and video capacity is necessary to assure the health and safety of children. The Department made no changes in response to this comment.

SECTION 9: Training

Comment 101: Section 9(A): Commenters 5, 26, 28, 29, 31, and 32 requested clarification on the nature of pre-licensing training. Commenters 26, 28, 29, 31, and 32 asked if previously-licensed providers will be required to complete pre-licensing training after an interruption in licensure.

Response: The Department determined that this rule maintains the same requirement as was required before this rulemaking. The pre-licensing training, “Getting Started in Child Care,” is currently offered by Maine Roads to Quality. The Department did not cite this training by name in the rule to allow flexibility, should this title change. The Department has determined that the requirement for completing this training following an interruption in service will be individually determined at the time of application, in accordance with current practice, and the determination will be based upon factors such as the length of prior service, licensing history, and length of the interruption in service. The Department made no changes in response to this comment.

Comment 102: Section 9(B): Commenters 5, 26, 28, 29, 31, and 32 stated that providers who are supervised should not be required to understand all of the requirements of the licensing rules.

Response: The Department has determined that the relevant requirements of the rule vary according to the responsibilities of the licensee and the provider. The Department added the word “relevant” to the rule.

Comment 103: Section 9(C): Commenter 7 stated that the orientation training requirement is consistent with subsidy program requirements and is helpful. Commenter 5 asked for clarification on the time allowed for completion of orientation training. Commenters 8 and 27 recommended that first aid and CPR training be completed prior to licensure.

Response: The Department thanks Commenter 7. In response to the other comments regarding Section 9(C), the Department finds the section states that orientation training must be completed in the first twelve months of employment. As this rule replaces the previous rule, the requirement for orientation training would apply only to providers hired subsequent to the effective date of this rule. The Department notes that

Section 12(E) requires that a provider who is currently certified in basic adult, child, and infant first aid and CPR must be present at all times while child care is being provided, which would require that it be completed prior to licensure for a new applicant.

Comment 104: Section 9(C)(8): Commenter 7 stated that re-taking transportation training every two years is unnecessary, but that an online free refresher training may be helpful.

Response: The Department has determined that the degree of risk inherent in providing transportation to children, especially young children, justifies the requirement for re-training in a frequency consistent with first aid and CPR training. The Department made no changes in response to this comment.

Comment 105: Sections 9(D) and (D)(1): Commenters 7, 26, 28, 29, 31, and 32 supported including first aid and CPR training in the requisite number of ongoing training hours. Commenters 16, 17, 22, 24, and 27 stated that first aid and CPR training should not be included in the requisite number of ongoing training hours. Commenters 26, 28, 29, 31, and 32 stated that providers who have been in business for more than 10 years should be allowed to complete 8 hours of training each year, and that providers who have been in business for more than 20 years should be allowed to complete 6 hours of training each year,

Response: The Department has determined that including first aid and CPR training in the total number of training hours required annually represents a reasonable compromise between ongoing training and retraining and is sufficient to preserve the health and safety of children. The Department has further determined that this number of hours is the minimum requirement for all providers for continued professional growth and development. The Department made no changes in response to this comment.

Comment 106: Section 9(D)(2): Commenters 7, 26, 28, 29, 31, and 32 stated that proof of completion of training should be removed from the rule. Commenters 26, 28, 29, 31, and 32 asked for clarification on how trainer qualifications are determined.

Response: The Department has determined that proof of completion is necessary to ensure that training has occurred. Recognized online training resources are equipped to issue such proof of training; these include the American Association of Pediatrics and Better Kid Care. The Department has determined that licensees may exercise professional judgment in determining that the trainer's qualifications are appropriate for the training content, and that the training is relevant to the needs of the children served. The Department made no changes in response to this comment.

SECTION 10: Child Guidance, Management, and Discipline

Comment 107: Section 10(B): Commenter 5 stated that the list of prohibited actions improved rule clarity and should be included in orientation training. Commenters 26, 28, 29, 31, and 32 requested that the rule be amended to state that only actions taken with the intent to cause harm and actions taken with the intent to protect or prevent injury should not be construed as corporal punishment.

Response: The Department thanks Commenter 5. In response to Commenters 26, 28, 29, 31, and 32, the Department has reviewed the rule and determined that the included list of detrimental practices is sufficiently clear. The Department made no changes in response to this comment.

Comment 108: Section 10(B)(6): Commenters 26, 28, 29, 31, and 32 requested clarification on the terms “developmentally appropriate” and “unusual confinement.” Commenters 26, 28, 29, 31, and 32 stated that there are times when separating a child is necessary to preserve the safety of other children.

Response: The Department has determined that the broad language within the rule is necessary, due to the circumstances unique to each specific child. The Department made no changes in response to this comment.

SECTION 11: Child Abuse and Neglect

Comment 109: Section 11(B): Commenters 26, 28, 29, 31, and 32 requested clarification on the term “status.”

Response: The Department used the term “status” to refer to the provider’s status as a mandated reporter under State statute. The Department made no changes in response to this comment.

SECTION 12: Health and Medical

Comment 110: Section 12(C)(2): Commenters 26, 28, 29, 31, and 32 stated that providers should not have to seek parental permission to use sunscreen, diaper creams, and bug repellent.

Response: The Department has determined that parental permission is necessary prior to administering nonprescription medications, to protect the child from adverse reactions. The Department made no changes in response to this comment.

Comment 111: Section 12(D): Commenters 26, 28, 29, 31, and 32 stated that reusable ice packs should be included as an alternative to instant cold packs.

