

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

DOCKET NO. 16-0602-1001

### NOTICE OF RULEMAKING -TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of these temporary rules is [July 1, 2010](#).

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than [July 21, 2010](#).

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Title 39, Chapter 11, Idaho Code, was amended to provide a statewide system for the protection of children in daycare facilities. The statutory changes were effective on January 1, 2010, and necessitate corresponding changes and clarification in this chapter of rules. The Department presented rules to the 2010 Legislature that were rejected. These rules are being published as temporary rules, in order to have rules effective on July 1, 2010, with changes to address concerns of the legislature.

These rule changes provide requirements and clarification for areas related to daycare licensing that include: safety and health standards, licensure requirements, suspension, denial, and revocation of licenses. While amending these child care licensing rules for daycare standards, other updates were made for consistency in language, clarification, deletion of obsolete language, and updating references. These amendments will help assure standards and processes to better protect the health and safety of children in child care licensed by the Department.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of children in child care and daycare, and to comply with amendments to statutes effective January 1, 2010.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

The Department estimates the anticipated cost for SFY 2011 is \$69,000. This cost will be covered by the Federal Child Care Development Funds which is 100 percent federally funded.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted this year, 2010, because extensive rulemaking negotiations were held in 2009 under Docket No. 16-0602-0901, to meet new statutory requirements effective January 1, 2010.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact [Landis Rossi \(208\) 334-5688](#).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 28, 2010.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Tamara Prisock  
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**THE FOLLOWING IS THE AMENDED TEXT FOR DOCKET NO. 16-0602-1001**

**000. LEGAL AUTHORITY.**

Under Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code, the Idaho Legislature authorizes the Department of Health and Welfare and the Board of Health and Welfare to adopt and enforce rules governing standards and procedures for licensureing or certification of daycare centers, group daycare facilities, family daycare homes, foster homes, children's agencies, and children's residential care facilities, children's camps, and children's therapeutic outdoor programs which are maintained or operated within Idaho.

~~(7-1-09)~~(7-1-10)T

**001. TITLE, SCOPE, ~~AND~~ POLICY, PURPOSE, EXCEPTIONS, AND EXEMPTIONS TO LICENSING.**

**01. Title.** The title of this chapter of rules is IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing." (7-1-09)

**02. Scope.** These rules establish minimum standards and procedures for the licensureing, or certification of maintaining, and operating the following facilities or programs within Idaho: (7-1-10)T

- a.** Daycare centers; (7-1-10)T
- b.** Group daycare facilities; (7-1-10)T
- c.** Family daycare homes, voluntarily; (7-1-10)T
- d.** Foster homes; (7-1-10)T
- e.** Children's agencies, ~~and~~; (7-1-10)T
- f.** Children's residential care facilities, including non-accredited residential schools; (7-1-10)T
- g.** Children's camps providing child care in Idaho. These standards apply for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period; (7-1-10)T
- h.** Children's therapeutic outdoor programs; (7-1-10)T
- i.** Alcohol-drug abuse treatment facilities for adolescents certified according to IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs"; and (7-1-10)T
- j.** Facilities specializing in maternity care to for minors; daycare centers and group daycare facilities. Also included are standards and procedures for voluntary compliance for licensing of group daycare facilities and family daycare homes. (7-1-09)(7-1-10)T

**03. Policy.** It is the policy of the Department to assure that children of this state receive adequate substitute parental care in the event of absence, temporary or permanent inability of parents to provide care and protection for their children or the parents are seeking alternative twenty-four (24) hour long-term care for their children. This policy is based on the fact that children are vulnerable and not capable of protecting themselves. When parents, for any reason have relinquished their children's care to others, there arises the possibility of certain risks to those children's lives, health and safety which the community as a whole must protect against. This requires the offsetting statutory protection of review and, in certain instances, licensing or registration. (7-1-10)

**04. Purpose.** The Department issues a license to assure, as is reasonably practicable, that the care, services, and physical surroundings of each program or facility are in substantial compliance with these rules and minimum standards. (7-1-10)T

**a.** According to Section 39-1117, Idaho Code, a daycare license does not constitute a representation affirming to any person that the program or facility is free from risk. A daycare license does not guarantee adequacy of care, services, safety, or the well-being of any child, staff, contractor, volunteer, or visitor of a daycare facility. It is the parent's primary responsibility for evaluation and selection of daycare services. (7-1-10)T

**b.** The state, its employees or agents of the state or its political subdivisions, will not be liable for nor will a cause of action exist for any loss or damage based upon the failure of any daycare facility to meet the minimum standards contained in these rules. (7-1-10)T

**05. Exceptions and Exemptions to Daycare Licensing.** Under Section 39-1103, Idaho Code, the minimum standards and licensing requirements in these rules do not apply to: (7-1-10)T

**a.** Daycare facilities regulated, licensed, or certified by a city or county in accordance with local options under Section 39-1108, Idaho Code; (7-1-10)T

**b.** The occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily in the business of providing daycare; (7-1-10)T

**c.** The operation of a private school or religious school for educational purposes for children over four (4) years of age, or a religious kindergarten; (7-1-10)T

**d.** The provision of occasional care exclusively for children of parents who are simultaneously in the same building; (7-1-10)T

**e.** The operation of day camps, programs and religious schools for less than twelve (12) weeks during a calendar year or not more often than once a week; or (7-1-10)T

**f.** The provision of care for children of a family within the second degree of relationship as defined in Section 011 of these rules. (7-1-10)T

**06. Exceptions and Exemptions to Child Care Licensing.** Under Sections 39-1206, 39-1213(b) and 39-1211, Idaho Code, the minimum standards and licensing requirements in these rules do not apply to: (7-1-10)T

**a.** Foster homes that have been approved by a licensed children's agency provided the standards for approval by such agency are no less restrictive than the rules and standards established by the Board and that such agency is maintained, operated, and conforms with these rules and standards; (7-1-10)T

**b.** The occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily engaged in child care; or (7-1-10)T

**c.** Children's camps which only provide child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period. A children's camp which provides child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period constitutes a children's residential care facility and is subject to the minimum standards and licensing requirements in these rules. (7-1-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (4-11-06)

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-11-06)

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-11-06)

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-11-06)

**05. Internet Website.** The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. (4-11-06)

**06. Child Care Licensing Authority Location.** The Department's child care licensing authority for children's residential treatment facilities, children's agencies, and children's outdoor therapeutic programs is located at 450 West State Street, Boise, Idaho 83702; Phone (208) 334-5700. ~~(7-1-09)~~(7-1-10)T

**07. Daycare Licensing Authority Location.** The Department's daycare licensing authority for daycare centers, group daycare facilities, and family daycare homes is located at 450 West State Street, Boise, Idaho 83702; Phone (208) 334-5700. (7-1-10)T

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.**

**01. Confidential Records.** Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (4-11-06)

**02. Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (4-11-06)

**03. Licensure or Deficiencies Records.** Under Section 9-340C(9), Idaho Code and IDAPA 16.05.01, "Use and Disclosure of Department Records," information referring or relating to individuals, programs, or facilities subject to this chapter of rules, IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing," will be released to the public upon written request if they are part of an inquiry into an individual's or organization's fitness to be granted or retain a license, certificate, permit, privilege, commission or position. These records will otherwise be provided in redacted form as required by law or rule. (7-1-10)T

**007. -- 008. (RESERVED).**

**009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.**

**01. Compliance with Department Criminal History and Background Check.** Criminal history and background checks are required for providers individuals who are licensed ~~or certified~~ under these rules. Providers Individuals who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks," with the exception of those individuals described in Subsection 009.04 of ~~these~~ this rules. ~~(3-30-07)~~(7-1-10)T

02. When ~~Certification or~~ License is Granted. The applicant must have a completed criminal history and background check, including clearance, prior to ~~certification or~~ licensure. Any other adult living in the home must complete a ~~self-declaration form~~ criminal history application, must be fingerprinted, and must not have any ~~designated~~ disqualifying crimes listed in IDAPA 16.05.06, "Criminal History and Background Checks." ~~(3-30-07)(7-1-10)T~~

03. ~~Applicants and Providers~~ Individuals Subject to Criminal History Check Requirements. The following ~~applicants and providers~~ individuals must receive a criminal history and background check clearance prior to licensure: (3-30-07)

a. Adoptive Parents. The criminal history and background check requirements applicable to adoptive parents are found in Subsection 671.02 of these rules. (3-30-07)

b. Child Care Facility Staff. The criminal history and background check requirements applicable to a child care facility are found in Section 109 of these rules. ~~(3-30-07)(7-1-10)T~~

c. Children's Agency Facility Staff. The criminal history and background check requirements for a children's agency facility are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. ~~(3-30-07)(7-1-10)T~~

d. Children's Residential Care Facility and Children's Camp Staff. The criminal history and background check requirements for a children's residential care facility or children's camp are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. ~~(3-30-07)(7-1-10)T~~

e. Children's Therapeutic Outdoor Program Staff. The criminal history and background check requirements for a children's therapeutic outdoor program are found in Section 810 of these rules and in Section 39-1208(8), Idaho Code. (3-30-07)

f. Daycare Center, Group Daycare Facility, Staff and Family Day Care Home. The criminal history and background check requirements applicable to ~~licensed a~~ daycare ~~providers~~ center, group daycare facility, and family daycare home are found in Section ~~309~~ of these rules and in Sections 39-1105, 39-1113, and 39-1114, Idaho Code. ~~(3-30-07)(7-1-10)T~~

g. Licensed Foster Care Home. The criminal history and background check requirements applicable to licensed foster care are found in Section 404 of these rules and in Section 39-1211(4), Idaho Code. (3-30-07)

04. Exceptions to Criminal History and Background Checks for Certain Youths. Criminal history and background checks are optional for certain youth placed in licensed foster homes and licensed residential care facilities. ~~(3-30-07)(7-1-10)T~~

a. Youth in foster care who reach the age of eighteen (18) and continue to reside in the same licensed foster home. (3-30-07)

b. Youth in a children's residential care facility who reach the age of eighteen (18) and continue to live in the same licensed residential facility. (3-30-07)

05. Criminal History and Background Check at Any Time. The Department can require a criminal history and background check at any time on any individual who: ~~(7-1-10)T~~

a. ~~Is a permanent~~ resident ~~of or an adult living in~~ a licensed foster home ~~or~~; ~~(7-1-10)T~~

b. Is a resident or adult living in, employee, contractor, volunteer, or staff member of a licensed residential facility; or ~~(3-30-07)(7-1-10)T~~

c. Is an owner, operator, or staff of a daycare center, group daycare facility, family daycare home, and all other individuals who are thirteen (13) years of age or older who have unsupervised direct contact with children or who are regularly on the premises. ~~(7-1-10)T~~

