

**PROPOSED REGULATION OF THE DIVISION OF CHILD AND
FAMILY SERVICES OF THE DEPARTMENT
OF HUMAN RESOURCES**

LCB File No. R066-99

August 2, 1999

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-3, 5-8, 11, 12 and 15-23, NRS 424.020; §§4, 9, 10, 13 and 14, NRS 424.020
and 424.045.

Section 1. Chapter 424 of NAC is hereby amended by adding thereto a new section to read
as follows:

“Applicant” includes:

- 1. A person applying to be a provider of foster care;*
- 2. A resident of a foster home who is 18 years of age or older; and*
- 3. A volunteer or an employee of a foster home who will be providing foster care.*

Sec. 2. NAC 424.005 is hereby amended to read as follows:

424.005 As used in this chapter, unless the context otherwise requires, the words and terms
defined in NAC 424.010 to 424.080, inclusive, *and section 1 of this regulation* have the
meanings ascribed to them in those sections.

Sec. 3. NAC 424.035 is hereby amended to read as follows:

424.035 “Division representative” ~~[means the licensing]~~ *includes a regional representative of the division, a professional worker of the division or a designee* of the division, or ~~[the licensing]~~ *a professional worker or a designee* of a licensed child-placing agency.

Sec. 4. NAC 424.110 is hereby amended to read as follows:

424.110 1. Any person or operator, including corporations, desiring to operate a foster home shall contact ~~[their]~~ *the appropriate regional representative of the division or* local district office of the division for an application and return the completed application to the *regional representative or* district office.

2. When a corporation applies for a license, the application must include information on the director and staff. The director is responsible for interviewing each ~~[of the prospective employees]~~ *prospective employee* and submitting a copy of ~~[their]~~ *each* employment application and resume to the division upon request.

3. ~~[Misrepresentation]~~ *Intentional misrepresentation* or omission of information on a foster home application ~~[can be]~~ *is* cause for *the* immediate denial *of the application* or revocation of the license. *Such a denial or revocation is not subject to appeal.*

Sec. 5. NAC 424.130 is hereby amended to read as follows:

424.130 1. A division representative shall conduct a fair and impartial inspection of each foster home at initial licensing and annually thereafter. The division representative may request any health, fire, building or other inspection if he has any reason for concern regarding the health or safety of the home.

2. All foster homes must receive fire safety inspections upon their initial application for a license and annually thereafter pursuant to NAC 424.135.

3. ~~Each~~ *The division may require each* group foster home ~~must~~ *to* be inspected upon its application for a license by the local building inspector and ~~the~~ *any* local or state health inspector. A subsequent building inspection may be required if any structural remodeling is done.

4. ~~All~~ *The division may require all* foster homes ~~may~~ *to* be inspected annually by ~~the health department~~ *a health authority* if individual well water or a septic tank is used.

5. If ~~the~~ *a foster* home is not located on a city water system, the division may require the analysis of a water sample and the issuance of a report of approval by the appropriate governmental authority. The division may require foster homes that obtain their water from an individual well to have an annual water inspection to ensure that the water is safe for drinking. Bottled water may be required if the water *from the individual well* is unsafe.

6. All group foster homes must be inspected as single-family dwellings, as defined in the current codes for such dwellings adopted by the state fire marshal.

Sec. 6. NAC 424.135 is hereby amended to read as follows:

424.135 1. Fire safety inspections must be conducted by ~~the licensing worker~~ *a regional representative of the division* or the state or local fire inspector based on the home's total occupancy, including the number of foster children for whom the home is to be licensed. If the home will accept or is currently occupied by a nonambulatory or severely handicapped, disabled or mentally retarded person, each such person must be counted twice when determining total occupancy.

2. If the total occupancy is:

(a) Less than 10, the ~~licensing worker~~ *regional representative* shall, *except as otherwise provided in this paragraph*, inspect the home to ensure the requirements of subsection 3 are met.

The regional representative is not required to inspect a home pursuant to this paragraph if the state or local fire inspector has inspected the home in conjunction with a current application.

(b) Ten or more, the state fire marshal or his designee shall inspect the home. The state fire marshal may, based upon information he receives regarding the home, designate the ~~licensing worker~~ *regional representative of the division* to conduct the inspection.