Response: The Department finds that instant cold packs are necessary for inclusion in first aid kits for use when children are off site or outside of the home and to prevent the possible transmission of diseases from children reusing ice packs. The Department made no changes in response to this comment.

Comment 112: Section 12(D): Commenters 26, 28, 29, 31, and 32 requested that ‘quantity’ and ‘limited to’ be removed from the rule.

Response: The Department finds “type and quantity” to refer to the list of supplies that follows in the rule but removed the word “quantity,” as specific numbers of each item are at the discretion of the provider. The Department finds that the phrase “not limited to” allows licensees to expand on the basic list of first aid supplies at their discretion.

Comment 113: Section 12(G)(1): Commenters 26, 28, 29, 31, and 32 stated that washing hands would be an acceptable alternative to wearing disposable gloves for bagging clothing that is damp from urine and while wiping a runny nose.

Response: The Department has determined that use of disposable gloves would be best practice to protect providers from the spread of contagious diseases, but rephrased and renumbered this Section of the rule to allow the licensee to exercise discretion.

Comment 114: Section 12(H): Commenters 26, 28, 29, 31, and 32 recommended removing the phrase “as recommended by a physician.”

Response: The Department has reviewed the rule and determined that a physician’s verification of a food allergy or food intolerance is necessary before a licensee is required to follow dietary restrictions. The Department made no changes in response to this comment.

Comment 115: Section 12(I) and (I)(3): Commenter 8 stated that a more complete list of times when handwashing is recommended may be found in “Caring for Our Children.” Commenters 26, 28, 29, 31, and 32 stated that infants who are not crawling and not eating table food should be excluded from this requirement. Commenters 26, 28, 29, 31, and 32 stated that handwashing after meals can be done with a wet cloth or wipe instead of soap and running water.

Response: The Department has determined that the times listed for required handwashing represent the minimum health and safety standard of this rule and further notes that providers are not restricted from handwashing at other times of their choice. The Department has determined that handwashing as described in the rule is necessary to prevent the transmission of contagious diseases and protect children from ingesting other environmental hazards. The Department made no changes in response to this comment.

SECTION 13: Drinking Water and Wastewater

Comment 116: Section 13(A): Commenters 26, 28, 29, 31, and 32 questioned the need for first-draw lead testing of drinking water.

Response: The Department has determined that this testing is necessary to protect the health of children due to the prevalence of lead in drinking water caused by the deterioration of solder and plumbing fixtures in many homes. First-draw lead samples depict an accurate representation of any lead in the pipes. The Department made no changes in response to this comment.

Comment 117: Section 13(C): Commenters 26, 28, 29, 31, and 32 suggested that the Department pay for ongoing annual water tests and five-year water tests for providers with wells using application fees.

Response: The Department has reviewed this suggestion and determined that the application fees are set at rates that are significantly below the actual cost to the Department to provide the services rendered, as they are currently subsidized by federal funding. As noted previously, the Department currently subsidizes child care costs by funding background checks conducted by the Department, provider training, the Maine Quality Rating and Improvement System, child care licensing inspections, and State Fire Marshal’s Office. The Department made no changes in response to this comment.

SECTION 14: Environment and Safety

Comment 118: Section 14(A)(5): Commenter 7 recommended that the statutory citation be removed or clarified.

Response: The Department has included statutory citations throughout this rule to provide licensees with the resources that direct them to the relevant State laws that support this rule. This decision prevents the Department from the need to revise the rule when a statute is revised and eliminates the redundancy of repeating statute in rule. A complete listing of all State statutes can be found at

<http://www.mainelegislature.org/legis/statutes/>. The Department made no changes in response to this comment.

Comment 119: Section 14(A)(8): Commenters 8 and 27 recommended that smoking be prohibited at all times in any area used by children.

Response: The Department recognizes that prohibition of smoking at all times would be best practice; however, this determination must be balanced with the fact that family child care occurs in private homes. The Department finds that parental choice of licensee is an appropriate means of balancing these conflicting factors. The Department made no changes in response to this comment.

Comment 120: Section 14(A)(11): Commenter 5 stated that the rule change in this section promotes clarity in practice. Commenters 26, 28, 29, 31, and 32 suggested that providers be able to lock doors from the inside to prevent children from leaving, which creates a risk of harm.

Response: The Department thanks Commenter 5. The Department has determined that the suggestion made by Commenters 26, 28, 29, 31, and 32 that providers lock doors to prevent the exit of children would present an undue risk in the event of fire or other need to evacuate in an emergency and would be a violation of fire safety rules. The Department made no changes in response to this comment.

Comment 121: Section 14(B): Commenter 8 noted that the Department uses the words “sanitizing” and “disinfecting” but does not define them.

Response: The Department has reviewed this rule and distinguished “cleaning” from “sanitizing” in Section 14(B). The Department amended this language by removing “sanitizing” from the proposed rule at Section 14(B) and prohibiting only disinfectants use in close proximity to children. The Department has determined that “sanitize,” “disinfect” and “disinfectant” are terms that do not require definition in this rule.

Comment 122: Section 14(C): Commenters 26, 28, 29, 31, and 32 suggested that the Department adopt the wording “...remove the contents from the child care space when the containers are overfilled, or sooner if contents create a health risk” and remove the term ‘odor.’

Response: The Department has determined that the maintenance of waste and recycling receptacles, as stated, is necessary to preserve the health and safety of children, including children with environmental sensitivities. The Department made no changes in response to this comment.

Comment 123: Section 14(D)(1)(a): Commenters 26, 28, 29, 31, and 32 suggested that the Department adopt the wording “...must be maintained in children’s indoor playrooms.”