**010. DEFINITIONS A THROUGH M.**

For the purposes of these rules, the following terms apply. (7-1-09)

**01. Accredited Residential School.** A residential school for any number of children subject to the jurisdiction of the Idaho Department of Education that has been certified as accredited according to the accrediting standards promulgated by the Idaho State Board of Education or a secular or religious accrediting association recognized by the Idaho Department of Education. (3-30-01)

**02. Alcohol-Drug Abuse Treatment Facility.** A children's residential care facility specializing in providing programs of treatment for children whose primary problem is alcohol or drug abuse, certified according to IDAPA 16.07.20, "Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs." (~~3-30-01~~)(7-1-10)T

**03. Attendance.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, "attendance" means the number of children present at a daycare facility at any given time. (7-1-10)T

~~034.~~ **Board.** The Idaho State Board of Health and Welfare. (3-30-01)

~~045.~~ **Chief Administrator.** The duly authorized representative of an organization responsible for day-to-day operations, management and compliance with these rules and Title 39, Chapter 12, Idaho Code. (7-1-09)

~~056.~~ **Child.** (7-1-10)T

**a.** For requirements of Title 39, Chapter 12, Idaho Code, and Sections 400 through 999 of these rules, "child" means an individual less than eighteen (18) years of age, synonymous with juvenile or minor. (~~3-30-01~~)(7-1-10)T

**b.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, "child" means an individual less than thirteen (13) years of age. (7-1-10)T

**067.** **Child Care.** The care, control, supervision or maintenance of children for twenty-four (24) hours a day which is provided as an alternative to parental care. (3-30-01)

**08.** **Child-Staff Ratio.** "Child-staff ratio" means the maximum number of children allowed under the care and supervision of one (1) staff person. (7-1-10)T

**079.** **Children's Agency.** A person who operates a business for the placement of children in foster homes, children's residential care facilities or for adoption in a permanent home and who does not provide child care as part of that business. A children's agency does not include a licensed attorney or physician assisting or providing natural and adoptive parents with legal services or medical services necessary to initiate and complete adoptive placements. (3-30-01)

**108.** **Children's Camp.** A program of child care at a location away from the child's home, which is primarily recreational and includes the overnight accommodation of the child and is not intended to provide treatment, therapy or rehabilitation for the child. A children's camp which only provides child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period is exempt from the licensure and disclosure provisions of this chapter. A children's camp which provides child care for any one (1) child for more than nine (9) consecutive weeks in any one (1) year period constitutes a children's residential care facility. (7-1-09)

~~091.~~ **Children's Institution.** A person defined herein, who operates a residential facility for unrelated children, for the purpose of providing child care. Children's institutions include foster homes, children's residential care facilities, maternity homes, or any residential facility providing treatment, therapy or rehabilitation for children, or any children's therapeutic outdoor program. (5-3-03)

**102.** **Children's Residential Care Facility.** A facility that provides residential child care, excluding foster homes, residential schools, juvenile detention centers and children's camps that: (3-30-01)

- a. Seeks, receives or enrolls children for treatment of special needs such as substance abuse, mental illness, emotional disturbance, developmental disability, mental retardation, or children who have been identified by the judicial system as requiring treatment, therapy, rehabilitation or supervision; (3-30-01)
- b. Receives payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability or mental retardation; or (3-30-01)
- c. Represents to the payor of the child care services provided by the children's facility that such payment may qualify for health insurance reimbursement by the payor's carrier or may qualify for tax benefits relating to medical services; and (5-3-03)
- d. May include a children's therapeutic outdoor program whether or not that program operates out of a standard facility. (5-3-03)
- 143. Children's Therapeutic Outdoor Program.** A program which is designed to provide behavioral, substance abuse, or mental health services to minors in an outdoor setting and serves either adjudicated or non-adjudicated youth. Children's Therapeutic Outdoor programs do not include outdoor programs for minors that are primarily designed to be educational or recreational that may include Boy Scouts, Girl Scouts, 4-H and other youth organizations. (5-3-03)
- 124. Continued Care.** The ongoing placement of an individual in a foster home, children's residential care facility, children's therapeutic outdoor program, or transitional living placement who reaches the age of eighteen (18) years but is less than twenty-one (21) years of age. (7-1-09)
- 135. Contraband.** Goods or merchandise, the possession of which is prohibited, such as weapons and drugs. (3-30-01)
- 146. Daycare.** The care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood, ~~or~~ marriage, adoption, or legal guardianship to the person or persons providing the care, in a place other than the child's or children's own home or homes. ~~(3-30-01)~~(7-1-10)T
- 157. Daycare Center.** A place or facility providing daycare ~~for compensation~~ where thirteen (13) or more children, regardless of relationship to the person or persons providing the care, are in attendance. ~~(3-30-01)~~(7-1-10)T
- 18. Daycare Facility.** A place or facility providing daycare where seven (7) or more children, regardless of relationship to the person or persons providing the care, are in attendance. (7-1-10)T
- 169. Department.** The Idaho Department of Health and Welfare ~~or its designee.~~ ~~(7-1-09)~~(7-1-10)T
- 170. Direct Care Staff.** An employee who has direct personal interaction with children in the provision of child care and is included as staff in meeting the minimum staff-child ratio requirements. (3-30-01)
- 218. Director.** Director of the Idaho Department of Health and Welfare or designee. (3-30-01)
- 192. Family Daycare Home.** A home, place, or facility providing daycare ~~for~~ where six (6) or fewer children, regardless of relationship to the person or persons providing the care, are in attendance. ~~(3-30-01)~~(7-1-10)T
- 203. Foster Care.** The twenty-four (24) hour substitute parental care of children by persons who may or may not be related to a child. (7-1-09)
- 214. Foster Home.** The private home of an individual or family licensed or approved as meeting the standards for foster care and providing twenty-four (24) hour substitute parental care to six (6) or fewer children. (7-1-09)

~~225.~~ **Foster Parent.** A person or persons residing in a private home under their direct control to whom a foster care license ~~or certification~~ has been issued. ~~(3-30-01)(7-1-10)T~~

~~236.~~ **Group Daycare Facility.** A home, place, or facility providing daycare ~~for where~~ seven (7) to twelve (12) children, regardless of relationship to the person or persons providing the care, are in attendance. ~~(3-30-01)(7-1-10)T~~

~~247.~~ **Inter-Country Adoption.** The placement of a child from one (1) country to another for the purpose of adoption. (3-30-01)

~~25.~~ **Licensing Authority.** ~~The Department's child care licensing unit responsible for licensure or certification of Children's Residential Treatment Facilities, Children's Agencies, and Children's Outdoor Therapeutic Program.~~ ~~(7-1-09)~~

~~268.~~ **Mechanical Restraint.** Devices used to control the range and motion of an individual, including handcuffs, restraint boards, restraint chairs, and restraint jackets. (3-30-01)

~~279.~~ **Medical Professionals.** Persons who have received a degree in nursing or medicine and registered nurse, nurse practitioner, physician's assistant and medical doctor. (3-30-01)

~~2830.~~ **Member of the Household.** Any person, other than a foster child, who resides in, or on the property of, a foster home. (3-30-01)

**011. DEFINITIONS N THROUGH Z.**  
For the purposes of these rules, the following terms apply. (7-1-09)

**01. Nonaccredited Residential School.** A residential school for any number of children that is not certified or accredited pursuant to Section 39-1207, Idaho Code, or has lost accreditation and is subject to the jurisdiction of the Department as a children's residential care facility pursuant to Section 39-1210, Idaho Code, unless and until accreditation is certified by the Idaho Department of Education. (3-30-01)

**02. Non-Compliance.** Violation of, or inability to meet the requirements of, the act or a rule promulgated under the act, or terms of licensure. (3-30-01)

**03. Operator.** An individual who operates or maintains within Idaho a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's agency, children's therapeutic outdoor program, or children's camp. ~~(7-1-10)T~~

~~034.~~ **Organization.** A children's agency or a children's residential care facility. (3-30-01)

~~045.~~ **Person.** Any individual, group of individuals, associations, partnerships or corporations. (3-30-01)

~~056.~~ **Physical Intervention.** Physical restraint utilized to control the range and motion of an individual. (3-30-01)

~~067.~~ **Placement.** The activities and arrangements related to finding a suitable licensed home or facility in which a child will reside for purposes of care, treatment, adoption, or other services. (3-30-01)

~~078.~~ **Plan of Correction.** The detailed procedures and activities developed between the licensing authority and caregiver required to bring a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster family, children's residential care facility, ~~or~~ children's agency, children's therapeutic outdoor program, or children's camp into conformity with these licensing rules. ~~(3-30-01)(7-1-10)T~~

**09. Regularly on the Premises.** For the purposes of Sections 009 and 309 of these rules, regularly on the premises means twelve (12) hours or more in any one (1) month, or daily during any hours of operation. ~~(7-1-10)T~~

~~108.~~ **Relative.** ~~Individuals related to a child by blood, marriage or adoption.~~ Under Section 39-1202, Idaho Code, “relative” means a child’s grandparent, great grandparent, aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling, and half-sibling. (3-30-01)(7-1-10)T

~~109.~~ **Representative.** An employee of the Department of Health and Welfare. (3-30-01)

~~110.~~ **Residential School.** A residential facility for any number of children which: (3-30-01)

a. Provides a planned, scheduled, regular, academic or vocational program for students in the elementary, middle or secondary grades as defined in Section 33-1001, Idaho Code; and (3-30-01)

b. Provides services substantially comparable to those provided in nonresidential public schools where the primary purpose is the education and academic pursuits of the students; and (3-30-01)

c. Does not seek, receive or enroll students for treatment of such special needs as substance abuse, mental illness, emotional disturbance, developmental disability or mental retardation; and (3-30-01)

d. Does not receive payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability, or mental retardation; and (3-30-01)

e. Does not represent to the payor of child care services provided that such payment may qualify for health insurance reimbursement by the payor’s carrier or may qualify for tax benefits relating to medical services. (3-30-01)

~~113.~~ **Restraint.** Interventions to control the range and motion of a child. (3-30-01)

~~114.~~ **Seclusion.** A room within a facility designed to temporarily isolate an individual in order to gain emotional or physical control by means of structure and minimal stimulation. (3-30-01)