3. Requirements for safety from fire must be met as established by the state fire marshal considering the number of occupants and their ability to exit in case of a fire.

Sec. 7. NAC 424.160 is hereby amended to read as follows:

424.160 1. No family foster home may be licensed for more than six children, excluding any children who are related to the foster parent, reside in the home and are not foster children.

2. No group foster home may be licensed for more than 15 children.

3. The total number of children for which a facility may be licensed must be determined by a division representative based upon the following factors:

(a) The staff's own children under the age of 16 who live in the facility and the individual needs of these children.

(b) The physical facilities, equipment and available space for activities.

(c) The skills and abilities of the staff.

(d) The characteristics of children in care.

(e) The services provided and program description.

(f) Other factors the division determines to be relevant.

4. Care must not be provided for more than two children who are under the age of 18 months or four children who are under the age of 5 years, including in that total any children of

the foster parents under the age of 18 months or 5 years, without the approval of the chief of the bureau or ~~his designee.~~ *the designee of the administrator.*

Sec. 8. NAC 424.165 is hereby amended to read as follows:

424.165 ~~1.~~ Before granting ~~a provisional~~ *an initial* license, the following minimum requirements must be met:

~~(a)~~ *1.* A clearance through local law enforcement and submittal of fingerprints pursuant to NRS 424.033 and NAC 424.195 and 424.280;

~~(b)~~ *2.* *A satisfactory clearance through the statewide central registry established pursuant to NRS 432.100 on all applicants and members of the household;*

3. At least one visit by ~~the~~ *a* division representative to the foster home to determine that the home is safe;

~~(c)~~ *4.* Receipt of a signed foster home application form; ~~and~~

~~(d) 5. Contact, either oral or written, with [three references.~~

~~2. If the division, pursuant to NRS 424.035, delegates issuance of provisional licenses to specific other agencies, those agencies shall comply with the requirements of this section and subsection 4 of NRS 424.030.]~~ *five satisfactory references; and*

6. Satisfactory completion of the training specified in NAC 424.270.

Sec. 9. NAC 424.175 is hereby amended to read as follows:

424.175 1. A foster home shall notify a division representative and apply for a change in its license if there are changes in the proposed programs, range of ages or sex of children in care or the total number of children in care. The request for a change must be in writing and may be submitted with an application for the renewal of the license or at any time during the period the license is effective. If the change is approved, after the division has conducted a study to

determine that the relevant requirements have been met, a revised license must be issued. If a request for a change in the license is denied, the home may request a review of the denial by the chief of the bureau ~~[,]~~ *or the designee of the administrator*, but the denial is not subject to appeal.

2. A division representative may revise the contents of a license and shall provide the licensee with a written discussion of any proposed changes. The licensee may request the chief of the bureau *or the designee of the administrator* to review the proposed changes, but the changes are not subject to appeal.

3. The chief of the bureau *or the designee of the administrator* shall conduct any review requested pursuant to this section within 30 days after he receives the request and shall inform the licensee in writing of his decision regarding the review.

Sec. 10. NAC 424.185 is hereby amended to read as follows:

424.185 1. A license will be denied , *suspended* or revoked for a failure or refusal to comply with the licensing requirements for a foster home. The division will evaluate that compliance based on information gathered as well as on its interpretation of that information considering its experience with foster children and foster homes. The division's first responsibility is to ensure licensed homes can provide for foster children. The division is, therefore, not required to prove noncompliance in those areas which are a matter of judgment but may deny , *suspend* or revoke licensure based on reasonable doubt.

2. The decision of the division to deny an initial application ~~[, or full licensure if a provisional license was initially issued,]~~ is subject to review by the chief of the bureau , *the designee of the administrator*, or *the* director *or the designee of the director* of the child-placing

agency to which the application was made. However, such denials are not subject to the appeal process. Foster home licensure is a privilege and not a right.

3. In the case of multiple homes or locations, the denial, *suspension* or revocation of a license for one home ~~does~~ *may* not affect the licensure of other homes, if the reason for denial, *suspension* or revocation is not based on the failure of the program to meet group home standards.