Response: The Department has determined that this section sufficiently refers to indoor space, due to the fact that it requires measurement of the temperature within two feet of the floor, and there is a later subsection that addresses outdoor play areas. The Department made no changes in response to this comment.

Comment 124: Section 14(D)(1)(c): Commenters 26, 28, 29, 31, and 32 questioned the use of the phrase “all children” in that some elements of the rule may not be applicable to older children.

Response: The Department has reviewed the rule and determined that the use of the word “or” provides flexibility between assuring the safety of children of differing ages. The Department made no changes in response to this comment.

Comment 125: Section 14(D)(3): Commenters 26, 28, 29, 31, and 32 suggested either removing this section or amending it to state that ventilation be available.

Response: The Department determined that indoor air quality is assured by compliance with this rule. The Department made no changes in response to this comment.

Comment 126: Section 14(D)(4)(a): Commenters 26, 28, 29, 31, and 32 requested that use of cribs and play yards be extended to children over 18 months of age at the discretion of the provider.

Response: The Department determined that there is no restriction stated in the rule regarding the use of such equipment for older children. The Department made no changes in response to this comment.

Comment 127: Section 14(D)(4)(c): Commenter 8 suggested that the space between cribs and mats be extended to three feet.

Response: The Department has determined that two feet between cribs and mats is the minimum requirement to allow for the safe movement of providers between equipment and evacuation, if necessary. The Department made no changes in response to this comment.

Comment 128: Section 14(D)(5)(b): Commenters 26, 28, 29, 31, and 32 requested that “individual use” be added for wash cloths and towels.

Response: The Department finds that the phrase “individually assigned” clearly indicates “individual use.” The Department made no changes in response to this comment.

Comment 129: Section 14(A)(1): Commenter 5 expressed support of the proposed change.

Response: The Department thanks Commenter 5.

Comment 130: Section 14(A)(1): Commenters 8, 16, and 17 suggested that the proposed rule include specific minimum lengths of time for outdoor play.

Response: The Department has determined that setting the specific length of time for outdoor play should be a decision reached by parent and provider. The Department made no changes in response to this comment.

Comment 131: Section 14(E)(2)(a): Commenters 26, 28, 29, 31, and 32 requested that the requirement for outdoor play equipment to be clean be removed from the rule.

Response: The Department finds that cleanliness is a requisite for outdoor play equipment, especially when pets are also present in the play area. The Department made no changes in response to this comment.

Comment 132: Section 14(E)(2)(b): Commenters 26, 28, 29, 31, and 32 requested that the phrase “A variety of equipment for the age and needs of all children in care.” be added to the rule.

Response: The Department agrees with these Commenters and clarified this language in Section 14(E)(2), and removed the proposed Section 14(E)(2)(b).

Comment 133: Section 14(E)(2)(b): Commenters 26, 28, 29, 31, and 32 requested that the Department clarify equipment needs specific to the age range of children in care.

Response: The Department’s intent is that the licensee have equipment available in the play area that is suitable to their individual age and needs of each child in the care. The Department made the changes indicated in the response to Comment 132 above.

Comment 134: Section 14(E)(2)(c): Commenters 26, 28, 29, 31, and 32 requested that only equipment used for climbing be located at least six feet from any hard surfaces including poles, fences, sheds and other play equipment.

Response: The Department has determined that six feet between any climber, swing, or slide and a hard surface is the minimum acceptable distance. The Department made no changes in response to this comment, as the changes made in response to Comment 137 below clarified this requirement.

Comment 135: Section 14(E)(2)(c) and (3)(c): Commenters 5, 26, 28, 29, 31, and 32 stated that the rule would limit the amount of play equipment available and would prohibit the use of mobile toys.

Response: The Department determined that six feet between climbers, swings, or slides and hard surfaces is the minimum distance to allow safe movement of children and prevent injury. The Department’s rule does not address mobile toys. The Department made no changes in response to this comment.

Comment 136: Section 14(E)(2)(c) and (3)(c): Commenters 16 and 17 stated that the section is cumbersome for low, non-climbing items and requested clarification.

Response: The Department finds the rule requires shock-absorbing material only when equipment exceed 36 inches in height. The Department made no changes in response to this comment.

Comment 137: Section 14(E)(2)(c) and (3)(c): Commenter 18 suggested that Section 14(E)(2) be removed, because “equipment” is not defined.

Response: The Department finds that the phrase “climbers, swings and slides” provides a definition for equipment and has removed the use of “climbers, swings and slides” in Section 14(E)(3) and “equipment” in Section 14(E)(2) to provide more clarity.

Comment 138: Section 14(E)(2)(c) and (3)(c): Commenter 5 suggested that shock absorbing materials be required only in fall zones and not “in all directions.”

Response: The Department has reviewed the rule and determined that the requirement for shock-absorbing material to be placed in all directions surrounding equipment is necessary, due to the fact that children often use stationary equipment in a manner unintended by the manufacturer. The Department made no changes in response to this comment.

Comment 139: Section 14(E)(2)(c) and (3)(c): Commenter 6 asked if the “36 inches in height” stated in rule is measured from the landing of a slide.

Response: The Department has reviewed the rule and finds that 36 inches refers to the distance between the ground and the highest point of the equipment. The Department made no changes in response to this comment.

Comment 140: Section 14(E)(6)(a): Commenters 26, 28, 29, 31, and 32 requested that the phrase “any body of water” be removed, or that the Department define the size of a body of water requiring fencing.

Response: The Department determined that children may be at risk of drowning in a natural body of water of any size. The Department agrees with the Commenters and added the word “natural” to improve the clarity of the rule by directing licensees to the definition.