~~115.~~ **Second Degree of Relationship.** The second degree of relationship refers to persons related consanguineally (“blood relative”) and affinally (“relative by marriage”) and includes their spouses. The number of degrees between two (2) relatives is calculated by summing the number of ties between each relative and the common ancestor. (7-1-10)T

~~116.~~ **Secure.** A physically restrictive setting, as in a locked or guarded residential facility. (3-30-01)

~~117.~~ **Security Risk.** An individual who presents the possibility by actions, behavior or emotional reaction that may result in harm to self or others, or escape from physical control. (3-30-01)

~~118.~~ **Service Worker.** An employee of an organization who has obtained at a minimum, a Bachelor’s degree in a behavioral science, including social work, sociology, psychology, criminal justice, counseling, or a related field, whose duties may include assessment, service planning, supervision and support. (7-1-09)

~~119.~~ **Shelter Care.** The temporary or emergency out-of-home care of children in a foster home or residential facility. (3-30-01)

~~120.~~ **Social Worker.** An individual licensed by the state of Idaho in compliance with Title 54, Chapter 32, Idaho Code, and IDAPA 24.14.01, “Rules of the State Board of Social Work Examiners.” (7-1-09)

~~121.~~ **Soft Restraints.** Mechanical restraints made of leather, cloth or other combinations of fibers, utilized to control the range of motion of an individual. (3-30-01)

~~22.~~ **Staff.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, “staff” means a person who is sixteen (16) years of age or older and employed by a daycare owner or operator to provide care and supervision at a daycare facility. (7-1-10)T

**23. Supervision.** For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, supervision is defined as within sight and normal hearing range of the child or children being cared for. (7-1-10)T

~~1924.~~ **Time-Out.** Separation of a child from group activity as a means of behavior management. (3-30-01)

**205. Training.** The preparation, instruction and education related to child care that increases the knowledge, skill and abilities of a foster parent, agency and residential care facility staff or volunteers. (3-30-01)

**246. Transitional Living.** Living arrangements and aftercare services for children, or as continued care, to gain experience living on their own in a supportive and supervised environment prior to emancipation. (3-30-01)

**227. Variance.** The means of complying with the intent and purpose of a child care licensing rule in a manner acceptable to the Department other than that specifically prescribed in the rule. (7-1-09)

**238. Waiver.** The non-application of a child care licensing rule, except those related to safety, extended to a relative foster home by the licensing authority which serves to promote child health, well-being, and permanence while not compromising safety. (7-1-09)

012. -- 099. (RESERVED).

#### LICENSING AND CERTIFICATION (Sections 100 through 299)

**100. LICENSING ~~AND CERTIFICATION.~~** The purpose of licensing ~~and certification~~ is to set minimum standards and to monitor compliance. Persons applying for licensure need to be physically and emotionally suited to protect the health, safety and well-being of the children in their care. Physical surroundings must present no hazards to the children in care. (7-1-09)(7-1-10)T

~~**01. Local Option.** If a city or county, within its respective jurisdiction, has adopted and is enforcing ordinances for regulating or licensing of daycare services which are at least as stringent as those contained in Subsections 300.01 through 300.15 of these rules, then those provisions of Section 39-1108, Idaho Code, will not apply within such city or county, unless the ordinance is subsequently repealed or is no longer enforced. (7-1-09)~~

~~**02. Exemptions From Licensing.** Under Sections 39-1103 and 39-1211, Idaho Code, the occasional or irregular care of a neighbor's, relative's, or friend's child or children by a person not ordinarily engaged in child care is exempt from licensure requirements for daycare and foster homes. Foster homes which have been certified by a licensed children's agency are exempt from licensure requirements, provided the standards for approval by such agency are at least as stringent as the rules and standards established by the Board and that such agency is maintained and operated in conformity with the rules and standards of the Board under Section 39-1213(b), Idaho Code. (7-1-09)~~

~~**031. Responsibilities of the Foster Parent or Operator.** A foster parent or operator must conform to the terms of the license ~~or certification~~. In addition: (3-30-01)(7-1-10)T~~

~~**#02. Responsible for Knowledge of Standards.** The foster parent or operator is responsible for knowing the standards and rules applying to the type of foster home, children's residential care facility, ~~or~~ children's agencies, children's therapeutic outdoor programs, children's camps, daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, covered by the license ~~or certification~~, and for conforming to them at all times; ~~and~~. (3-30-01)(7-1-10)T~~

~~**#03. Responsible for Agency Staff Knowledge.** The operators of child care facilities and agencies, are responsible for ensuring that all staff members are familiar with the applicable rules governing the children's residential care facility, children's therapeutic outdoor program, ~~or~~ children's agencies, children's camps, daycare~~

centers, group daycare facilities, or family daycare homes voluntarily licensed by the Department. A copy of these rules are available from the Office of the Administrative Rules Coordinator, 650 W. State Street, Boise ID 83720, or on the Office of the Administrative Rules Coordinator's website, <http://adm.idaho.gov/adminrules/>~~and~~.  
(7-1-09)(7-1-10)T

~~e04.~~ **Return of License.** The foster parent or operator must immediately return his license ~~or certification~~ to the Department under any of the following circumstances: (3-30-01)(7-1-10)T

~~ia.~~ Changes of management or address; ~~or~~ (3-30-01)(7-1-10)T

~~ib.~~ Upon suspension or revocation of the license ~~or certification~~ by the Department; or (3-30-01)(7-1-10)T

~~ic.~~ Upon voluntary discontinuation of service. (3-30-01)

### 101. APPLICATIONS FOR LICENSE ~~OR CERTIFICATION.~~

~~An applications~~ for a license ~~or certification are to~~ must be submitted ~~and action is to be initiated on all applications within thirty (30) days after receipt, that addresses each requirement for the particular type of home, facility or agency to the Department.~~ Licensing ~~and certification~~ studies will follow the format of these rules and will contain a specific recommendation regarding the terms of the license ~~or certification~~. All foster homes, children's agencies, children's therapeutic outdoor programs, children's camps, daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, and children's residential care facilities must also comply with applicable Idaho city and county ordinances. (7-1-09)(7-1-10)T

~~01. Sanitation Inspection. The applicant must request and obtain a sanitation inspection and written report from the applicable Idaho Public Health District. (7-1-09)~~

~~02. Fire Inspection. The applicant must request and obtain a fire safety inspection and written report from the office of the Idaho State Fire Marshall or local fire department. (7-1-09)~~

~~03. Corrective Action and Fees. The applicant must correct all deficiencies noted in the sanitation and fire reports, in order to provide documentation that the applicant has passed the inspections, and is responsible to pay any fees charged. (7-1-09)~~

~~04. Planning and Zoning. The applicant must provide documentation demonstrating it meets planning and zoning requirements of the applicable Idaho city or county. (7-1-09)~~

### 102. DISPOSITION OF APPLICATIONS.

The Department will initiate action on each completed application within thirty (30) days after receipt that addresses each requirement for the specific type of home, facility, or agency. Upon receipt of a completed application and study, the licensing authority will review the materials for conformity with these rules. (7-1-09)(7-1-10)T

**01. Approval of Application.** A license ~~or certification~~ will be issued to any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential facility, children's therapeutic outdoor programs, children's camps, or children's agency, found to be in conformity with these rules governing the home or facility. The license ~~or certification~~ is issued according to the terms specified in the licensing ~~or certification~~ study and will be mailed to the applicant. (7-1-09)(7-1-10)T

**02. Regular License.** A regular license ~~or certification~~ will be issued to any daycare ~~or center,~~ group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camps, or children's agency found to be in conformity with these rules governing the facility and will specify the terms of licensure ~~or certification~~, such as: (7-1-09)(7-1-10)T

a. Full time or daycare; (3-30-01)

b. The number of children who may receive care at any one (1) time; and (3-30-01)

c. Age range and gender, if there are conditions in the foster home or children's residential care facility making such limitations necessary; (3-30-01)

d. The regular license ~~or certification~~ for foster homes, children's agencies, ~~and twenty-four (24) hour a-day child care~~ children's residential care facilities, ~~children's therapeutic outdoor program, and children's camps~~ will be in effect for one (1) year from the date of issuance unless suspended or revoked earlier; ~~(7-1-09)~~(7-1-10)T

e. A regular license ~~or certification~~ for a daycare ~~and center~~ group daycare facility, ~~or family daycare home voluntarily licensed by the Department~~ is in effect for two (2) years from the date of issuance unless suspended or revoked earlier; and ~~(7-1-09)~~(7-1-10)T

f. If the license for a foster home is for a specific child only, the name of that child will be shown on the foster home license. (3-30-01)

03. **Waiver.** A regular license ~~or certification~~ may be issued to the foster home of a relative who has received a waiver of licensing rules provided: ~~(7-1-09)~~(7-1-10)T

a. The waiver is considered on an individual case basis; (3-30-01)

b. The waiver is approved only for non-safety foster care rules; (7-1-09)

c. All other licensing ~~or certification~~ requirements have been met; ~~(3-30-01)~~(7-1-10)T

d. The approval of a waiver of any foster home rules requires the licensing authority to document a description of the reasons for issuing a waiver, the rules being waived, and assurance that the waiver will not compromise the child's safety; and (7-1-09)

e. The approved waiver must be reviewed for continued need and approval at regular intervals not to exceed six (6) months. (7-1-09)

04. **Variance.** A regular license ~~or certification~~ will be issued to a foster home, children's residential care facility or children's agency approved for a variance of a licensing rule provided: ~~(3-30-01)~~(7-1-10)T

a. The variance is considered on an individual case basis; (3-30-01)

b. The variance is approved for a non-safety licensing rules; (3-30-01)

c. The approval of a variance must have no adverse effect on the health, safety, and well-being of any child in care at the foster home or facility; (7-1-09)

d. The approval of a variance is documented by the licensing agency and includes a description of the reasons for issuing a variance and assurances that the variance will not compromise any child's health, safety, and well-being; and (7-1-09)

e. The approved variance must be reviewed for continued need and approval annually. (7-1-09)