4. Whenever initial licensing or relicensing is denied, ~~the~~ *a* division representative will discuss the reasons for denial with the ~~applicants/foster parents,~~ *applicants* followed by a written statement giving the reasons for denial.

Sec. 11. NAC 424.195 is hereby amended to read as follows:

424.195 1. ~~A~~ *Except as otherwise provided in subsection 3, a* license to operate a foster home must not be issued, or must be revoked if one was issued, if ~~one~~ *any* of the following persons has been convicted of a crime involving harm to a child:

- (a) A foster home applicant or licensee;
- (b) An employee of the foster home; or
- (c) A resident of the foster home who is 18 years of age or older.

2. *A license to operate a foster home must not be issued, or must be revoked if one was issued, if the applicant or licensee has a felony conviction for:*

- (a) Child abuse or neglect;*
- (b) Spousal abuse;*
- (c) Any crime against children, including child pornography;*
- (d) Any crime involving violence, including rape, sexual assault or homicide, but not including any other physical assault or battery; or*

(e) Physical assault, battery or a drug-related offense, if the assault, battery or drug-related offense was committed within the last 5 years.

3. If any of the persons specified in subsection 1 has been convicted of:

(a) A felony or *a* gross misdemeanor, the home must not be licensed without the approval of the administrator or ~~his designee.~~ *the designee of the administrator. The administrator or designee shall not approve the issuance of a license or the continuance of a license if the applicant or licensee has been convicted of a felony described in subsection 2.*

(b) One or more misdemeanors, the home must not be licensed without the approval of the chief of the bureau or ~~his designee.~~ *the designee of the administrator.*

Sec. 12. NAC 424.200 is hereby amended to read as follows:

424.200 1. Whenever the division has reason to believe that a foster home is operating without a license, or a licensed foster home is not conforming to the conditions of the license or the requirements for foster home care, the division will make an investigation to determine the facts. The division will have the authority to inspect the premises where the violation is alleged to occur and to conduct such other investigations as may be indicated.

2. If it is found that a person is operating without a license, the division may either issue a license if the person is found to be in compliance with licensing requirements or may refer the matter to the attorney general for appropriate action. If it is found a licensed foster home is not conforming to the requirements for foster home care, the division may, depending on the circumstances:

(a) Issue a written notice specifying the nature of the noncompliance ~~;~~
~~—(b) Issue a provisional;~~ *a plan of corrective action and the time in which each corrective action must be taken;*

(b) If the noncompliance does not involve health or safety issues, continue the license conditioned on the foster home achieving full conformity ~~[within a stated time;]~~ *by a date set forth in the written notice issued pursuant to paragraph (a);*

(c) Suspend the license;

(d) Revoke the license; or

(e) Refer the person to the attorney general for appropriate action.

3. Allegations regarding possible child abuse or neglect of foster children will be investigated in accordance with chapter 432B of NRS.

Sec. 13. NAC 424.205 is hereby amended to read as follows:

424.205 1. The right to operate a foster home is dependent upon continued compliance with the licensing requirements of the division.

2. The license may be revoked by the division whenever a home fails to meet the requirements for a license. The division representative will send a written statement to the foster family giving the reasons for revocation of the license. Revocation ~~[shall be]~~ *is* effective 30 days ~~[from]~~ *after* the date the notice is sent.

3. In cases of ~~[extreme]~~ noncompliance with one or more licensing requirements which are believed to be hazardous to children, the division ~~[has the authority to]~~ *may* suspend a license and require the home *to* cease operation immediately, ~~[prior to]~~ *before* notification of fair hearing procedures. *The suspension of a license pursuant to this subsection is not subject to the fair hearing process provided in NAC 424.210, but a licensee may request a review of the suspension by the administrator or the designee of the administrator.*

Sec. 14. NAC 424.210 is hereby amended to read as follows:

424.210 ~~{A}~~ *Except as otherwise provided in NAC 424.205, a* licensee may, by written request, obtain a hearing regarding a proposal by the division to revoke or deny the renewal of his license. The request must be received by the division before the effective date of the proposed action or within 13 days after the notice of action was mailed, including the date of mailing. The hearing must be held before a hearing officer of the division ~~{}~~ *or the designee of the administrator*. The hearing officer *or designee, as appropriate*, shall render a written decision on the matter within 90 calendar days after the request for a hearing was filed.