Comment 141: Section 14(F)(2): Commenters 26, 28, 29, 31, and 32 recommended that only play areas used by children be free of pet waste or odors, and that the word “odors” be removed from this rule.

Response: The Department agrees with the Commenters’ suggestions and added “the interior of the home must be free of pet waste” before the word “odors” to clarify this section.

Comment 142: Section 14(F)(2): Commenters 26, 28, 29, 31, and 32 recommended that parents be allowed to sign a waiver acknowledging that children may be exposed to pet waste and odor.

Response: The Department determined that parents do not have the authority to grant a licensee a waiver from the requirements of rule. The Department made no changes in response to this comment.

SECTION 16: Food and Kitchen Facilities

Comment 143: Section 16(A)(1): Commenter 5 stated that the use of the term “shall” could be interpreted to mean that licensees must provide meals and snacks.

Response: The Department agrees with Commenter 5 that “shall” may be interpreted as a directive and amended this section.

Comment 144: Section 16(A)(1): Commenters 5 and 23 recommended adding a reference to the United States Department of Agriculture, Food and Nutrition Service, Child and Adult Care Food Program. Commenters 26, 28, 29, 31, and 32 recommended deleting the phrase “balanced diet” as subjective.

Response: The Department determined the a requirement for licensees to conform to the standards to the USDA Food and Nutrition Service would exceed minimum health and safety licensing standards for the purposes of this rule. The Department finds that the use of the “well-balanced” to be adequately described in the following sentence in that Section. The Department made no changes in response to this comment.

Comment 145: Section 16(A)(3): Commenters 26, 28, 29, 31, and 32 stated that breast milk storage should be the parent’s decision and that this requirement be deleted from the rule.

Response: The Department finds that safe storage of breast milk is necessary to preserve the health and safety of children; therefore, the Department determined that requirements for safe storage must remain in this rule. The Department made no changes in response to this comment.

Comment 146: Sections 16(A)(3) and (4): Commenters 26, 28, 29, 31, and 32 recommended that the term “refrigerated” be replaced with “chilled or frozen.” Commenter 5 requested that freezer storage be added to the proposed rule.

Response: The Department agrees with the Commenters and, therefore, replaced the language in Section 16(A)(3) and 16(A)(4) with the requirement to follow those standards of the national Center for Disease Control available at www.cdc.gov/breastfeeding/recommendations/handling_breastmilk.htm.

Comment 147: Section 16(A)(4): Commenter 5 questioned the meaning of the Department’s inclusion of the sentence “Breast milk or specialized dietary formulas may be used when needed and supplied by the child’s parent.”

Response: The Department included this sentence to clarify the preceding sentence regarding the use of formula, to explain that providers are not restricted to the use of formula. As noted in the response above, the Department agrees with the Commenter and replaced the language in the proposed Section 16(A)(4) with amended language in 16(A)(3).

Comment 148: Section 16(A)(5): Commenter 5 suggested that sight and sound supervision include snack times.

Response: The Department agrees with this comment and amended this language to read “meal and snack times” in a renumbered Section 16(A)(4).

Comment 149: Section 16(A)(5): Commenters 26, 28, 29, 31, and 32 suggested that the word “mealtimes” with “while eating.”

Response: The Department agrees with this comment and amended the language to read “meal and snack times.”

Comment 150: Section 16(B)(2): Commenter 8 suggested that the word “washed” be replaced with “washed and sanitized.”

Response: In response to this comment, the Department replaced “washed” with “disinfected” to provide a more accurate term for eliminating germs on food preparation services.

Comment 151: Section 16(B)(4): Commenters 26, 28, 29, 31, and 32 suggested that it would be acceptable to dispose of paper products at the end of the day instead of immediately after use.

Response: The Department disagrees with this suggestion and finds that disposing of paper products after use is necessary to prevent inadvertent reuse or access by children. The Department made no changes in response to this comment.

Comment 152: Section 16(B)(5): Commenters 26, 28, 29, 31, and 32 recommended that a temperature of up to 5 degrees over the indicated maximum acceptable temperature be allowed, as long as it is corrected at the time of inspection.

Response: The Department finds that the maximum temperature stated in the rule is consistent with previous administration of this standard and necessary to prevent the spoilage of food. The Department made no changes in response to this comment.

Comment 153: Section 16(B)(5) and 16(B)(6): Commenters 26, 28, 29, 31, and 32 recommended that the rule specifically exclude refrigerators and freezers not used for food served to children in care.

Response: The Department agrees with the Commenters and amended this requirement to apply to only to appliances used for the storage of food consumed by children in care.

SECTION 18: Infant and Toddler Care

Comment 154: Section 18(A)(2): Commenters 26, 28, 29, 31, and 32 stated that “proper development” is too broad and subjective.

Response: The Department intentionally used broad language to allow flexibility for the unique needs of each infant and toddler, to be determined by the parents and providers. The Department made no changes in response to this comment.

Comment 155: Section 18(A)(3): Commenters 26, 28, 29, 31, and 32 recommended that the Department’s requirement to reposition a toddler every 30 minutes should be removed from rule. In the alternative, the Commenters asked the Department to add information specific to infants.

Response: The Department finds that the requirement is necessary and the age range is appropriate, due to the fact that younger toddlers also need frequent repositioning to prevent possible asphyxiation. The Department made no changes in response to this comment.

Comment 156: Section 18(B)(1): Commenters 26, 28, 29, 31, and 32 recommended adding the phrase “in their arms for feeding a bottle” to the rule.

Response: The Department reworded this section to make it clear that the providers shall hold infants in their arms for bottle feeding.

Comment 157: Section 18(C): Commenters 26, 28, 29, 31, and 32 recommended adding the phrase “except when sleeping” to the rule.