05. **Provisional License ~~or Certification~~.** A provisional license ~~or certification~~ may be issued to a ~~daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor programs, children's camps, or children's agency~~ when a licensing standard cannot be met but can be expected to be corrected within six (6) months, provided this does not affect the health, safety and well-being of any child in care at the home or facility. ~~(3-30-01)~~(7-1-10)T

a. A provisional license ~~or certification~~ will be in effect for not more than six (6) months. ~~(3-30-01)~~(7-1-10)T

b. Only one (1) provisional license ~~or certification~~ will be issued to a ~~daycare center, group daycare~~

facility, family daycare home voluntarily licensed by the Department, foster home, or children's residential care facility, children's agency, or a children's therapeutic outdoor program, or children's camp in any twelve-month period of time under Sections 39-1216, ~~Idaho Code,~~ and for daycare facilities defined in Section 39-1102, Idaho Code. ~~(7-1-09)~~(7-1-10)T

**06. Limited License.** A limited license for a foster home may be issued for the care of a specific child in a home which may not meet the requirements for a license, provided that: (3-30-01)

- a. The child is already in the home and has formed strong emotional ties with the foster parents; and (3-30-01)
- b. It can be shown that the child's continued placement in the home would be more conducive to their welfare than would removal to another home. (3-30-01)

**07. Denial of Application.** In the event that an application is denied, a signed letter will be sent directly to the applicant by registered or certified mail, advising the applicant of the denial and stating the basis for such denial. An applicant whose application has been denied may not reapply until after one (1) year has elapsed from the date on the denial of application. ~~(7-1-09)~~(7-1-10)T

**08. Failure to Complete Application Process.** (7-1-09)

- a. Failure of the applicant to complete the application process within six (6) months of the original date of application will result in a denial of the application. (7-1-09)
- b. An applicant whose application has been denied for being incomplete may not reapply until after one (1) year has elapsed from the date on the denial of application. (7-1-09)

**103. RESTRICTIONS ON APPLICABILITY AND NONTRANSFER.**

**01. Issued License.** A ~~child care~~ license ~~or certification~~ applies only to the foster home, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's agency, children's therapeutic outdoor program, children's camp, or the person and premises designated. Each license is issued in the name of the individual, firm, partnership, association, corporation, or governmental unit identified on the application and only to a specified address of the facility or program stated in the application for the period and services specified. A license issued in the name of a foster parent, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's agency applies only to the services specified in the license ~~or certification~~. Any change in management or address renders the license ~~or certification~~ null and void, and the foster parent or operator must immediately return the license ~~or certification~~ to the licensing agency as required in Section 100 of these rules. ~~(3-30-01)~~(7-1-10)T

**02. Nontransferable.** A license is nontransferable or assignable from one (1) individual to another, from one (1) business entity or governmental unit to another, or from one (1) location to another. (7-1-10)T

**03. Change in Ownership, Operator, or Location.** When there is a change in ownership, operator, or a change in location occurs, the facility or program must reapply for a license as required in Section 101 of these rules. The new owner or operator must obtain a license before starting operations. (7-1-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**105. REVISIT, AND RELICENSE ~~AND RECERTIFICATION.~~**

Revisit, and relicense, ~~and re-certification~~ studies will document how the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency continues to meet the standards for licensing. Consideration must be given to each point of the standards, including a review of the previous study and

original application to determine what changes have occurred. An application for renewal of a license ~~or certification~~ must be made by the operator on the form furnished by the Department, and filled out prior to the expiration date of the license ~~or certification~~ currently in force. When such application for renewal has been made in the proper manner and form, the existing license ~~or certification~~ will, unless officially revoked, remain in force until the Department has acted on the application for renewal. ~~(7-1-09)~~(7-1-10)T

**106. COMPLAINTS AGAINST DAYCARE CENTERS, GROUP DAYCARE FACILITIES, FAMILY DAYCARE HOMES, FOSTER HOMES, CHILDREN'S RESIDENTIAL CARE FACILITIES, CHILDREN'S THERAPEUTIC OUTDOOR PROGRAMS, CHILDREN'S CAMPS, AND CHILDREN'S AGENCIES.**

**01. Investigation.** The Department will investigate complaints regarding daycare centers, group daycare facilities, family daycare homes voluntarily licensed by the Department, foster homes, children's residential care facilities, children's therapeutic outdoor programs, children's camps, or children's agencies. The investigation may include further contact with the complainant, scheduled or unannounced visits to the children's residential care facility, foster home, daycare center, group daycare facility, family daycare home, children's therapeutic outdoor program, children's camp, or children's agency, collateral contacts including interviews with the victim, parents or guardian, children's residential care facility or children's agency administrator, operator, staff, consultants, children in care, other persons who may have knowledge of the complaint, and inspections by fire or health officials. ~~(7-1-09)~~(7-1-10)T

**02. Informed of Action.** If an initial preliminary investigation indicates that a more complete investigation must be made, the foster parents, operator, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency will be informed of the investigation, and any action to be taken, including referral for civil or criminal action. ~~(7-1-09)~~(7-1-10)T

**107. SUSPENSION FOR CIRCUMSTANCES BEYOND CONTROL OF FOSTER PARENT OR OPERATOR.**

When circumstances occur over which the foster parent or operator has no control including illness, epidemics, fire, flood, or contamination, which temporarily place the operation of the foster home, child care facility, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency out of conformity with Idaho law or with these rules, the license ~~or certification~~ must be suspended until the nonconformity is remedied. ~~(7-1-09)~~(7-1-10)T

**108. SUSPENSION OR REVOCATION FOR INFRACTIONS.**

A license ~~or certification~~ may be suspended for infractions of these rules. Such suspension may lead to revocation if the foster parent or operator fails to satisfy the Director that the infractions have been corrected sufficiently to assure conformity with the rules. ~~(7-1-09)~~(7-1-10)T

**109. NON-RENEWAL, DENIAL, REVOCATION, OR SUSPENSION OF LICENSE ~~OR CERTIFICATION.~~**

If, upon investigation, it is found that an applicant, foster parent, or operator has failed or refused to comply with any of the provisions of the Basic Daycare License Law, Sections 39-1101 through 39-11~~720~~<sup>720</sup>, Idaho Code, or the Child Care Licensing Reform Act, Sections 39-120~~81~~<sup>81</sup> through 39-1224, Idaho Code, or with these rules, or with any provision of the license ~~or certification~~, the Director may deny, suspend, revoke, or not renew a license ~~or certification~~. The Department may also deny, suspend, revoke, or ~~not renew~~ deny renewal of a license ~~or certification~~ for any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, child care facility, children's residential care facility, children's agency, children's therapeutic outdoor program, children's camp, or foster home when any of the following in Subsection 109.01 and 109.02 of this rule is determined. ~~(7-1-09)~~(7-1-10)T

**01. Criminal Conviction or Relevant Record.** Anyone providing direct care or working onsite under these rules is denied clearance or refuses to comply with the requirements in IDAPA 16.05.06, "Criminal History and Background Checks." ~~(7-1-09)~~(7-1-10)T

**02. Other Misconduct.** The applicant, foster parent, operator, or the person proposed as chief executive officer ~~except for daycare facilities:~~ ~~(3-30-01)~~(7-1-10)T

- a. Fails to furnish any data, statistics, records or information requested by the Department without good cause or provides false information; (3-30-01)
- b. Has been found guilty of or is under investigation for fraud, deceit, misrepresentation or dishonesty associated with the operation of a children's residential care facility or children's agency; (3-30-01)
- c. Has been found guilty of or is under investigation for the commission of any felony; (3-30-01)
- d. Has failed to exercise fiscal accountability toward a client or the Department regarding payment for services; or (3-30-01)
- e. Has knowingly permitted, aided or abetted the commission of any illegal act on the premises of the daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency. ~~(7-1-09)~~(7-1-10)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. ENFORCEMENT REMEDY OF SUMMARY SUSPENSION AND TRANSFER OF RESIDENTS OR CHILDREN.**

The Department may summarily suspend a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's agency, children's therapeutic outdoor program, children's camp, or a children's residential care facility license and require the program to transfer residents or children when the Department has determined a resident's or child's health and safety are in immediate jeopardy. Children in a daycare center, group daycare facility, or family daycare home will not be transported from the facility, instead the parent or legal guardian will be contacted. ~~(7-1-09)~~(7-1-10)T

**112. ENFORCEMENT REMEDY REVOCATION OF LICENSE AND TRANSFER OF RESIDENTS OR CHILDREN.**

The Department may revoke the license of a daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's agency, children's therapeutic outdoor program, or children's residential care facility when the Department determines the provider operator is not in compliance with these rules. Children in a daycare center, group daycare facility, or family daycare home will not be transported from the facility, instead the parent or legal guardian will be contacted. Revocation and transfer of residents or children may occur under the following circumstances: ~~(7-1-09)~~(7-1-10)T

**01. Endangers Health or Safety.** Any condition that endangers the health or safety of any resident or child. ~~(7-1-09)~~(7-1-10)T

**02. Not in Substantial Compliance.** A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility is not in substantial compliance with these rules. ~~(7-1-09)~~(7-1-10)T

**03. No Progress to Meet Plan of Correction.** A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted a plan of correction. ~~(7-1-09)~~(7-1-10)T

**04. Repeat Violations.** Repeat violations of any requirement of these rules or provisions of Title 39, Chapters 11 and 12, Idaho Code. ~~(7-1-09)~~(7-1-10)T

**05. Misrepresented or Omitted Information.** A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor

program, children's camp, or children's residential care facility has knowingly misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate license. (7-1-09)(7-1-10)T

**06. Refusal to Allow Access.** Refusal to allow Department representatives full access to the foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility and its grounds facilities and records. (7-1-09)(7-1-10)T

**07. Violation of Terms of Provisional License.** A children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility that has violated any of the terms or conditions of a provisional license. (7-1-09)(7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

**300. STANDARDS FOR DAYCARE.**

**01. Purpose.** ~~The stated legislative purpose of Sections 39-1101 through 39-1117, Idaho Code, is to provide for minimum statewide daycare licensing for children less than twelve (12) years of age. Persons with certain criminal backgrounds are prohibited from working in daycare centers. Responsibilities for regulatory authority are divided between the Board, the state fire marshal, and the public health districts. As stated in Section 39-1101, Idaho Code: "It is declared to be the policy of the state to establish a minimum statewide system for the protection of children in daycare centers. This system is intended to establish minimum standards, while still leaving primary responsibility for evaluation and selection of daycare services with parents. The minimum standards established by this chapter are not to be construed as preempting more stringent regulation by county or city ordinance."~~ Daycare Standards. In addition to meeting the rules and minimum standards required in Sections 000 through 199 of these rules, each owner, operator, or applicant seeking licensure from the Department as a daycare center, group daycare facility, or family daycare home must also meet the requirements under Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules. (4-9-09)(7-1-10)T