Sec. 15. NAC 424.260 is hereby amended to read as follows:

424.260 ~~{Applicants shall}~~ *An applicant to be a foster parent must* be 21 years of age or older. The age of the foster parent should be considered only as it affects ~~{their}~~ *his* physical energy, flexibility or ability to care for a specific child, and in relation to the probable duration of the care of a particular child.

Sec. 16. NAC 424.270 is hereby amended to read as follows:

424.270 1. Applicants for a license to operate a foster home must attend *at least* 8 hours of training in foster parenting provided *or approved* by the division. If the home has a pool, hot tub or jacuzzi, another free-standing body of water or a sauna, the applicants must also complete training in cardiopulmonary resuscitation and pool safety before licensure.

2. Foster parents must attend 4 hours annually of training in foster parenting which is provided or approved by the division.

3. The annual training or portions of the annual training required pursuant to subsection 2 may for good cause, as determined by the division, be obtained from another agency that places foster children, as a substitute for the training provided by the division, if at least one foster parent participates in the training.

4. A foster home which is licensed to provide foster care for a specific, licensed child-placing agency may receive any of the training required by this section through that agency.

Sec. 17. NAC 424.275 is hereby amended to read as follows:

424.275 1. Adults who care for children shall provide evidence of their character and ability to care for children. There must be at least five satisfactory references received by the division.

2. Directors of group homes ~~[must submit three positive]~~ *shall submit five satisfactory* references to the division on each employee hired to care for children. The division must receive five ~~[positive]~~ *satisfactory* references on the director.

3. ~~[The]~~ *A* division representative is not obligated to share *with the applicant* concerns raised by references ~~[with the applicant(s) if it]~~ *if the division representative* cannot do so without compromising the reference's confidentiality.

Sec. 18. NAC 424.280 is hereby amended to read as follows:

424.280 1. The director of a group home is responsible for submitting to the division two sets of fingerprint cards for each employee of the foster home. The director of the group home shall ensure that each person fingerprinted has signed Law Enforcement Record Form 3321-SA or an equivalent release of law enforcement information.

2. Employees hired by a foster care facility after the initial licensure of the facility must be cleared through fingerprinting. Conditional employment will be permitted pending satisfactory clearance through the Federal Bureau of Investigation if:

- (a) A local law enforcement agency provides a satisfactory report.
- (b) ~~[Three positive]~~ *Five satisfactory* references have been received regarding the person.
- (c) The person's fingerprints have been taken.

FLUSH A conditional employee is subject to dismissal by the foster care facility if the Federal Bureau of Investigation indicates the employee has a criminal history. Such history must be discussed with the division to determine the acceptability of the employee. Failure to dismiss an unacceptable employee is grounds for revocation of the facility's license.

3. When conditional employment is permitted pending satisfactory clearance through the Federal Bureau of Investigation, the director of the group home is responsible for submitting a satisfactory report on the employee provided by a local law enforcement agency, and for the accuracy and verification of any information obtained regarding the employee.

4. Residents who are 18 years of age or older and who move into a foster home after the initial licensure must be cleared through fingerprinting. The person may reside in the home pending satisfactory clearance through the Federal Bureau of Investigation if:

- (a) A local law enforcement agency provides a satisfactory report.
- (b) ~~Three positive~~ *Five satisfactory* references have been received regarding the person.
- (c) The person's fingerprints have been taken.

FLUSH ~~It~~ *Except as otherwise required in NAC 424.195, if* an unsatisfactory report is received from the Federal Bureau of Investigation, the division will determine the acceptability of the resident on a case-by-case basis. If unacceptable, the operator of the foster home ~~must choose to~~ *shall either* terminate his license or have the resident move out of the foster home.

Sec. 19. NAC 424.300 is hereby amended to read as follows:

424.300 If ~~the applicant/foster parent~~ *an applicant or a foster parent* is providing professional care directly to a child in the division's custody, ~~that applicant/foster parent~~ *the applicant or foster parent* can only be a foster parent for that child with the approval of the

administrator ~~[]~~ *or the designee of the administrator.* Persons providing professional care include, but are not limited to:

1. A minister who is counseling the child.
2. A psychiatrist or psychologist who is treating the child.
3. A social worker or mental health counselor who is counseling the child.
4. The child's probation officer.
5. The child's teacher.
6. A physician who is treating the child.
7. The guardian ad litem for the child.
8. The child's attorney.

