

Ordinance 31-09

An ordinance amending Chapter 11 entitled Child Care of Title 8 of the Mille Lacs Band Statutes Annotated (MLBSA) for the purpose of adding Subchapter III entitled Drop-In Child Care Centers to regulate this specific type of Child Care Center operating on Band lands to ensure the safety of children.

The District I Representative introduced the following Bill on the 26th day of May, 2009.

Preamble

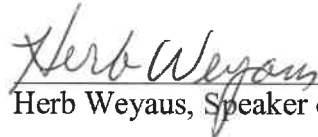
It is enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Ojibwe for the purpose of amending Chapter 11 of Title 8 of the Mille Lacs Band Statutes Annotated (MLBSA) in order to add Subchapter III entitled Drop-In Child Care Centers for the purpose of regulating this specific type of child care center located on Band lands and to ensure the safety of children.

Section 1. The new Subchapter III of Chapter 11 of Title 8 of the Mille Lacs Band Statutes Annotated (MLBSA) is attached hereto as Exhibit A. The Band Assembly reserves the right to amend or delete this subchapter at any time.

Ordinance 31-09

Introduced to the Band Assembly on this
Twenty-first day of May in the year
Two Thousand Nine.


Passed by the Band Assembly on this
Twenty-first day of May in the year
Two Thousand Nine.



Herb Weyaus, Speaker of the Assembly

APPROVED:

Date: 5-26-09_____



Marge Anderson, Chief Executive

OFFICIAL SEAL OF THE BAND

Chapter 11

Child Care

Subchapter	Section
III. Drop-in Child Care Centers	§1701

SUBCHAPTER III

DROP-IN CHILD CARE CENTERS

Part	Section
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Part A Definitions

§1701. Definitions

The Mille Lacs Band of Ojibwe Indians hereby establishes the following definitions of the terms to be utilized when interpreting this subchapter.

(a) “Age category”: the designation given a child according to the child’s age. The age categories are as follows:

- (1) “Infant”: a child who is at least six weeks old but less than 16 months old.
- (2) “Toddler”: a child at least 16 months old but less than 33 months old.
- (3) “Preschooler”: a child who is at least 33 months old but less than 60 months and who has not yet attended the first day of kindergarten.
- (4) “School age”: a child who is at least 60 months old and has attended the first day of kindergarten but less than 13 years of age.

(b) “Annual” or “annually”: prior to or within the same month of the subsequent calendar year.

(c) “Applicant”: an individual, corporation, partnership, voluntary association, controlling individual, or other organization that has applied for licensure under this subchapter.

(d) “Band”: the Mille Lacs Band of Ojibwe Indians or its designee, such as one of its governmental agencies or officials.

(e) “Certification”: the written authorization for a license holder licensed by the Mille Lacs Band of Ojibwe Indians. The term “certification” and its derivatives have the same meaning and may be substituted for the term “licensure” and its derivatives in this subchapter.

(f) “Clean” free from dirt or other contaminants that can be detected by sight, smell, or touch.

(g) “Child”: a person who has not reached age 18.

(h) “Controlling individual”: a public body, governmental agency, business entity, officer, owner, or managerial official whose responsibilities include the direction of the management or policies of a drop-in child care program. For purposes of this subchapter, owner means an individual who has direct or indirect ownership interest in a corporation, partnership, or other business association issued a license under this subchapter. For purposes of this subchapter, managerial official means those individuals who have the decision-making authority related to the operation of the program, and the responsibility for the ongoing management of or direction of the policies, services, or employees of the program.

(i) “Disinfected”: treated to reduce microorganism contamination after an object has been cleaned. Disinfection must be done by rinsing or wiping with a solution of one-fourth cup chlorine bleach plus water to equal one gallon, or an equivalent product or process approved by Indian Health Service (“IHS”).

(j) “Disqualification”: an offense or charge as defined by 8 MLBSA §1444, Disqualification factors.

(k) “Drop-in child care program”: a nonresidential program of child care in which children participate on a onetime only or occasional basis up to a maximum of 90 hours per child, per month that provides care for children listed in the age categories defined above. A drop-in child care program must be licensed under Mille Lacs Band of Ojibwe Statutes governing drop-in child care centers.

(l) “Experience”: for purposes of drop-in child care centers, includes paid or unpaid employment serving children as a teacher, assistant teacher, aide, or a student intern in a licensed child care center, or work as a student intern in a licensed center, a school operated by a state commissioner of education or by a legally constituted local school board, or a private school approved under rules administered by a state commissioner of education.

(m) “Facility”: the indoor and outdoor space in which the child care program is provided.

(n) “Health consultant”: a physician licensed to practice medicine, a public health nurse or registered nurse.

(o) "Interpretive guidelines": a policy statement that has been published pursuant to this subchapter which provides interpretation, details, or supplementary information concerning the application of laws or rules. Interpretive guidelines are published for the information and guidance of consumers, providers of service, Band agencies, and others concerned.