**02. Fee Charged.** ~~Fees are charged at the time of initial application for a basic daycare license or certification. The fees will be used to cover the expenses for fire inspections, health inspections and criminal history and background checks. The initial inspection fees are non-refundable. Basic daycare licenses and certifications are valid for a period of two (2) years. Minimum Age of Applicant. An individual, submitting an application to the Department to be licensed for a daycare center, group daycare facility, or family daycare home, must be a minimum of eighteen (18) years of age.~~ (4-9-09)(7-1-10)T

**a.** ~~Fees will also be charged at the time of application for renewal of a license or certification. An application for renewal must be filed every two (2) years prior to the expiration of a current basic daycare license or certification in order for the current license or certification to remain valid, pending the completion of the appropriate inspections. Application and inspection fees for renewal are non-refundable.~~ (4-9-09)

**b.** ~~Fees for initial inspection and renewal of basic daycare licenses and certifications must be paid directly to the inspecting fire and health agencies. The criminal history check fees and application fee for renewal must be paid directly to the Department.~~ (4-9-09)

**e.** ~~The applicable license fee payable to the Department upon initial application or a renewal will be reduced for any daycare facility which provides evidence that at least fifty percent (50%) of its staff is certified in infant/child first aid and cardiopulmonary resuscitation.~~ (4-9-09)

**i.** ~~To receive such refund of monies paid to the Department for licensure or renewal, the applicant or owner/operator of such daycare facility must submit to the Department daycare licensing unit, at any time during the period of a valid license or certificate for daycare, written documentation of the number of staff in the daycare facility and that at least fifty percent (50%) of that staff is certified in infant/child first aid and cardiopulmonary~~

~~resuscitation. (4-9-09)~~

~~ii. Upon receipt of valid documentation that fifty percent (50%) of the staff of that daycare facility is so certified, a payment equal to twenty-five percent (25%) of the licensing fee paid will be made to the applicant or owner/operator of such licensed daycare facility. (4-9-09)~~

~~**03. Initial Application Fees for Basic Daycare License.** All unlicensed and previously licensed daycare centers caring for thirteen (13) or more children are required to submit an initial application for a basic daycare license. The maximum fees for both unlicensed and previously licensed centers cannot exceed one hundred dollars (\$100) for a state license. (4-9-09)~~

~~a. The following fees will be included with the initial application for a basic daycare license: (3-30-01)~~

~~i. Health Inspection—thirty-five dollars (\$35) payable to the Health District; (3-30-01)~~

~~ii. Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; and (3-30-01)~~

~~iii. Criminal History Check—forty-five dollars (\$45) for the criminal history check will be charged for each licensing applicant and is separate from the application fees for health and fire inspections. The fees for criminal history checks are the responsibility of the individual or daycare center with which they are associated. (4-9-09)~~

~~b. Posting of license in a conspicuous place at the daycare center is required. (3-30-01)~~

~~e. The Department obtains a criminal history check on only those applicants, owners, operators, employees or volunteers who have direct contact with the children in care and on all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. "Volunteers" when used in this chapter means only those persons who have direct unsupervised contact with children in care for more than twelve (12) hours in any one (1) month. (4-9-09)~~

~~**04. Application Fees for Renewal of Basic Daycare License.** A basic daycare license must be renewed every two (2) years. The application fee for renewal of a license cannot exceed sixty dollars (\$60). The following fees will be included with an application for renewal of a basic daycare license: (4-9-09)~~

~~a. Department—ten dollars (\$10) payable to the Department; (3-30-01)~~

~~b. Health Inspection—thirty dollars (\$30) payable to the Health District; and (3-30-01)~~

~~c. Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency. (3-30-01)~~

~~d. It will be the responsibility of the applicant, owner, or operator of a daycare center to ensure that a criminal history check is initiated within ten (10) days for staff having direct contact with children to include employees and volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. (3-30-01)~~

~~**05. Initial Application Fees for Certification.** All unlicensed and previously licensed group daycare facilities caring for seven (7) to twelve (12) children are not required to be licensed but must be certified by obtaining a fire inspection and criminal history check for applicant and staff. (4-9-09)~~

~~a. The following fees shall be included with the initial application for a state certification: (3-30-01)~~

~~i. Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency; (3-30-01)~~

~~ii. Criminal History Check—fifty-five dollars (\$55) will be charged for each certification applicant, owner, operator, employee or volunteer at the group daycare facility requiring a criminal history check and is separate from the application fee for a fire inspection and is the responsibility of the individual or group daycare facility. (4-9-09)~~

~~b. The fire inspection certification and verification of the required criminal history check must be available for inspection on the premises. (4-9-09)~~

~~e. The Department obtains a criminal history check on only those applicants, owners, operators, employees, or volunteers and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. (4-9-09)~~

~~06. Application Fee for Renewal of Certification. A certification must be renewed every two (2) years. The application fee for renewal of a certification will not exceed thirty dollars (\$30). The following fees will be included with the application for renewal of certification: (4-9-09)~~

~~a. Department—ten dollars (\$10) payable to the Department; and (3-30-01)~~

~~b. Fire Inspection—up to twenty dollars (\$20) payable to fire inspector or fire inspection agency. (3-30-01)~~

~~e. It will be the responsibility of the applicant, owner or operator of a group daycare facility to ensure that any employees and volunteers having direct contact with children have, upon employment or assignment, a criminal history check initiated within ten (10) days for staff. (3-30-01)~~

~~07. Voluntary Compliance by Group Daycare Facilities for Basic Daycare License. A group daycare facility may elect voluntarily to secure a basic daycare license and must meet the same requirements as for daycare centers. Group daycare facilities wishing to apply for a basic daycare license must comply in all cases with the requirements of a fire inspection, health inspection and criminal history check. Group daycare facilities electing to secure a basic daycare license will be charged the same fees as for daycare centers. (4-9-09)~~

~~08. Family Daycare Homes. Family daycare homes caring for six (6) or fewer children are not required to have a basic daycare license or certification. A family daycare home may, however, elect voluntarily to secure a basic daycare license and must meet the same requirements as for daycare centers. Family daycare homes wishing to apply for a basic daycare license must comply with the requirements of a fire inspection, health inspection and criminal history check, when required. Family daycare homes electing to secure a basic daycare license will be charged the same fees as for daycare centers. (4-9-09)~~

~~09. Procedure for Criminal History Checks. The Department is hereby authorized to obtain and submit criminal history checks with fingerprints on applicants, owners, operators, employees and volunteers of daycare centers, group daycare facilities and family daycare homes, when the home wishes to voluntarily comply with the requirements for a basic daycare license. The criminal history check is conducted under Sections 39-1113 and 56-1004A, Idaho Code, and IDAPA 16.05.06, "Criminal History and Background Checks." Criminal history checks are required on employees, volunteers, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children in care. Basic daycare licenses, certifications and/or daycare provider permits will be used as a means of verifying that no record has been found under Sections 39-1113 and 39-1115(3), Idaho Code, on licensing and certification applicants, owners, operators, employees and volunteers requiring criminal history checks. (4-9-09)~~

~~10. Temporary Basic Daycare Licenses, Certifications, and Daycare Provider Permits. (3-30-01)~~

~~a. The Department may issue temporary basic daycare license, temporary certifications and temporary daycare provider permits to licensing or certification applicants pending the completion of the necessary daycare inspections or criminal history checks. The Department may also issue temporary daycare provider permits to daycare providers who are owners, operators, employees and volunteers pending the completion of the criminal history check. All temporary basic daycare licenses, temporary certifications and temporary daycare provider permits will be issued under the following conditions: (4-9-09)~~

~~i. Issued for a period not to exceed one hundred twenty (120) days, unless otherwise extended by the Department. (4-9-09)~~

~~ii. Applicants, owners, operators, employees and volunteers requiring a criminal history check properly completing and signing a notarized self-declaration certifying that they have never been found guilty of or received a withheld judgement for any of the crimes enumerated in Sections 39-1113 and 39-1115(3), Idaho Code, pending the completion of the criminal history check. (3-30-01)~~

~~iii. All temporary basic daycare licenses and certifications are conditional upon satisfactory daycare facility inspections and applicants' satisfactory criminal history checks. (3-30-01)~~

~~iv. All temporary daycare provider permits are conditional upon satisfactory criminal history checks. (3-30-01)~~

~~b. If a criminal history check on an applicant for licensing or certification or a currently licensed or certified daycare facility discloses an owner, operator, employee or volunteer with a guilty conviction or a withheld judgement under Sections 39-1113 and 39-1115(3), Idaho Code, the individual must be suspended immediately from continued employment or volunteering. The daycare facility and individual will be in violation of these rules and subject to a misdemeanor if the individual is retained after receiving notice by certified mail from the Department that the individual has been found guilty of or received a withheld judgement for an offense under Sections 39-1113 and 39-1115(3), Idaho Code. (4-9-09)~~

~~11. **Responsibilities of Applicants, Owners or Operators.** It is the responsibility of the applicant, owner or operator of a daycare facility to maintain a personnel record on each employee and volunteer at the daycare facility having direct contact with children. The personnel record must include date of initial employment or assignment, date of termination or extended leave from employment or assignment, a copy of the daycare provider permit and any other information which may be necessary to establish daycare facility and personnel compliance with Section 39-1105, Idaho Code. It is the responsibility of the applicant, owner or operator of a daycare facility to ensure new employees and volunteers having direct contact with children, and all other individuals twelve (12) years of age or older who have unsupervised direct contact with children, submit to the Department within ten (10) days from the date of initial employment or assigned self-declaration certifying they have not been found guilty of or received a withheld judgement for the crimes under Section 39-1115(3), Idaho Code. Two (2) fingerprint cards (FD-258) with fingerprints for personnel requiring criminal history checks must also be completed within ten (10) days from the date of initial employment or assignment. (4-9-09)~~

~~12. **Immunizations Required.** Under Section 39-1118, Idaho Code, the immunizations required and the manner and frequency of their administration are provided in IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." (4-9-09)~~

~~13. **Employee Training.** The owner operator of a daycare center must ensure through documentation that each employee receives four (4) hours of ongoing training every twelve (12) months after the employee's hire date. (4-9-09)~~

~~14. **Preemption.** These rules do not preempt more stringent local regulation or requirements. (3-30-01)~~

### **301. TYPES OF DAYCARE LICENSES.**

Subject to meeting all requirements under Title 39, Chapter 11, Idaho Code, and the rules and minimum standards in this chapter, the Department will determine the type of daycare license required by an owner or operator providing daycare by counting each child in attendance, regardless of relationship to the person or persons providing the care. The following types of daycare licenses may be issued by the Department. (7-1-10)T