Response: The Department determined that the two-hour interval for checking diapers would allow children to nap without being disturbed. The Department made no changes in response to this comment.

Comment 158: Section 18(C)(1): Commenters 26, 28, 29, 31, and 32 recommended that the rule allow “a lidded shared container or a shared garbage container inaccessible to children.”

Response: The Department determined that this requirement allows sufficient options for disposal of stored diapers as written. The Department made no changes in response to this comment.

Comment 159: Section 18(C)(2): Commenter 8 recommended that the word “sanitized” be replaced with “disinfected.”

Response: The Department agrees with the Commenter and changed this term.

Comment 160: Section 18(E)(1): Commenters 26, 28, 29, 31, and 32 recommended adding “and may be used for children over 18 months old at the discretion of the provider” to the rule.

Response: The Department finds that no restriction would prohibit the use of cribs or play yards for children over the age of 18 months; the rule requires that a crib or play yard be provided for each children under the age of 18 months. The Department made no changes in response to this comment.

SECTION 19: Nighttime Care

Comment 161: Section 19(D)(4): Commenters 26, 28, 29, 31, and 32 recommended that nighttime fire drills occur monthly.

Response: The Department agrees with the Commenters and amend the rule to reflect a monthly frequency requirement.

Comment 162: Section 19(G)(1): Commenters 26, 28, 29, 31, and 32 recommended that the rule be amended to allow related children to bathe together or use the same bath water.

Response: The Department determines that the health and safety needs relevant to sharing bath water apply equally to related and unrelated children. Therefore, the language will remain and the Department made no changes in response to this comment.

SECTION 20: Enforcement

Comment 163: Commenters 26, 28, 29, 31, and 32 stated that this entire section is unclear and should not be implemented until clarified.

Response: The Department has reviewed each comment where a subsection of Section 20 was questioned and has made changes in several areas, including clarifying the procedure for administrative appeals and explained more fully how licensees receive due process. (See responses to Comments 164-177 below). The Department revised past practices to describe a progressive series of actions to correct violations with the intent of achieving compliance with the rule. The progression begins with the plan of action developed at the time of inspection, and proceeds to informal dispute resolution which may result in an amended plan of action, a directed plan of action, and restricted license. When a licensee fails to comply with restrictions or a directed plan of action, the Department will only then assess administrative fines, which may be appealed by the licensee. If, after a licensee disputes a final decision from an administrative hearing, then a licensee may still appeal to Superior Court. The Department’s intent is to supplement the previous approach of formal licensing actions (issuance of a conditional license, or revocation of a license) with less public and punitive measures that do not have as profound an impact on the public image or financial status of the licensee.

Comment 164: Section 20(A): Commenters 26, 28, 29, 31, and 32 suggested striking this sentence from the rule: “The Department may direct any licensee to correct any violations in a manner, and within a time frame, that the Department determines is appropriate to ensure compliance with this rule or to protect the health and safety of children.”

Response: The Department would only issue a directed plan of action when a licensee fails to meet the actions and timelines specified in the mutually-determined Plan of Action described in Section 4(D)(1) of the rule, or following an amended plan of action following an informal dispute resolution. The Department made no changes in response to this comment.

Comment 165: Section 20(A): Commenters 26, 28, 29, 31, and 32 asked if a directed plan of action is subject to appeal rights.

Response: No, a directed plan of action is not subject to appeal. However, if a licensee disagrees with a disputed plan of action, he or she may appeal the administrative fine assessed by the Department after a licensee fails to comply with a directed plan of action. During the period of time from a request to appeal the fine until the final decision is rendered for an administrative hearing, the requirements under the Directed Plan of Action, as well as the requirement to pay the administrative fine, is stayed. The Department made no changes in response to this comment.

Comment 166: Section 20(A): Commenters 26, 28, 29, 31, and 32 asked if a directed plan of action is a conditional license.

Response: No, the directed plan of action is not a conditional license. If a conditional license was not followed under the previous rule, then the Department could immediately void the license, which would prevent the licensee from operating at all; in addition, it may prevent the licensee from receiving subsidies. If the licensee fails to comply with a directed plan of action, then he or she may continue to operate the family child care and receive an administrative fine. The Department made no changes in response to this comment.

Comment 167: Section 20(B): Commenters 26, 28, 29, 31, and 32 asked what level of violation will lead the Department to issue an order.

Response: To answer the Commenters, the Department would only issue an order to cease admissions or reduce the licensed capacity of a licensee when the plan of action and directed plan of action were unsuccessful in complying with the requirement within the rule. The Department made no changes in response to this comment.

Comment 168: Section 20(C): Commenters 7, 21, 26, 28, 29, 31, and 32 stated that fines are not affordable and will increase the cost of child care or lead to child care licensees going out of business.

Response: The Department’s issuance of fines to licensees will only occur after the licensee had an opportunity for an informal dispute resolution, failed to comply with the plan of action following an informal dispute resolution, and then failed to comply with a directed plan of action. The Department finds that administrative fines are likely to cost less than a conditional license, which frequently results in loss of business and/or an inability to participate in the DHHS OCFS Child Care Subsidy Program or Child and Adult Care Food Program. The Department would also like to note that fines may be appealed, in

accordance with Section J(1)(c)(v), and that, pending appeal, any Department requirement associated with a plan of action or to pay a fine, is stayed until a final decision is rendered. Only if the final hearing decision is in the Department's favor, is the licensee required to pay the fine and comply with the directed plan of action. In addition, the licensee is afforded the opportunity to appeal a final hearing decision by appealing to Superior Court. Until a final decision is rendered by a judge at Superior Court, the licensee's requirement to comply with the Directed Plan of Action and pay the administrative fine would continue to be stayed. The Department made no changes in response to this comment.