(p) "License": a certificate issued by the Band authorizing the license holder to provide a drop-in child care program for a specified period of time and in accordance with the terms of the license and Mille Lacs Band Statutes.

(q) "License holder": an individual, corporation, partnership, voluntary association, or other organization that is legally responsible for the operation of the program, has been granted a license by the Band under this subchapter, and is a controlling individual.

(r) "Licensed capacity": the maximum number of children for which the license holder is licensed to operate a child care program in a center at any one time.

(s) "Medicine": a substance used to treat disease or injuries, maintain health, heal, or relieve pain. The term applies to prescription and nonprescription substances taken internally or applied externally.

(t) "Parent": the person or persons with legal custody of the child.

(u) "Program staff person": a teacher, assistant teacher, or aide, whether paid or unpaid, who carries out the child care program plan in the center and has direct contact with children.

(v) "Sick child": a child with a medical condition or illness.

(w) "Staff supervision": the responsibilities to hire, train, assign duties and direct staff in day to day activities and evaluate staff performance. A "supervisor" is a person with staff supervision responsibility.

(x) "Supervision": for purposes of drop-in child care centers, when a program staff person is within sight and hearing of a child at all times so that the program staff can intervene to protect the health and safety of the child. When an infant is placed in a crib room to sleep, supervision occurs when a staff person is within sight or hearing of the infant. When supervision of a crib room is provided by sight or hearing, the center must have a plan to address the other supervision component.

(y) "Variance": time limited written permission by the Band for an applicant or license holder to depart from the provisions of this subchapter if equivalent alternative measures are taken to ensure the health, safety, and rights of the children in care.

Part B
Licensure

§1702. Licensure

The Mille Lacs Band of Ojibwe Indians hereby establishes the following licensing standards and procedures for drop-in child care centers.

§1703. License required

Unless licensed by the Band, an individual, corporation, partnership, voluntary association, other organization, or controlling individual must not operate a drop-in child care center program.

§1704. Unlicensed drop-in child care programs

(a) It is a misdemeanor, subject to prosecution pursuant to 24 MLBSA §1054, for an individual, corporation, partnership, voluntary association, other organization, or a controlling individual to provide a drop-in child care program without a license and in willful disregard of this subchapter.

(b) The Band will issue a closure order to prevent the continued operation of a drop-in child care program, if an individual, corporation, partnership, voluntary association, other organization, or controlling individual has:

- (1) failed to apply for a license after receiving notice that a license is required or continues to operate without a license after receiving notice that a license is required;
- (2) continued to operate without a license after the license has been revoked or suspended, and a final order has been issued affirming the revocation or suspension, or the license holder did not timely appeal the sanction; or
- (3) continued to operate without a license after the license has been temporarily suspended.

§1705. Application for Licensure

An individual, corporation, partnership, voluntary association, other organization or controlling individual that is subject to licensure under this subchapter must apply for a license. The application must be made on the forms and in the manner prescribed by the Band. The Band will provide the applicant with instruction in completing the application and provide information about the rules and requirements that affect the applicant.

(a) The Band will act on the application within 30 working days after a complete application and any required reports have been received from other agencies or departments, counties, municipalities, or other political subdivisions. The Band will not consider an application to be complete until the Band receives all of the information required under this subchapter.

(b) An application for licensure must specify one or more controlling individuals as an agent who is responsible for dealing with the Band on all matters provided for in this subchapter and on whom service of all notices and orders must be made. The agent must be authorized to accept service on behalf of all of the controlling individuals of the program. Service on the agent is service on all of the controlling individuals of the program. It is not a defense to any action arising under this subchapter that service was not made on each controlling individual of the program. The designation of one or more controlling individuals as agents under this paragraph does not affect the legal responsibility of any other controlling individual under this chapter.

(c) An applicant or license holder must have a policy that prohibits license holders, employees, subcontractors, and volunteers, when directly responsible for persons served by the program, from abusing prescription medication or being in any manner under the influence of a chemical that impairs the individual's ability to provide services or care. The license holder must train employees, subcontractors, and volunteers about the program's drug and alcohol policy.

(d) An applicant and license holder must have a program grievance procedure that permits persons served by the program and their authorized representatives to bring a grievance to the highest level of authority in the program.

§1706. Background Study

Individuals and organizations providing drop-in child care programs are required under this subchapter to provide the Band's Office of the Solicitor General and the Band's Gaming Regulatory Authority ("GRA") with background studies for all controlling individuals and employees of the program. All such studies must meet the requirements of 8 MLBSA §1444, Disqualification factors.

§1707. Conclusive determinations or dispositions

A disqualification determination or maltreatment determination or disposition is deemed conclusive and not subject to appeal.