**01. Daycare Center License.** A daycare center license is issued for a place or facility providing daycare, where thirteen (13) or more children, regardless of relationship to the person or persons providing the care, are in attendance. (7-1-10)T

**02. Group Daycare Facility.** A group daycare facility license is issued for a place or facility providing daycare, where seven (7) to twelve (12) children, regardless of relationship to the person or persons providing the care, are in attendance. (7-1-10)T

**03. Family Daycare Home.** A family daycare home is not required to be licensed. However, a family daycare home may voluntarily elect to be licensed by the Department. (7-1-10)T

**302. -- 308. (RESERVED).**

**309. CRIMINAL HISTORY AND BACKGROUND CHECK FOR DAYCARE STANDARDS.**

**01. Criminal History and Background Check for Daycare Centers and Group Daycare Facilities.** Each owner, operator, or applicant seeking licensure for a daycare center, group daycare facility, or a family daycare home must submit evidence that is satisfactory to the Department that the following individuals have successfully completed and received a clearance for a Department criminal history and background check under the provisions of Sections 39-1105 and 39-1113, Idaho Code: (7-1-10)T

- a. Owners, operators, and staff.** (7-1-10)T
- b. All other individuals thirteen (13) years of age or older who have unsupervised direct contact with children; or** (7-1-10)T
- c. All other individuals thirteen (13) years of age or older who are regularly on the premises.** (7-1-10)T

**02. Juvenile Justice Records.** The criminal history and background check for any individual under eighteen (18) years of age, must include a check of the juvenile justice records, as authorized by the minor and his parent or guardian. Records must be checked for each jurisdiction in which the individual has resided since becoming thirteen (13) years of age through eighteen (18) years of age. Each owner, operator, or applicant is responsible for requesting a check of the juvenile justice record, paying for the costs of a check of the juvenile justice records, and submitting them to the Department for review. A check of the juvenile justice records must include the following: (7-1-10)T

- a. Juvenile justice records of adjudication of the magistrate division of the district court;** (7-1-10)T
- b. County probation services; and** (7-1-10)T
- c. Department records.** (7-1-10)T

**03. Criminal History and Background Check for Family Daycare Homes.** Under Section 39-1114, Idaho Code, any person providing daycare for four (4) or more children in a family daycare home is required to comply with the requirements of Sections 39-1105 and 39-1113, Idaho Code. (7-1-10)T

**04. Criminal History and Background Check for Private Schools and Private Kindergartens.** Under Section 39-1105, Idaho Code, any person who owns, operates, or is employed by a private school for educational purposes for children four (4) through six (6) years of age or a private kindergarten is required to comply with the requirements of Sections 39-1105 and 39-1113, Idaho Code. (7-1-10)T

**05. Cost of Criminal History and Background Check and Juvenile Justice Records.** Each individual who requests and obtains a Department criminal history and background check is responsible for the cost of the criminal history and background check and check of juvenile justice records. (7-1-10)T

**06. On-going Duty to Report Convictions.** Following completion of a criminal history and juvenile justice background check and clearance, additional criminal convictions and juvenile justice adjudications for disqualifying crimes under Section 39-1113, Idaho Code, must be self-disclosed by the individual to the owner or operator of a daycare center, group daycare facility, or family daycare home. The owner or operator must report these additional convictions and adjudications to the Department within five (5) days of learning of the conviction or

adjudication. (7-1-10)T

**310. -- 320. (RESERVED).**

**321. APPLICATION FOR DAYCARE LICENSE OR RENEWAL.**

Any individual applying for licensure as a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must be at least eighteen (18) years of age. The applicant must apply on forms provided by the Department and must provide information required by the Department set forth in the following Subsections 321.01 through 321.10. (7-1-10)T

**01. Completed and Signed Application.** A completed application form signed and dated by the applicant. (7-1-10)T

**02. Licensing Fee.** The applicant must pay the appropriate licensing fee prior to the issuance of a daycare license by the Department. (7-1-10)T

**03. Inspection Reports.** The following reports must be submitted to the Department with the application: (7-1-10)T

**a.** Proof that the proposed facility meets local building code, where required; (7-1-10)T

**b.** Proof that the proposed facility meets local electrical code, where required; (7-1-10)T

**c.** Proof that the proposed facility meets fire code, where required; and (7-1-10)T

**d.** Proof that the facility meets local planning and zoning requirements. (7-1-10)T

**04. Proof of Insurance.** The applicant must provide proof of current fire and liability insurance coverage for the daycare facility. (7-1-10)T

**05. Criminal History and Background Clearance.** Evidence that the applicant and all individuals required to have a criminal history and background check have received a clearance from the Department required in Section 309 of these rules. (7-1-10)T

**06. Statement to Comply.** The applicant must provide a written statement that these rules have been thoroughly read and reviewed and the applicant is prepared to comply with all of its provisions. (7-1-10)T

**07. Statement Disclosing Revocation or Disciplinary Actions.** A written statement that discloses any revocation or other disciplinary action taken or in the process of being taken against the applicant as a daycare provider in Idaho or any other jurisdiction, or a statement from the applicant stating he has never been involved in any such action. (7-1-10)T

**08. Other Information as Requested.** The applicant must provide other information that may be requested by the Department for the proper administration and enforcement of the provisions of this chapter. (7-1-10)T

**09. Additional Requirements for License Renewal.** A daycare license must be renewed every two (2) years. The daycare operator must submit to the Department the renewal application, fee, and all required documentation in this section of rule at least forty-five (45) days prior to the expiration of the current daycare license. (7-1-10)T

**10. Termination of Application Process.** Failure of the applicant to cooperate with the Department in the application process may result in the termination of the application process. Failure to cooperate means that the information requested is not provided within ninety (90) days, or not provided in the form requested by the Department, or both. (7-1-10)T

**321. --324. (RESERVED).**

325. ISSUANCE OF LICENSE.

01. Department Action. The Department will order a health and safety inspection of the daycare facility once the application for licensure is complete and the licensing fee has been paid. (7-1-10)T

02. Issuance of a Regular License. If the Department determines the applicant is in compliance with the rules and minimum standards set forth in these rules, the Department will within sixty (60) days from the date the completed application is submitted issue one (1) of the following licenses: (7-1-10)T

a. Daycare Center License. stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; (7-1-10)T

b. Group Daycare Facility License. stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; or (7-1-10)T

c. Family Daycare Home License. stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect. (7-1-10)T

03. Issuance of Provisional License. A provisional daycare license may be issued for a period of time not to exceed one hundred eighty (180) days provided this does not effect the health, safety, and well-being of any child in daycare at the home or facility and the Department determines that a licensing standard cannot be met but is expected to be corrected within six (6) months. A provisional daycare license automatically expires after one hundred eight (180) days and can only be issued one (1) time in any twelve-month period. (7-1-10)T

04. Denial of Licensure. If the Department determines the applicant is not in compliance with the rules and minimum standards set forth in this chapter and further determines not to issue a regular license or provisional license, the Department will, within thirty (30) days from the date the completed application is submitted, issue a letter of denial of licensure stating the basis for the denial. (7-1-10)T

05. Incomplete Application. The Department is not required to take any action on an application until the application is complete. (7-1-10)T

06. Notification of License Renewal. The Department will notify the licensed daycare operator at least ninety (90) days prior to expiration of the license. (7-1-10)T

07. List of Licensed Daycare Facilities. The Department will maintain a list of all licensed daycare facilities for public use. (7-1-10)T

326. --329. (RESERVED).

330. STAFF AND OTHER INDIVIDUAL RECORD REQUIREMENTS.

Each owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must maintain a current list covering the previous twelve-month period of all staff and other individuals thirteen (13) years of age or older who have unsupervised direct contact with children, or are regularly on the premises. The list must specify, at a minimum, the following: (7-1-10)T

01. Legal name. (7-1-10)T

02. Proof of Age. (7-1-10)T

03. Phone Number. (7-1-10)T

04. Record of Training. (7-1-10)T

05. Verification of Criminal History and Background Check Clearance. (7-1-10)T

- 06. Results of Juvenile Justice Records.** The results of juvenile justice records, when applicable. (7-1-10)T
- 07. Certification.** Verification of Pediatric Rescue Breathing, Infant-Child CPR, and First Aid Treatment certification from a certified instructor, when applicable. (7-1-10)T
- 08. Record of Hours.** The times, dates, and records of hours on the premises each day. (7-1-10)T
- 331. CHILD RECORD CONTENT REQUIREMENTS.**  
Each owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must maintain a record for each child in attendance covering the previous twelve-month period. The record must contain, at a minimum, the following: (7-1-10)T
  - 01. Child's Full Name.** (7-1-10)T
  - 02. Date of Birth.** (7-1-10)T
  - 03. Parent or Guardian's Name, Address, and Contact Information.** (7-1-10)T
  - 04. Emergency Contact Information.** (7-1-10)T
  - 05. Child's Health Information.** (7-1-10)T
    - a. Immunization record or waiver of exemption form or statement;** (7-1-10)T
    - b. Any medical conditions that could affect the care of the child;** (7-1-10)T
    - c. Medications the child is taking or may be allergic to.** (7-1-10)T
  - 06. Record of Attendance.** The times, dates, and record of attendance each day. (7-1-10)T

**332. -- 334. (RESERVED).**

**335. CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZES.**  
The Department determines the maximum allowable ratio of children to staff and maximum group size as described in the tables provided in Subsections 335.01 and 335.02 of this rule. (7-1-10)T

**01. Daycare Centers Child-Staff Ratios and Maximum Group Size.**

<b><u>DAYCARE CENTERS</u></b> <b><u>CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZE</u></b> <b><u>Based on Age of Youngest Child</u></b> <b><u>TABLE 335.01</u></b>		
<b><u>Ages and Counts Based on Age of Youngest Child</u></b>	<b><u>Child:Staff Ratio</u></b>	<b><u>Maximum Group Size</u></b>
<u>A child or children birth to two (2) years of age</u>	<u>6:1 or 12:2</u>	<u>12</u>
<u>All children at least two (2) years of age</u>	<u>8:1 or 16:2</u>	<u>16</u>
<u>All children at least three (3) years of age</u>	<u>10:1 or 20:2</u>	<u>20</u>
<u>All children at least four (4) years of age</u>	<u>12:1 or 24:2</u>	<u>24</u>
<u>All children at least five (5) years of age</u>	<u>18:1 or 36:2</u>	<u>36</u>