Comment 169: Section 20(C): Commenters 26, 28, 29, 31, and 32 asked for clarification on the differences between fines and administrative fines.

Response: The terms "fine" and "administrative fine" are synonymous in the rule. In response to this Comment and to clarify the meaning, the Department inserted the word "administrative" in any areas where it did not appear in the proposed rule.

Comment 170: Section 20(C)(3)-(C)(7): Commenters 26, 28, 29, 31, and 32 stated that the amount of fine and evidence of violation should be shared at the time of inspection.

Response: A fine would only be issued by the Department after other attempts to achieve compliance were unsuccessful; therefore, a licensor would not be able to share the amount of a fine at the time of inspection, because it would be premature to calculate such an amount. All evidence of violations is reviewed as part of developing a plan of action at the time of inspection. The Department made no changes in response to this comment.

Comment 171: Section 20(C)(3)-(C)(7): Commenters 26, 28, 29, 31, and 32 asked if fines can be disputed through informal dispute resolution.

Response: No, a fine cannot be disputed through informal dispute resolution. If the Department assesses an administrative fine, the licensee may appeal the fine through a formal request for an administrative hearing. The Department notes that a fine will only be administered after measures including a plan of action, an informal dispute resolution occurred (if requested by the licensee), an amended plan of action was issued that resulted from the informal dispute resolution decision (if the Department revised the original plan of action), a directed plan of action was issued, the licensee failed to comply with the directed plan of action, and the licensee failed to comply with the directed plan of action. The Department has clarified language in the rule to clarify the appeal process and to describe that fines and other requirements of a directed plan of action are stayed pending the appeal in Section 20(J)(1)(d).

Comment 172: Section 20(C)(3)-(C)(7): Commenters 26, 28, 29, 31, and 32 asked if every violation is subject to a \$100 fine.

Response: Section 1(A)(7) identifies which violations of the rule are critical violations and which violations are non-critical violations. Section 20(C)(4)(a) states that a non-critical violation may result in an administrative fine of \$100.00. Critical violations are subject to a fine of \$200. The Department made no changes in response to this comment.

Comment 173: Section 20(C)(3)-(C)(7): Commenters 26, 28, 29, 31, and 32 asked if administrative fines are subject to right to appeal.

Response: Yes, administrative fines are subject to the right to appeal, and licensees may request an administrative hearing to dispute the fine under Section 20 of the rule. The Department changed this section, in response to public comment and AAG review, to better describe this process.

Comment 174: Section 20(D) and (D)(2): Commenters 26, 28, 29, 31, and 32 stated that the licensee should be provided a public defender at no cost.

Response: The Department is under no legal obligation to pay for an attorney for the licensee, but the licensee does have the right to be represented by either an attorney or a non-attorney at any hearing or informal dispute resolution conference. The Department made no changes in response to this comment.

Comment 175: Section 20(G): Commenters 26, 28, 29, 31, and 32 asked if the Department would close a provider's business if a \$100 fine was not paid.

Response: The Department provides a gradual and progressive method for providers to achieve compliance, with the intent to work with providers to prevent closure of licensed family child care settings whenever possible. Closure would only occur when there is an immediate risk to children or chronic failure to comply with the rule. Providers may also opt to exercise their right to an administrative hearing to contest a final agency decision. If the licensee does not pay a fine that was upheld after a final administrative hearing decision, then the Department may deny an application for the renewal of the license. The Department made no changes in response to this comment.

Comment 176: Section 20(J)(1)(c): Commenters 26, 28, 29, 31, and 32 stated that right to appeal should extend to "any decision by the department where the department has misapplied applicable laws, procedures or rules." Commenters 26, 28, 29, 31, and 32 stated that right to appeal should extend to "all violations or anything in your file." Commenters 26, 28, 29, 31, and 32 stated that Section 20 (J)(1)(c) should be deleted from the proposed rule.

Response: The Department finds that the listing of actions that are subject to appeal is accurate and consistent with statute. However, in addition to the list contained within 22 M.R.S. §7802 (5), the Department has added the denial of a waiver request to Section 20(J)(1)(c).

Comment 177: Section 20(J)(2)(c): Commenters 26, 28, 29, 31, and 32 stated that administrative hearings should be administered by a fair and neutral party who is not affiliated with DHHS or the CDC.

Response: The Department determined this Section to be consistent with the statutory requirements of the Maine Administrative Procedures Act, 22 M.R.S. Chapter 375. The Department's Administrative Hearings Unit is governed by 10-144 C.M.R. Chapter 1, Administrative Hearings Regulations, and administrative hearing decisions may be further appealed to Superior Court. The Department has added the right to appeal a final agency decision in Superior Court at Section 20(J)(3). The Department made no changes in response to this comment.

Comment 178: Section 20(J)(2)(c): Commenters 26, 28, 29, 31, and 32 stated that there should be a statute of limitations that removes violations from the licensee's record three years from the date of the occurrence of the violation.

Response: The Department maintains an ongoing record of licensee compliance with Section, in order to make fair, consistent, and informed decisions regarding actions employed, to protect the health and safety of children. The Department made no changes in response to this comment.

SUMMARY OF CHANGES RESULTING FROM COMMENTS & AAG REVIEW:

Note: Items in italics are changes made in response to the Office of the Attorney General's review of the proposed rule.