§1708. Inspections; waiver

Before issuing an initial license and throughout the term of the license, Indian Health Service shall conduct an inspection of the program for health and safety purposes. Before issuing an initial license and throughout the term of the license, the Band or Indian Health Service may conduct an inspection of the program, including but not limited to:

- (a) an inspection of the program's facility;

- (b) an inspection of records and documents;
- (c) an evaluation of the program by consumers of the program;
- (d) observation of the program in operation; and
- (e) written health policies.

For the purposes of this subchapter, “consumer” means a person who receives the services of a licensed program, the person's legal guardian, or the parent or individual having legal custody of a child who receives the services of a licensed program.

§1709. The Band’s right of access

When the Band is exercising the powers conferred by this subchapter, the Band must be given access to the program’s facility where the program is provided, documents, persons served by the program, and staff whenever the program is in operation and the information is relevant to inspections or investigations conducted by the Band. The Band must be given access without prior notice and as often as the Band considers necessary if the Band is conducting an investigation of allegations of maltreatment or other violation of applicable laws or rules. In conducting inspections, the Band may request and shall receive assistance from other governmental agencies and departments. The applicant or license holder shall allow the Band to photocopy, photograph, and make audio and video tape recordings during the inspection of the program. The Band shall obtain a court order or the consent of the subject of the records or the parents or legal guardian of the subject before photocopying hospital medical records.

Persons served by the program have the right to refuse to consent to be interviewed, photographed, or audio or videotaped. Failure or refusal of an applicant or license holder to fully comply with this section is reasonable cause for the Band to deny the application or immediately suspend or revoke the license.

§1710. The Band’s evaluation

Before issuing, denying, suspending, revoking, or making conditional a license, the Band or its designee shall evaluate information gathered under this section. The Band’s evaluation shall consider facts, conditions, or circumstances concerning the program’s operation, the well-being of persons served by the program, available consumer evaluations of the program, and information about the qualifications of the personnel employed by the applicant or license holder.

The Band shall evaluate the results of any study, inspection, or investigation to determine whether a risk of harm to the persons served by the program exists.

§1711. Grant of license

(a) If the Band determines that the program complies with all applicable rules and laws, the Band may issue a license. At minimum, the license shall state:

- (1) the name of the license holder;
- (2) the address of the program;
- (3) the effective date and expiration date of the license;
- (4) the type of license;
- (5) the maximum number and ages of persons that may receive services from the program; and
- (6) any special conditions of licensure.

(b) The Band may issue an initial license for a period not to exceed one year if:

- (1) the Band is unable to conduct the evaluation or observation required by this subchapter, because the program is not yet operational;
- (2) certain records and documents are not available because persons are not yet receiving services from the program; and
- (3) the applicant complies with applicable laws and rules in all other respects.

(c) A decision by the Band to issue a license does not guarantee that any person or persons will be placed or cared for in the licensed program. A license shall not be transferable to another individual, corporation, partnership, voluntary association, other organization, or controlling individual or to another location.

(d) A license holder must notify the Band and obtain the Band's approval before making any changes that would alter the license information listed under paragraph (a).

(e) The Band will not issue a license if the applicant, license holder, or controlling individual has:

- (1) been disqualified and the disqualification was not set aside;
- (2) has been denied a license within the past two years; or
- (3) had a license revoked within the past five years.

(f) Unless otherwise specified by statute, all licenses expire at 12:00 a.m. on the day after the expiration date stated on the license. A license holder must apply for and be granted a new license to operate the program or the program must not be operated after the expiration date.

(g) Upon the expiration of an initial license, the Band may grant subsequent licenses for a period not to exceed two years.

§1712. Variances

The Band may grant variances to rules that do not affect the health or safety of persons in a licensed program if the following conditions are met:

(a) the variance must be requested by an applicant or license holder on a form and in a manner prescribed by the Band;

(b) the request for a variance must include the reasons that the applicant or license holder cannot comply with a requirement as stated in the rule and the alternative equivalent measures that the applicant or license holder will follow to comply with the intent of the rule; and

(c) the request must state the period of time for which the variance is requested.

The Band may grant a permanent variance when conditions under which the variance is requested do not affect the health or safety of persons being served by the licensed program, nor compromise the qualifications of staff to provide services. The permanent variance shall expire as soon as the conditions that warranted the variance are modified in any way. Any applicant or license holder must inform the Band of any changes or modifications that have occurred in the conditions that warranted the permanent variance. Failure to advise the Band shall result in revocation of the permanent variance and may be cause for other sanctions provided by this subchapter. The Band's decision to grant or deny a variance request is final and not subject to appeal.

§1713. Policies and procedures for program administration required and enforceable

(a) The license holder shall develop program policies and procedures necessary to maintain compliance with licensing requirements under this subchapter.

(b) The license holder shall:

(1) provide training to program staff related to their duties in implementing the program's policies and procedures developed under paragraph (a);

(2) document the provision of this training; and

(3) monitor implementation of policies and procedures by program staff.