Sec. 20. NAC 424.375 is hereby amended to read as follows:

424.375 1. Unless an exception is approved by a licensing supervisor:

- (a) Foster children must sleep in a room, designated as a bedroom, which must ensure privacy.
 - (b) Closets, partitioned rooms and similar areas are unacceptable areas for children to sleep.
 - (c) No child may be allowed to sleep in a detached building, unfinished attic or basement, stairhall or room commonly used for other than bedroom purposes.
2. Unless an exception is approved by a licensing worker, rooms used by children for sleeping must have a minimum of 35 square feet per child and 3 feet of floor space between beds.
 3. Dormitories housing more than six children are not allowed without the approval of ~~[the division.]~~ *a licensing supervisor.* Single rooms must be provided for those children whose behavior or development makes it desirable for them to have a single room.

4. ~~{Children}~~ *Unless an exception is approved by a licensing supervisor, children* of the opposite sex over 5 years of age must not share a bedroom, and children over 1 year of age must not sleep in the same room with an adult. A child of the foster parents who is 18, 19 or 20 years of age may share a room with a foster child of the same sex and similar age if this arrangement is approved by the child's social worker.

5. ~~{The}~~ *Unless an exception is approved by a licensing supervisor, the* foster parents' bedroom must be located on the same floor as the bedroom of any child under 8 years of age.

6. Except as otherwise provided in this subsection or as approved by a licensing worker, each child must be provided with his own bed, which must be at least 30 inches wide and of a length which is adequate for the child's height, and the bottom of which is at least 6 inches off the floor. Siblings of the same sex may share a double bed.

7. Each bed or crib must have a comfortable and supportive mattress in good condition, a pillow, sheets and coverings and, as needed, waterproofing sufficient for the child's comfort.

8. ~~{Bunk}~~ *Unless an exception is approved by a licensing supervisor, bunk* beds with more than two bunks are prohibited. If bunk beds are used, the upper bunk must have a guardrail. Upper bunks must not be used by children under 8 years of age.

9. A complete change of bed linens must be supplied at least once a week or more often if necessary.

10. Each child must have access to a closet, locker or dresser for clothing and personal belongings.

11. Bedroom furnishings must not be set up in such a manner as to obstruct a clear exit from a door or window.

Sec. 21. NAC 424.455 is hereby amended to read as follows:

424.455 1. A foster home shall not combine foster care with regular paid care for others, including day care, without the approval of the chief of the bureau or ~~his designee.~~ *the designee of the administrator.*

2. A foster home may house adult roomers or boarders under the following circumstances, if approved by the division:

(a) The roomer or boarder must have been in residence 6 months or longer at the time of initial licensing and:

(1) Be considered a part of the family; or

(2) Have been a foster child who has reached the age of 18 years; and

(b) The roomer or boarder, regardless of age, must be willing to submit to the same licensing requirements as the staff.

Sec. 22. NAC 424.680 is hereby amended to read as follows:

424.680 1. Any person employed as a director or applying to be a foster parent who has been convicted of:

(a) A felony or gross misdemeanor must not be employed in that position without the approval of the administrator or his designee.

(b) One or more misdemeanors must not be employed in that position without the approval of the chief of the bureau or ~~his designee.~~ *the designee of the administrator.*

2. Any other person employed or volunteering his services within a group home who has been convicted of a felony or gross misdemeanor or one or more misdemeanors may be employed upon factual verification of rehabilitation. Each person's background must be evaluated for the position for which he will be employed and reviewed by the chief of the bureau or ~~his designee.~~ *the designee of the administrator.*

Sec. 23. NAC 424.800 is hereby amended to read as follows:

424.800 ~~The~~ *Except as otherwise provided in NAC 424.195, the* administrator or his designee may, on a case-by-case basis, waive a specific requirement of this chapter if the waiver is for the betterment of the foster care program and child and is not in violation of any statute of this state .