Title Page:

- The title of the rule was changed to reflect current style. *The word "provider" was added to the title.*
- "Last amended" was replaced with "Effective date" as this rule replaced 10-148 C.M.R. Ch. 33.
- *The effective date of the rule was added.*

Table of Contents, Summary, and Authority:

- p. i: Section 1 was updated to match the body of the text.
- p. i: Section 7(B) was corrected to match the body of the rule.
- p. ii: The word "staff" was replaced with "provider" in Sections 8 and 12.
- p. ii: Section 9(B) was corrected to match the body of the rule.
- p. ii: Section 14(B) was amended to reflect a change in the rule.
- p. iii: Section 20(C) was corrected to match the body of the rule.
- p. iv: The title of the rule was changed to reflect current style.
- *p. iv: The authority was changed to reflect statutory chapters instead of sections.*
- p. iv: The sentence following "Effective Date" was revised to reflect that this rule replaced 10-148 C.M.R. Ch. 33.

SECTION 1: Purpose and Definitions

- p. 1: Section and subsection titles were revised for consistency.
- p. 1: The title of the rule was changed to reflect current style.
- *p. 1: A notice was added to state that the rule contains both routine technical and major substantive parts, and to indicate how those parts are distinguished within the rule.*
- *p. 2, 1(B*)(7): A correction was made in a rule number.*

* The outline of the rule was changed to make the “Purpose” section 1((A) and “Definitions Section 1(B). Comments included the original citations; but all summaries of such comments and responses within the Purpose and Definitions section of this document reflect the updated sequence and structure.

- p. 2, 1(B*)(13): The wording “operate a family child care. A license includes a certificate as defined in 22 M.R.S. §8301-A.” was replaced with “be a family child care provider. For purposes of this rule license has the same meaning as the certification referred to in 22 MRS §8301-A.”
- p. 3, 1(B*)(15): The definition of “licensed capacity” was clarified.
- p. 3, 1(B*)(23): The definition of “swimming pool” was revised.
- p. 3, 1(B*)(28): The definition of “volunteer” was removed.

SECTION 2: Application and Licensing

- p. 4, 2(A)(1) and (2): These rules were re-labeled as major substantive.
- p. 4, 2(A)(3): This rule was revised and relocated to Section 2(D)(6). All other changes noted in Section 2 (below) reflect the new citations.
- p. 4, 2(A)(4)(e): The rule was revised to include a reference the appropriate section of this rule.
- p. 4, 2(A)(5): The rule was rephrased for clarity.
- p. 4, 2(A)(6): The requirement for compliance with the Life Safety Code was relocated from the preceding rule.
- p. 5, 2(B)(3): A requirement that any fines due be paid before renewal of a license was added.
- p. 5, 2(D)(1): The phrase “and shall state the licensed capacity” was added.
- p. 5, 2(D)(4): The nature of the actions that require parent notification was clarified. The phrase “proposed or” was deleted.
- p. 5, 2(D)(6): The rule was deleted, as the requirement for a license applies to all potential licensees. The following language was added: “The licensee is responsible for ensuring compliance with this rule and all applicable statutes for themselves and any providers working in the child care.”
- p. 5, 2(D)(7): This rule was renumbered based on the above change, and the phrase “the number of children in care” was replaced with “licensed capacity”.
- p. 5, 2(D)(8): This rule was renumbered and revised for clarity.
- p. 5, 2(D)(9): This rule was renumbered and the phrase “marijuana infused products” was replaced with “any product containing tetrahydrocannabinol”.
- p. 6, 2(D)(10): The requirement for the frequency of fire drills was changed from bi-monthly to monthly. This rule was renumbered.
- p. 6, 2(E): The following phrase was added: “and does not endanger the health and safety of a child in care.”

SECTION 3:

- No changes.

SECTION 4: Inspections and Investigations

- p. 7, 4(A)(3): The requirement for an inspection when decreasing licensed capacity was removed.
- p. 7, 4(C): *The phrase “or used” was added.*
- p. 8, 4(D)(5): *Added section: “No inspection reports shall be posted until the Department issues its written decision regarding any requested informal dispute resolution.”*
- p. 8, 4(F): *The rule was revised to clarify that rule violations may be identified either by inspection or during the course of a complaint investigation, and the notification process.*
- p. 8, 4(F)(2)(b): *The phrase “or a reason” was deleted.*
- p. 9, 4(F)(5): *The phrase “and may include an amended plan of action” was added.*
- p. 9, 4(F)(6): *This rule was added.*

SECTION 5: Records

- p. 9, 5(C)(3): The requirement to record the child’s parent’s employer’s mailing address was removed.
- p. 9, 5(C)(10): *Statutory citations were added.*
- p. 9, 5(C)(11)(b): *“Parental visitation at the child care site” was added.*
- p. 10, 5(C)(15): *The phrase “or denial” was added.*
- p. 10, 5(C)(17): *This rule was revised for clarity.*
- p. 11, 5(D)(3): The phrase “and dates of service for volunteers” was removed.
- p. 11, 5(E)(1): The phrase “or volunteered” was removed.
- p. 11, 5(E)(2): *Arrival and departure time was pluralized.*
- p. 11, 5(F): *The phrase “when it identifies a person directly or indirectly” was added.*
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SECTION 6: Background Checks

- p. 12, 6(A)(2): *The language regarding conditional employment was replaced with a reference to the relevant statute.*
- p. 11, 6(B): The phrase “and volunteers” was removed.