(7-1-10)T

**02. Group Daycare Facilities and Licensed Family Daycare Homes - Child-Staff Ratios and Maximum Group Size.**

<b><u>GROUP DAYCARE FACILITIES AND LICENSED FAMILY DAYCARE HOMES</u></b> <b><u>CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZE</u></b> <b><u>Based on Age of Youngest Child</u></b> <b><u>TABLE 335.02</u></b>		
<b><u>Ages and Counts Based on Age of Youngest Child</u></b>	<b><u>Child:Staff Ratio</u></b>	<b><u>Maximum Group Size</u></b>
<u>No child or children under the age of two (2)</u>	<u>12:1</u>	<u>12</u>
<u>One (1) or two (2) children under the age of two (2) years</u>	<u>10:1 or 12:2</u>	<u>10 or 12</u>
<u>Three (3) or more children under the age of two (2) years</u>	<u>9:1 or 12:2</u>	<u>9 or 12</u>

(7-1-10)T

**03. Compliance with Child-Staff Ratios and Maximum Group Sizes.** Child-staff ratios and maximum group sizes must be maintained at all times during all hours of operation when children are in attendance and when transporting children. (7-1-10)T

**a.** Each child in attendance is counted by the Department as one (1) child for the purposes of determining compliance with child-staff ratios; (7-1-10)T

**b.** The ratio of children to staff and maximum group size in mixed age groups is determined by the age of the youngest child in attendance; (7-1-10)T

**c.** Each adult staff member who is providing direct care for a child or children is counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios; and (7-1-10)T

**d.** Each staff member sixteen (16) and seventeen (17) years of age under the supervision of an adult staff member, when providing direct care for a child or children, may be counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios. (7-1-10)T

**04. Supervision of Children.** The owner or operator and all staff are responsible for the direct care, protection, supervision, and guidance of children through active involvement or direct observation. In addition to meeting all of the minimum requirements of child-staff ratio and maximum group size, the owner or operator of a daycare center, group daycare facility, or family daycare home licensed by the Department must ensure that at least one (1) adult staff member is; (7-1-10)T

**a.** Awake and on duty on the premises at all times during regular business hours or when children are in attendance, and (7-1-10)T

**b.** Currently certified in pediatric rescue breathing, infant-child CPR, and first-aid treatment. (7-1-10)T

**05. Napping Children.** Napping children who are not within sight of a staff member must be within easy hearing distance at all times. (7-1-10)T

**06.** **Overnight Daycare.** For daycare operators providing overnight care of children the following must apply: (7-1-10)T

**a.** A sleeping child must sleep on the same level as the staff member who must be able to hear the child; and (7-1-10)T

**b.** A staff member must be awake and on duty to release and receive a child. (7-1-10)T

**336. -- 339.** **(RESERVED).**

**340.** **DAYCARE CENTER TRAINING REQUIREMENTS.**

Each owner or operator of a daycare center licensed by the Department must receive and ensure that each staff member receives and completes four (4) hours of ongoing training every twelve (12) months after the staff member's date of hire. (7-1-10)T

**01.** **Child Development Training.** Training must be related to continuing education in child development. (7-1-10)T

**02.** **Documented Training.** It is the responsibility of the owner or operator of the daycare center to ensure that each staff member has completed four (4) hours of training each year. The training must be documented in the staff member's record. (7-1-10)T

**03.** **Pediatric Rescue Breathing, Infant-Child CPR and First Aid Treatment Training.** Pediatric rescue breathing, infant-child CPR, and first aid treatment training will not count towards the required four (4) hours of annual training. (7-1-10)T

**04.** **Staff Training Records.** Each owner or operator of the daycare center is responsible for maintaining documentation of staff's training and may be asked to produce documentation at the time of license renewal. (7-1-10)T

**342. -- 344.** **(RESERVED).**

**345.** **MANDATORY REPORTING OF ABUSE, ABANDONMENT, OR NEGLECT.**

Under Section 16-1605, Idaho Code, daycare personnel, including the owners, operators, staff, and any other person who has reason to believe that a child has been abused, abandoned, or neglected or is being subjected to conditions or circumstances which would reasonably result in abuse, abandonment, or neglect, must report or cause to be reported within twenty-four (24) hours, such conditions or circumstances to the Department or the proper law enforcement agency. (7-1-10)T

**346.** **VISITATION AND ACCESS.**

**01.** **Visitation Rights.** Parents and guardians have the absolute right to enter the daycare premises when their child is in the care of the daycare operator. Failure or refusal to allow parental or guardian entry to the daycare premises or access to their child may result in the suspension or revocation of a daycare license. (7-1-10)T

**02.** **Denied or Limited Visitation Rights by Court Order.** If a parent or guardian has been granted limited or has been denied visitation rights by a court of competent jurisdiction, and the daycare operator has written documentation from the court, Subsection 346.01 of this rule does not confer a right to visitation upon the parent or guardian. (7-1-10)T

**03.** **Department Access.** The owner or operator of a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must allow the Department access to the premises for re-inspection at any time during the licensing period. (7-1-10)T

**347. -- 349.** **(RESERVED).**

**350.** **FIRE SAFETY STANDARDS.**

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the fire safety standards outlined in Subsections 350.01 and 350.02 of this rule. (7-1-10)T

**01. Inspections.** Inspections must be completed by the local fire official or designee. For a daycare located outside of the area of authority outlined in Section 39-1109, Idaho Code, the Department can designate an approved inspector for daycare licensing purposes only. (7-1-10)T

**02. Unobstructed Exits.** Required exits must be located in such a way that an unobstructed path outside the building is provided to a public way or area of refuge. (7-1-10)T

**a.** Exit doors must open from the inside without the use of a key or any special knowledge or effort. (7-1-10)T

**b.** There must be at least two (2) exits located a distance apart of not less than one-half (1/2) the diagonal dimension of the building or portion used for daycare, but not to exceed seventy-five (75) feet. An exception may be made for the following: (7-1-10)T

**i.** The distance between exits may be extended to ninety (90) feet if the building is totally protected throughout with smoke detectors; or (7-1-10)T

**ii.** The distance between exits may be increased to one hundred ten (110) feet if the building is equipped with an automatic fire sprinkler system. (7-1-10)T

**c.** The required dimensions of exits must not be less than thirty-two (32) inches of clear exit width and not be less than six (6) feet, eight (8) inches in height. An exception for sliding patio doors will be accepted as a required second exit in a family daycare home and group daycare facilities only. (7-1-10)T

**d.** Sleeping room exits must be provided with at least one (1) emergency egress window having at least a minimum single net clear opening of five point seven (5.7) square feet, minimum height twenty-four (24) inches, minimum width twenty (20) inches, and maximum finished sill height not over forty-four (44) inches. (7-1-10)T

**i.** Approved egress windows from sleeping areas must be operable from the inside without the use of separate tools. (7-1-10)T

**ii.** In lieu of egress windows, an approved exit door is acceptable. (7-1-10)T

**iii.** An approved piece of furniture or platform, if anchored in place, may be approved to sit in front of a window if the sill height is over forty-four (44) inches. (7-1-10)T

**e.** Where children are located on a story below the level of exit discharge (basement), there must be at least two (2) exits, one (1) of which must open directly to the outside. More than one (1) exit from the basement opening directly to the outside may be required, depending on the structure of the building, in order to ensure the safety of the occupants. (7-1-10)T

**f.** Where children are located on a story above the level of exit discharge, there must be two (2) exits, one (1) of which must open directly to the outside and be in compliance with building codes. (7-1-10)T

**351. Facility Capacity And Determining Occupant Load.** Occupant load is determined by the local fire official or designee. (7-1-10)T

**01. Area for Daycare Use Only.** The local fire official or designee will only use those areas used for daycare purposes when determining the occupant load. (7-1-10)T

**02. Facilities with an Occupancy Load of Fifty or More.** Facilities with an occupancy load of fifty (50) or more occupants must meet the requirements in Section 350 of these rules in addition to Subsections 351.01 through 351.03 of this rule. (7-1-10)T

- a. Exit doors must swing in the direction of egress. (7-1-10)T
- b. Exit doors from rooms, if provided with a latch, must have panic hardware installed. (7-1-10)T
- 03. Exit Signs. Exit signs must be installed at required exit doorways and wherever else necessary to clearly indicate the direction of egress. (7-1-10)T

**352. FIRE EXTINGUISHERS AND SAFETY REQUIREMENTS.**

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the fire extinguisher and safety requirements in this section of rule as applicable for size and type of facility. (7-1-10)T

01. Portable Fire Extinguisher. There must be an approved portable fire extinguisher (minimum 2A-10BC) mounted securely in a visible location not to exceed five (5) feet from the floor to the top of the extinguisher and not more than seventy five (75) feet travel distance to an extinguisher and maintained properly. (7-1-10)T

02. Kitchen Area. An approved fire extinguisher must be present or a hood-type fire suppression system must be installed in the kitchen area. (7-1-10)T

03. Fire Extinguishers. Approved fire extinguishers must be maintained properly. (7-1-10)T

04. Facilities Over Three Thousand Square Feet. Each daycare facility over three thousand (3,000) square feet is required to have additional fire extinguishers as approved by the local fire official or designee. (7-1-10)T

05. Fire Alarm System. Each daycare facility with over fifty (50) children, must have an approved fire alarm system installed. (7-1-10)T

06. Smoke Detectors. Smoke detectors must be installed and maintained in the following locations: (7-1-10)T

a. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms; (7-1-10)T

b. In each room used for sleeping purposes; and (7-1-10)T

c. In each story within a facility including basements. (7-1-10)T

d. If there is a basement, there must be a smoke detector installed in the basement having a stairway which opens from the basement into the facility. Such detector must be connected to a sounding device or other detector to provide an alarm which is audible in the sleeping area. (7-1-10)T

07. Automatic Sprinkler Systems. An automatic sprinkler system must be provided in all daycare facilities greater than twenty thousand (20,000) square feet in area or when the number of children under the age of eighteen (18) months exceeds one hundred (100). (7-1-10)T

**353. FIRE SAFETY AND EVACUATION PLANS.**

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must have an approved fire safety and evacuation plan prepared. Fire evacuation and safety plans must include the following: (7-1-10)T

01. Evacuation. Procedures and policies for accounting for staff and children after an evacuation is completed. (7-1-10)T