(c) The license holder shall keep program policies and procedures readily accessible to staff and index the policies and procedures with a table of contents or another method approved by the Band.

§1714. Emergency planning

Upon request, the license holder must cooperate with the Band's Tribal Emergency Response Committee ("TERC"), the Band's government disaster planning agency, to prepare for or react to emergencies presented by natural, technical, hazardous material, and terrorism disasters.

§1715. Denial of application

The Band may deny a license if an applicant fails to comply with applicable laws or rules, or knowingly withholds relevant information from or gives false or misleading information to the Band in connection with an application for a license or during an investigation. An applicant whose application has been denied by the Band must be given notice of the denial. Notice must be given by certified mail or personal service. The notice must state the reasons the application was denied and must inform the applicant of the right to a contested case hearing under this subchapter. The applicant may appeal the denial by notifying the Band in writing by certified mail or personal service within 20 calendar days after receiving notice that the application was denied.

§1716. Investigations and license expiration

(a) If a license holder is under investigation and the license is due to expire before completion of the investigation, the program may be issued a new license upon completion of the reapplication requirements. Upon completion of the investigation, a licensing sanction may be imposed against the new license under this subchapter.

(b) Failure to reapply or closure of a center by the license holder prior to the completion of any investigation shall not preclude the Band from issuing a licensing sanction under this subchapter at the conclusion of the investigation.

§1717. Correction Order and Conditional License

(a) If the Band finds that the applicant or license holder has failed to comply with an applicable law or rule and this failure does not imminently endanger the health, safety, or rights of the persons served by the program, the Band may issue a correction order and an order of conditional license to the applicant or license holder. When issuing a conditional license, the Band shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program. The correction order or conditional license must state:

- (1) the conditions that constitute a violation of the law or rule;
- (2) the specific law or rule violated;
- (3) the time allowed to correct each violation; and
- (4) if a license is made conditional, the length and terms of the conditional license.

(b) Nothing in this section prohibits the Band from issuing a sanction, prior to issuing a correction order or conditional license.

§1718. Failure to comply

If the Band finds that the applicant or license holder has not corrected the violations specified in the correction order or conditional license, the Band may impose a fine and order other licensing sanctions.

§1719. Requirement to post conditional license, correction, or sanction order

For license holders, upon receipt of any correction, order of conditional license, or sanction order issued by the Band under this subchapter, the license holder shall post the correction order, order of conditional license, or sanction order in a place that is conspicuous to the people receiving services and all visitors to the facility for two years. When the correction order, order of conditional license, or sanction order is accompanied by a maltreatment investigation memorandum, the investigation memoranda must be posted with the correction order, order of conditional license, or sanction order.

§1720. Sanction orders; appeals

(a) In addition to making a license conditional, the Band may suspend or revoke the license, or impose a fine against a license holder who does not comply with applicable law or rule. When ordering sanctions authorized under this section, the Band shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.

(1) License suspension or revocation. The Band may act immediately to suspend or revoke a license if a license holder fails to comply fully with applicable laws or rules, the actions of other individuals or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served by the program, if a license holder or an employee subject to a background study has a disqualification, if a license holder knowingly withholds relevant information from or gives false or misleading information to the Band in connection with an application for a license, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules. A license holder who has had a license suspended or revoked must be given notice of the action by certified mail or personal service. If mailed, the notice must be mailed to the address shown on the application or the last known address of the license holder. The notice must state the reasons the license was suspended or revoked.

(2) Fines. If the license holder is ordered to pay a fine, the notice must inform the license holder of the responsibility for payment of fines and the right to appeal. The license holder shall pay the fines assessed on or before the payment date specified. If the license holder fails to fully comply with the order, the Band may issue a second fine or suspend the license until the license holder complies. A license holder shall promptly notify the Band, in writing, when a violation specified in a sanction order to forfeit a fine is corrected. If upon re-inspection the Band determines that a violation has not been corrected as indicated by the order to forfeit a fine, the Band may issue a second fine. The Band shall notify the license holder by certified mail or

personal service that a second fine has been assessed. The license holder may appeal the second fine as provided under this section.

- (b) Appeal. Appeals must be made within five business days of receipt of a sanction.
- (1) An appeal hearing must be conducted by the Court of Central Jurisdiction within 30 calendar days, unless an extension is requested by either party and granted for good cause. The burden of proof under this section shall be limited to the Band's demonstration that reasonable cause exists that the license holder's actions or failure to comply with applicable law or rule poses, or the actions of other individuals or conditions in the program poses an imminent risk of harm to the health, safety, or rights of persons served by the program.
 - (2) The Court shall issue findings of fact, conclusions, and a recommendation within ten working days from the date of hearing. The Band shall consider, but shall not be bound by, the recommendations of the Court. The Band's final sanction order shall be issued within ten working days from the Court's recommendation and the appellant must be notified immediately of the Band's final sanction order.
 - (3) When a license holder appeals a suspension or revocation, the license holder continues to be prohibited from operation of the program. A timely appeal shall stay payment of the fine until the Band issues a final sanction order.