- p. 11, 6(C): The word “volunteers” was removed.
- p. 12, 6(D): The phrase “or volunteer” was removed. *The phrase “the adoption of 22 M.R.S. §9054” was replaced with “notification to use the Maine Background Check Center.”*
- p. 12, 6(D): *The phrase “pursuant to the adoption of 22 M.R.S. §9054” was deleted.*
- p. 13, 6(H): *The language regarding waivers for drug-related convictions was replaced with the appropriate statutory citation.*

SECTION 7: Reporting

- p. 15, 7(A): *The phrase “the following, within 24 hours of occurrence” was added.*
- p. 15, 7(A)(5)(g): *The phrase “such as the serious injury or death of a child in the licensee’s care: was added, and “which may” was removed.*
- p. 15, 7(A)(5)(a)-(g) and 7(B): *The rules were re-labeled as major substantive.*

SECTION 8: Staff-Child Ratios and Supervision

- p. 15-16: The word “staff” was replaced with “provider.”
- p. 15, 8(A): *Wording was added to clarify that the provider-staff ratios are no longer tied to the developmental stages of children.*
- p. 15, 8(A)(1): The term “Prohibited” was replaced with “Not Applicable.”
- p. 16, 8(A)(3): Children of the provider under three years of age are included in provider:child ratios. Children of the provider over the age of three are not included in licensed capacity.
- p. 16, 8(A)(5): *The phrase “and the reason for exceeding capacity” was added.*

SECTION 9: Training

- p. 16, 9(B): The word “relevant” was added.

SECTION 10: Child Guidance, Management, and Discipline

- *This section was re-labeled as major substantive.*

SECTION 11: Child Abuse and Neglect

- p. 18, 11(A): The word “volunteers” was removed.
- p. 18, 11(B): The word “staff” was changed to “providers.”
- *This section was re-labeled as major substantive.*

SECTION 12: Health and Medical

- p. 19, 12(D): The words “and quantity” were removed.
- p. 19, 12(E): The word “staff” was changed to “provider.”
- p. 19, 12(G)(1): The use of disposable gloves was made optional.

SECTION 13: Drinking Water and Wastewater

- No changes.

SECTION 14: Environment and Safety

- p. 22, 14(B): The word “sanitizing” was removed, and the rule limits only disinfectants as products to not be used in close proximity to children.
- p. 23, 14(E)(2)(b): The phrase “A variety of equipment suitable for the ages and needs of all children in care” was added to the rule.
- p. 23, 14(E): The use of “climbers, swings and slides” in Section 14(E)(3) and “equipment” in Section 14(E)(2) was reversed.
- p. 23, 14(E)(6)(a): The word “natural” was added.
- p. 24, 14(F)(2): *The phrase “or other animal” was added.* “The interior of the home must be free of pet waste” was added before the word “odors.”

SECTION 15: Swimming and Wading

- p. 24, 15(c)(2): The word “staff” was changed to “provider.”

SECTION 16: Food and Kitchen Facilities

- p. 25, 16(A)(1): The first sentence was amended to read: “Meals and snacks provided by the licensee shall be nutritious and well-balanced.” The word “served” was replaced with “provided by the licensee” in the second sentence.
- p. 25, 16(A)(3) and (4): Both sections were replaced with the requirement to follow the guidelines of the national Center for Disease Control, available at www.cdc.gov/breastfeeding/recommendations/handling_breastmilk.htm.
- p. 25, 16(A)(5): The phrase “snack and meal times” replaced “meal times.”
- p. 25, 16(B)(2): The term “washed” was replaced with “disinfected.”
- p. 26, 16(B)(5)&(6): The phrase “used to store food for children in care” was added.

SECTION 17: Transportation

- No changes

SECTION 18: Infant and Toddler Care

- p. 27, (B)(1): The sequence of the wording was changed for clarity.
- p. 27, 18(C)(2): The word “sanitized” was replaced with “disinfected.”
- P.28, 18(E)(1): A link to the Consumer Product Safety Commission was added.

SECTION 19: Nighttime Care 28

- p. 29, 19(D)(4): The frequency of nighttime fire drills was increased from bi-monthly to monthly.
- p. 29, 19(G)(6): The numbering was corrected.

SECTION 20: Enforcement

- p. 30: *The second sentence in the introduction to this section was deleted.*
- p. 30, 20(B): *The term “orders” was replaced with “restrictions”, and the rule was rephrased.*
- p. 30, 20(C): *The term “administrative” was inserted before each use of “fines.” The phrase “notice of” was deleted in the caption.*
- p. 30, 20(C)(1): *The phrase “correspondence following a” was replaced with “requirements related to the”.*
- p. 31, 20(C)(1): *The word “violation” was replaced with “inspection”.*
- p. 31, 20(C)(6): *The phrase “will refuse to process” with “may deny”.*
- p. 31: 20(D), (E), and (F) *were reordered to a new sequence, with referral to the Office of the Attorney General occurring after less punitive efforts to achieve compliance with rule.*
- Section 20(E) *was divided into subsections and revised to more accurately reflect statute. “Emergency suspension” was reallocated to Section 20 (E)(3).*
- p. 31: 20 (E): *The phrase “or seek to amend” was added, and the phrase “on an emergency or administrative basis” was replaced with “as follows”.*
- p. 32, 20(J)(1): *The word “administrative” was added.*
- p. 32, 20(J)(1): *“14 calendar days” was changed to “30 days”.*
- p. 33, 20(J)(1)(c)(vi): *Added: “The denial of a waiver request.”*
- p. 33, 20(J)(1)(d): *Added: “Actions subject to the right to appeal shall be stayed until the Department makes a final agency decision, unless the license is suspended under Section 20(E) or (F).”*
- p. 33, 20(J)(3): *A section regarding judicial review was added.*

- *p. 33: A notice was added to state that the rule contains both routine technical and major substantive parts, and to indicate how those parts are distinguished within the rule.*