§1721. Fine Schedule

- (a) Fines shall be assessed as follows (subject to amendment by Band Ordinance):
- (1) The license holder shall forfeit \$1,000 for each determination of maltreatment of a child for which the license holder is determined responsible for the maltreatment;
 - (2) The license holder shall forfeit \$200 for each occurrence of a violation of law or rule governing matters of health, safety, or supervision, including but not limited to the provision of adequate staff-to-child, and failure to submit a background study; and
 - (3) The license holder shall forfeit \$100 for each occurrence of a violation of law or rule other than those subject to a \$1,000 or \$200 fine above.
- (b) For purposes of this section, "occurrence" means each violation identified in the Band's fine order.
- (c) When a fine has been assessed, the license holder may not avoid payment by closing, selling, or otherwise transferring the program to a third party. In such an event, the license holder will be personally liable for payment. In the case of a corporation, each controlling individual is personally and jointly liable for payment.

§1722. Granting subsequent license

(a) A license holder and each controlling individual of a license holder whose license has been revoked because of noncompliance with applicable law or rule must not be granted a license for five years following the revocation.

(b) An applicant whose application was denied must not be granted a license for two years following a denial, unless the applicant's subsequent application contains new information which constitutes a substantial change in the conditions that caused the previous denial.

§1723. License or certification fee

(a) Drop-in center programs with a licensed capacity shall pay an annual nonrefundable license or certification fee based on the following schedule (subject to amendment by Band Ordinance):

Licensed Capacity	License/certification Fee
1 to 24 persons	\$225
25 to 49 persons	\$340
50 to 74 persons	\$450
75 to 99 persons	\$565
100 to 124 persons	\$675
125 to 149 persons	\$900
150 to 174 persons	\$1,050
175 to 199 persons	\$1,200
200 to 224 persons	\$1,350
225 or more persons	\$1,500

(b) The Band will not issue a license or certification until the license or certification fee is paid. The license or certification fee is due from the license holder upon initial application or renewal. If the license holder fails to pay the license or certification fee upon annual renewal, the program license will expire. If a license expires, the program is no longer licensed and must not operate after the expiration date. After a license expires, if the former license holder wishes to provide licensed services, the former license holder must submit a new license application and application fee under section (a) listed above.

**Part C
Staff Requirements**

§1724. Staff requirements

(a) A drop-in child care program must be operated under the supervision of a person qualified as a director and a teacher, defined by 8 MLBSA §1445 and §1446.

(b) A drop-in child care program must have at least two persons on staff whenever the program is operating.

(c) Children that are younger than age 2-1/2 must be in a separate group. This group must be cared for in an area that is physically separated from older children.

(d) A drop-in child care program must maintain a minimum staff ratio for children age 2-1/2 or greater of one staff person for each ten children.

(e) The drop-in child care program will have additional staff on call as a mandatory condition of their employment. The minimum child-to-staff ratio may not be exceeded and no more children may be admitted to the Facility until additional staff has arrived.

(f) In a drop-in child care program, the minimum staff-to-child ratio for infants up to 16 months of age is one staff person for every four infants. The minimum staff-to-child ratio for children age 17 months to 30 months is one staff for every seven children.

(g) In drop-in care programs that serve infants and older children, children up to age 2-1/2 may be supervised by assistant teachers, as long as other staff are present in appropriate ratios (see 8 MLBSA §1447 for qualifications).

(h) The minimum staff distribution pattern for a drop-in child care program serving children age 2-1/2 or greater is: the first staff member must be a teacher; the second, third, and fourth staff members must have at least the qualifications of a child care aide; the fifth staff member must have at least the qualifications of an assistant teacher; the sixth, seventh, and eighth staff members must have at least the qualifications of a child care aide; and the ninth staff person must have at least the qualifications of an assistant teacher (see 8 MLBSA §1447 for qualifications).

(i) A drop-in child care program may care for siblings 16 months or older together in any group, when the program is serving 20 children or less; however all staffing requirements of this sub-chapter must be maintained at all times. For purposes of this subdivision, sibling is defined as sister or brother, half sister or half brother, or stepsister or stepbrother.

Part D
Health and Safety

§1725. Reduction of Risk of Sudden Infant Death Syndrome

When a license holder is placing an infant to sleep, the license holder must place the infant on the infant's back, unless the license holder has documentation from the infant's parent directing an alternative sleeping position for the infant, and must place the infant in a crib with a firm mattress. The license holder must not place pillows, quilts, comforters, sheepskin, pillow-like stuffed toys, or other soft products in the crib with the infant. Licensed child care providers must meet the crib requirements under §1727.

§1726. Reporting Requirements

(a) All licensed child care providers must develop policies and procedures for reporting suspected child maltreatment and must develop policies and procedures for reporting complaints about the operation of a child care program. The policies and procedures must include the telephone numbers of the local child protection agency for reporting suspected maltreatment and local law enforcement.

(b) The policies and procedures required in paragraph (a) must be made available upon request.

(c) A child care license must include a statement that informs parents who have concerns about their child's care that they may call the licensing entity. The Band shall print the telephone number for the Band in bold and large font on the license issued to child care providers.

§1727. Crib Safety Requirements

(a) The license holder should access and consult United States Consumer Product Safety Commission Web site for crib safety information. Annually, from the date printed on the license, all license holders shall check all their cribs' brand names and model numbers against the United States Consumer Product Safety Commission Web site listing of unsafe cribs and shall maintain written documentation for inspection for each crib showing that the review has been completed.

(b) All license holders must maintain the following documentation for every crib used by or that is accessible to any child in care:

- (1) the crib's brand name; and
- (2) the crib's model number; and
- (3) the crib was not identified as unsafe on the United States Consumer Product Safety Commission Web site or the license holder has taken the action directed by the United States Consumer Product Safety Commission to make the crib safe.

(c) Any crib for which the license holder does not have the documentation required under paragraphs (a) and (b) must not be used by or be accessible to children in care.

(d) Documentation of the review completed under this subdivision shall be maintained by the license holder on site and made available to parents of children in care, the Band, and Indian Health Service.

(e) On at least a monthly basis, the license holder shall perform safety inspections of every crib used by or that is accessible to any child in care, and must document compliance with current Minnesota crib requirements (as stated in the most current MN statutes).

(f) Upon discovery of any unsafe condition identified by the license holder during the safety inspection, the license holder shall immediately remove the crib from use and ensure that the crib is not accessible to children in care, and as soon as practicable, but not more than two business days after the inspection, remove the crib from the area where child care services are routinely provided for necessary repairs or to destroy the crib.

(g) Documentation of the inspections and actions taken with unsafe cribs required shall be maintained on site by the license holder and made available to parents of children in care, the Band, and Indian Health Service.

(h) The Band may issue a licensing action if a license holder fails to comply with the requirements of this section.

§1728. Federal Protection Guidelines

Indian Health Service will inspect the license holder's facility for compliance with the Nation Fire Protection Association's Uniform Fire Code and Life Safety Code. Any inspection fees are the license holder's responsibility.

§1729. Behavior Guidance

(a) The applicant must develop written behavior guidance policies and procedures, and the license holder must see that the policies and procedures are carried out. The policies and procedures must:

- (1) ensure that each child is provided with a positive model of acceptable behavior;
- (2) be tailored to the developmental level of the children the center is licensed to serve;
- (3) redirect children and groups away from problems toward constructive activity in order to reduce conflict;
- (4) teach children how to use acceptable alternatives to problem behavior in order to reduce conflict;
- (5) protect the safety of children and staff persons; and
- (6) provide immediate and directly related consequences for a child's unacceptable behavior.

(b) The license holder must have written procedures for dealing with persistent unacceptable behavior that requires an increased amount of staff guidance and time. The procedures must specify that staff:

- (1) observe and record the behavior of the child and staff response to the behavior; and
- (2) address the behavior with the child's parent and with other staff persons and professionals when appropriate.

(c) The license holder must have and enforce a policy that prohibits the following actions by or at the direction of a staff person:

- (1) Subjection of a child to corporal punishment. Corporal punishment includes, but is not limited to, rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking.
- (2) Subjection of a child to emotional abuse. Emotional abuse includes, but is not limited to, name calling, ostracism, shaming, making derogatory remarks about the child or the child's family, and using language that threatens, humiliates, or frightens the child.
- (3) Separation of a child from the group, beyond time-out for a short period of time.
- (4) Punishment for lapses in toilet habits.
- (5) Withholding food, light, warmth, clothing, or medical care as a punishment for unacceptable behavior.
- (6) The use of physical restraint other than to physically hold a child when containment is necessary to protect a child or others from harm.
- (7) The use of mechanical restraints, such as tying.

(d) If a child's behavior threatens the well being of the child or other children in the center, the license holder must contact the parent(s), guardian(s), or emergency contact(s) to immediately pick up a child.

(e) Any incidents that require removal of a child from the drop-in child care center must be noted on a daily log. The license holder must ensure that notation in the log includes the child's name, staff person's name, time, date, and information indicating what less intrusive methods were used to guide the child's behavior and how the child's behavior continued to threaten the well being of the child or other children in care.

(f) In the event the removal of a child from the drop-in child care center is necessary and the parent(s), guardian(s), or emergency contact(s) failed to immediately pick up the child, the license holder will note this information in a log to be maintained in the center's administrative records.

§1730. Exclusion of sick children

(a) A child with any of the following conditions or behaviors is a sick child and must be excluded from the center. If the child becomes sick while at the center, the child

must be isolated from other children in care and the parent(s), guardian(s), or emergency contact(s) called immediately. A sick child must be supervised at all times. The license holder must exclude a child:

- (1) with chicken pox until the child is no longer infectious or until the lesions are crusted over;
- (2) who has vomited two or more times since admission that day;
- (3) who has had three or more abnormally loose stools since admission that day;
- (4) who has contagious conjunctivitis or pus draining from the eye;
- (5) who has a bacterial infection such as streptococcal pharyngitis or impetigo and has not completed 24 hours of antimicrobial therapy;
- (6) who has unexplained lethargy;
- (7) who has lice, ringworm, or scabies that is untreated and contagious to others;
- (8) who has a 100 degree Fahrenheit axillary or higher temperature of undiagnosed origin before fever reducing medication is given;
- (9) who has an undiagnosed rash or a rash attributable to a contagious illness or condition;
- (10) who has significant respiratory distress;
- (11) who is not able to participate in child care program activities with reasonable comfort; or
- (12) who requires more care than the program staff can provide without compromising the health and safety of other children in care.

(b) The license holder must post or give a notice to the parents of exposed children the same day a parent notifies the center of a child's illness or condition a contagious reportable disease, or lice, scabies, impetigo, ringworm, or chicken pox.

§1731. Emergency and accident policies and records

(a) The applicant must develop written policies governing emergencies, accidents, and injuries. The license holder must ensure that written records are kept about incidents, emergencies, accidents, and injuries that have occurred.

(b) The license holder must keep a record of instruction to all staff persons about how to carry out the policies.

(c) The policies must contain:

- (1) Procedures for administering first aid.
- (2) Safety rules to follow in avoiding injuries, burns, poisoning, choking, suffocation, and traffic and pedestrian accidents.
- (3) Procedures for the daily inspection of potential hazards.
- (4) Procedures for fire prevention and procedures to follow in the event of a fire, identifying primary and secondary exits, building evacuation routes, the phone number of the fire department, persons responsible for the evacuation of children, and areas for which they are responsible and instruction on how to use a fire extinguisher and how to close off the fire area.

- (5) Procedures to follow in the event of a blizzard, tornado, or other natural disaster.
- (6) Procedures to follow when a child is missing.
- (7) Procedures to follow if an unauthorized person or a person who is incapacitated or suspected of abuse attempts to pick up a child or if no one comes to pick up a child.
- (8) Procedures for recording accidents, injuries, and incidents involving a child enrolled in the center. The written record must contain the name and age of the persons involved; date and place of the accident, injury, or incident; type of injury; action taken by staff; and to whom the accident, injury, or incident was reported.
- (9) Procedures mandating an annual analysis of the license holder's records and procedures and any modification of the center's policies based on the analysis.

(d) The license holder must maintain a written record of accidents, injuries, emergencies, and incidents.

(e) The license holder must develop procedures to address when the parent(s), guardian(s), or emergency contact(s) fail(s) to pick up a child upon the closing of the child care center, if child must be removed from the center as described in §§1729(d) and 1730(b). Furthermore, the license holder will note this information in a log to be maintained in the license holder's administrative records.

§1732. Mandatory reporting

The license holder must report neglect, physical or sexual abuse of children in the home, school, or community setting.

§1733. Other reporting

- (a) The license holder must inform law enforcement immediately of the death of a child in care in the center; the Band must be notified within 24 hours.
- (b) The license holder must inform the Band within 24 hours of any injury to a child in care in the center that required treatment by a physician.
- (c) The license holder must inform the Band within 48 hours of the occurrence of a natural disaster during the hours of operation.
- (d) The license holder must ensure that the appropriate health authority is notified within 24 hours of receiving the parent's report of any suspected case of reportable disease as specified in the current Minnesota regulations governing child care centers (as stated in the most current Minnesota Rules).

§1734. Additional health and safety requirements

- (a) A license holder for a drop-in center program will not administer medicine.
- (b) The indoor space and equipment of the center must be clean and disinfected daily and as needed.
- (c) The toilet rooms of the center must be cleaned daily. Toilet training chairs must be emptied, washed with soap and water, and disinfected after each use. Toilets and seats must be washed with soap and water and disinfected when soiled or at least daily.
- (d) A diaper must be changed only in the diaper changing area. The diaper changing area must be separate from areas used for food storage, food preparation, and eating. The area must have a hand sink equipped with hot and cold running water within three feet of the diaper changing surface, a smooth nonabsorbent diaper changing surface and floor covering, and a sanitary container for soiled and wet diapers.
- (e) The center must have and follow diaper changing procedures that have been developed in consultation with a health consultant. The license holder must post the diaper changing procedures in the diaper changing area.
- (f) A child's hands must be washed with soap and water after a diaper change, after use of a toilet or toilet training chair, and before eating a meal or snack. Staff must monitor hand washing and assist a child who needs help. The use of a common basin or a hand sink filled with standing water is prohibited.
- (g) A staff person must wash his or her hands with soap and water after changing a child's diaper, after using toilet facilities, and before handling food or eating.
- (h) The license holder shall provide the following supplies and make them accessible to children: toilet paper, liquid hand soap, facial tissues, and single use paper towels or warm air hand dryers.
- (i) The license holder must ensure that a first aid kit is available within the center. The kit must contain sterile bandages and band-aids, sterile compresses, scissors, an ice bag or cold pack, an oral or surface thermometer, and adhesive tape. A current first aid manual must be included. The first aid kit and manual must be accessible to the staff in the center.
- (j) Sharp objects, medicines, plastic bags, and poisonous plants and chemicals, including household supplies, must be stored out of reach of children.
- (k) The center must have a battery operated flashlight and battery operated portable radio.
- (l) Equipment and furniture must be durable, in good repair, structurally sound and stable following assembly and installation. Equipment must be free of sharp edges, dangerous protrusions, points where a child's extremities could be pinched or crushed,

and openings or angles that could trap part of a child's body. Tables, chairs, and other furniture must be appropriate to the age and size of children who use them. Toys and equipment that are likely to be mouthed by infants and toddlers must be made of a material that can be disinfected. These must be cleaned and disinfected when mouthed or soiled and at least daily.

(m) Infant rattles must meet the United States consumer product safety standards contained in the Code of Federal Regulations, title 16, sections 1510.1 to 1510.4, as adopted on May 23, 1978. All toys and other articles intended for use by children under three years of age that present choking, aspiration, or ingestion hazards because of small parts must meet the size standards in Code of Federal Regulations, title 16, sections 1501.1 to 1501.5, as adopted on June 15, 1979.

(n) The areas used by children must be free from debris, loose flaking, peeling, or chipped paint, loose wallpaper, or crumbling plaster, litter, and holes in the walls, floors, and ceilings. Rugs must have a nonskid backing or be firmly fastened to the floor and be free from tears, curled or frayed edges, and hazardous wrinkles.

(o) Food and water must meet and comply with IHS standards.

(p) Any play equipment that has tubing, tunnels or otherwise prevents monitoring and observation of activity occurring inside the structure must have walls that are partially or completely transparent, or allow for surveillance of the structure's interior.

§1735. Facility

(a) If the Band has reasonable cause to believe that a potential hazard exists, the Band may request another inspection and written report by a fire marshal, building official, or health authority to verify the absence of hazard, the fees for which the license holder is responsible.

(b) Radiators, fireplaces, hot pipes, and other hot surfaces in areas used by children must be shielded or insulated to prevent burns.

(c) Except in a center that serves only school-age children, electrical outlets must be tamper proof or shielded when not in use.

(d) A minimum temperature of 68 degrees Fahrenheit must be maintained in indoor areas used by children.

(e) Kitchens, stairs, and other hazardous areas must be inaccessible to children except during periods of supervised use.

(f) Fire extinguishers must be serviced annually by a qualified inspector. The name of the inspector and date of the inspection must be written on a tag attached to the extinguisher.

**Part E
Records**

§1736. Personnel records

The license holder must ensure that a personnel record for each staff person is maintained at the center. The personnel record for each staff person must contain:

- (a) the staff person's name, home address, home telephone number, and date of birth;
- (b) the staff person's documentation indicating that the staff person meets the requirements of the staff person's job position and the education and experience requirements specified by this subchapter; and
- (c) documentation that the staff person has completed first aid and CPR training.

§1737. Child records

- (a) At the time of enrollment in the center, the license holder must ensure that a record is maintained on each child. The record must contain:
 - (1) the child's full name, birthdate, and current home address;
 - (2) the name, address, and telephone number of the child's parent(s) or legal guardian(s);
 - (3) instructions on how the parent(s) or guardian(s) can be reached when the child is attending the center;
 - (4) the names and telephone numbers of any persons authorized to take the child from the center;
 - (5) written authorization for the license holder to act in an emergency, or when a parent cannot be reached or is delayed;
 - (6) for children age six weeks to 36 months, a description of the child's eating, sleeping, toileting, and communication habits, and effective methods for comforting the child; and
 - (7) documentation of any dietary or medical needs of the child.
 - (8) documentation of parent(s) or guardian(s) failing to pick up the child.
- (b) The license holder shall not disclose a child's record to any person other than the child, the child's parent or guardian, the child's legal representative, employees of the license holder, the Band, and law enforcement unless the child's parent or guardian has given written consent or as otherwise required by law.

§1738. Center administrative records

All records, policies, and procedures required by this subchapter must be maintained within the center and be available for inspection at the request of the Band or IHS.