02. Assembly Point. Evacuation plan and assembly point for children and staff. (7-1-10)T

- 03. Locations of Facility Exits.** (7-1-10)T
- 04. Evacuation Routes.** (7-1-10)T
- 05. Location of Fire Alarms.** (7-1-10)T
- 06. Location of Fire Extinguishers.** (7-1-10)T
- 07. Annual Review.** Fire safety and evacuation plans must be reviewed or updated annually and available in the facility for reference and review. (7-1-10)T
- 08. Frequency of Fire and Emergency Evacuation Drills.** Fire and evacuation drills must be conducted on a routine schedule and all staff and children must participate. (7-1-10)T
- 354. -- 359. (RESERVED).**
- 360. HEALTH STANDARDS.**  
Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, must comply with the health standards in Subsections 360.01 through 360.19 of this rule. Health inspections will be completed by a qualified inspector designated by the Department. (7-1-10)T
- 01. Food Source.** Food must be from an approved source as defined in IDAPA 16.02.19, "The Idaho Food Code." Food must not be served past expiration or "use by date." (7-1-10)T
- 02. Food Preparation.** Food for use in daycare facilities must be prepared and served in a sanitary manner with sanitized utensils and on surfaces that have been cleaned, rinsed, and sanitized prior to use to prevent cross-contamination. (7-1-10)T
- a. Frozen food must be thawed in the refrigerator, under cold running water, or as part of the cooking process. Food must be cooked to proper temperatures according to IDAPA 16.02.19, "The Idaho Food Code."** (7-1-10)T
- b. Individuals preparing food must use proper hand-washing techniques, minimize bare hand contact with food, and wear clean clothes.** (7-1-10)T
- 03. Food Temperatures.** Potentially hazardous foods must be kept refrigerated at forty-one degrees Fahrenheit (41°F) or below, held hot at one hundred thirty-five degrees Fahrenheit (135°F) or more, and reheated or cooled at safe temperatures according to IDAPA 16.02.19, "The Idaho Food Code." Refrigerators must be equipped with an accurate thermometer. (7-1-10)T
- 04. Food Storage.** All food that is served in daycare facilities must be stored in such a manner that protects it from potential contamination. There must be no evidence of pests present in the daycare facility. (7-1-10)T
- 05. Food Contact Surfaces.** Food contact surfaces must be kept clean and sanitized, including counters, serving tables, high chair trays, and cutting boards. (7-1-10)T
- 06. Dishwashing Sanitizing.** Dishes, glasses, utensils, silverware and all other objects used for food preparation and eating must be sanitized using appropriate sanitizing procedures. (7-1-10)T
- 07. Utensil Storage.** Clean utensils must be stored on clean shelves or drawers and not subject to recontamination. Sharp knives and other sharp objects must be kept out of reach of children. (7-1-10)T
- 08. Garbage.** Garbage must be kept covered or inaccessible to children. (7-1-10)T
- 09. Hand Washing.** Children and facility staff must be provided with individual or disposable towels for hand drying. The hand washing area must be equipped with soap and warm and cold running water. (7-1-10)T

- 10. Diaper Changing.** Diaper changing must be conducted in such a manner as to prevent the spread of communicable diseases. A diaper-changing area must be separate from food preparation and serving areas and have easy access to a hand-washing sink. (7-1-10)T
- 11. Sleeping Areas.** Children sleeping at the facility must have separate cots, mats, or beds and blankets. (7-1-10)T
- 12. Restrooms, Water Supply, and Sewage.** All daycare facilities must have restrooms. (7-1-10)T
- a.** Each facility must have at least one (1) flushable toilet and at least one (1) hand washing sink with warm and cold water per restroom. (7-1-10)T
- b.** Plumbing and bathroom fixtures must be in good condition. (7-1-10)T
- c.** In addition, daycare centers must comply with requirements of the International Building Code incorporated by reference in Section 004 of these rules. (7-1-10)T
- 13. Water Supply.** The facility's water supply must meet one (1) of the following requirements: (7-1-10)T
- a.** Be from a public water system which is maintained according to IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," at the time of initial application and application for license renewal; or (7-1-10)T
- b.** Be from a private source, such as well or spring, and must be tested annually for bacteria and nitrate, and approved by the Department. (7-1-10)T
- c.** Water used for consumption at a daycare facility must be from an acceptable source. Temporary use of bottled water or boiled water may be allowed for a period specified by the by the Department. (7-1-10)T
- 14. Sewage Disposal.** Facility sewage must be disposed of through a public system, or in the absence of a public system, in a manner approved by the local health authority, according to IDAPA 58.01.03 "Individual/Subsurface Sewage Disposal Rules." (7-1-10)T
- 15. Use of Alcohol and Illegal Drugs.** Alcohol and illegal drugs must not be used by operators, children, staff, volunteers, or visitors at daycare facilities or in the presence of children during hours of operation or in vehicles while transporting children. (7-1-10)T
- a.** Any individual under the influence of alcohol or drugs must not be permitted at or in the daycare facility. (7-1-10)T
- b.** Illegal drugs are prohibited by law and therefore must not be allowed on the premises of a licensed daycare facility at anytime whether the facility is open or closed. (7-1-10)T
- 16. Smoke Free Environment.** Children must be afforded a smoke-free environment during all daycare hours, whether indoors or outdoors. While children are in care, the operator and all staff must ensure that no smoking or other tobacco use occurs within the facility, in outdoor areas, or in vehicles when children are present. (7-1-10)T
- 17. Medication.** No person can administer any medication to a child without it first being authorized by a parent or caretaker. All medications, refrigerated or unrefrigerated, must be in a locked box or otherwise inaccessible to children. (7-1-10)T
- 18. Adequate Heat, Light and Ventilation.** A daycare facility must have adequate heat, light and ventilation. Window and doors must be screened if used for ventilation. (7-1-10)T
- 19. Immunizations.** Daycare operators must comply with the immunizations requirements provided in IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho."

(7-1-10)T

**361. MISCELLANEOUS SAFETY REQUIREMENTS.**

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with the miscellaneous safety standards in Subsections 361.01 through 361.07 of this rule. (7-1-10)T

**01. Telephone.** An operable telephone or cell phone must be available on the facility at all times and the following conditions must apply: (7-1-10)T

**a.** The telephone number used to meet this standard must be made available to parents and guardians. (7-1-10)T

**b.** Emergency phone numbers to include 911, an adult emergency substitute operator, as well as the address and phone number of the facility, must be posted by the telephone or in a location that is immediately visible at all times. (7-1-10)T

**03. Heat Producing Equipment.** A furnace, fireplace, wood-burning stove, water heater and other flame or heat-producing equipment shall be installed and maintained as recommended by the manufacturer. Fireplaces and wood burning stoves shall be protected on all surfaces by screens or other means. (7-1-10)T

**04. Portable Heating Devices.** Portable heating devices must be limited and approved for use and location by the Fire Inspector prior to use within a facility. (7-1-10)T

**05. Storage of Weapons, Firearms, and Ammunition.** Firearms or other weapons which are stored at a daycare facility must be kept in a locked cabinet or other container that is inaccessible to children, including a locked gun safe, while children are in attendance. (7-1-10)T

**a.** Ammunition must be stored in a locked container separate from firearms. (7-1-10)T

**b.** Matches, lighters, and any other means of starting fires must be kept away from and out of the reach of children. (7-1-10)T

**c.** Other weapons that could cause harm to children must be stored out of reach of children. (7-1-10)T

**06. Animals and Pets.** Any pet or animal present at the facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The operator must maintain the animal's vaccinations and vaccination records. These records must be made available to the Department upon request. (7-1-10)T

**07. Storage of Hazardous Materials.** Cleaning materials, flammable liquids, detergents, aerosol cans, pesticides, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas or constitute a hazard to the children. (7-1-10)T

**362. -- 364. (RESERVED).**

**365. BUILDINGS, GROUNDS, FURNISHINGS, AND EQUIPMENT.**

Each daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department must comply with these minimum standards in Subsections 365.01 through 365.08 of this rule. (7-1-10)T

**01. Appliances and Electrical Cords.** All appliances, lamp cords, exposed light sockets and electrical outlets must be protected to prevent electrocution. (7-1-10)T

**02. Balconies and Stairways.** Balconies and stairways accessible to children must have substantial railings as required by the state-adopted International Building Code that is incorporated by reference in Section 004 of these rules. (7-1-10)T

**03. Stairway Protection.** Where an operator cares for children less than three (3) years of age, stairways must be protected to prevent child access to stairs. (7-1-10)T

**04. Hazard Areas Restrictions.** Based on the age and functioning level of children in care and the type of hazard, any outdoor hazard area must be restricted to prevent easy access to the hazard. (7-1-10)T

**05. Fueled Equipment.** Fueled equipment including, but not limited to, motorcycles, mopeds, lawn-care equipment and portable cooking equipment may not be stored or repaired in areas where children are present. (7-1-10)T

**06. Water Hazards.** Above and below ground pools, hot tubs, ponds, and other bodies of water that are on the daycare facility premises must provide the following safeguards: (7-1-10)T

**a.** The area surrounding the body of water must be fenced and locked in a manner that prevents access by children and meets the following requirements: (7-1-10)T

**i.** The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide and be designed so that a young child cannot climb or squeeze under or through the fence. The fence must surround all sides of the pool and have a self-closing gate that has a self latching mechanism in proper working order that is out of the reach of young children. (7-1-10)T

**ii.** If the house forms one (1) side of the barrier for the pool, all doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the door is opened. (7-1-10)T

**b.** Furniture or other large objects must not be left near the fence in a manner that would enable a child to climb on the furniture or other large object and gain access to the pool. If the area surrounding a pool, hot tub, pond or other body of water is not fenced and locked, there must be a secured protective covering that will prevent access by a child. (7-1-10)T

**c.** Wading pools and buckets must be empty when not in use. (7-1-10)T

**d.** Children must be under direct supervision of an adult staff member who is certified in pediatric rescue breathing, infant-child CPR, and first aid treatment while using a bath tub, pool, hot tub, pond, or other body of water. (7-1-10)T

**e.** A minimum of a four (4) foot high fence must be present that prevents access from the daycare facility premises, if the daycare premises are adjacent to a body of water. (7-1-10)T

**07. Indoor Play Areas and Toys.** The indoor play areas must be clean, reasonably neat and free from accumulation of dirt, rubbish or other health hazards. (7-1-10)T

**08. Outdoor Play Areas and Toys.** Any outdoor play area must be maintained free from hazards such as wells, machinery and animal waste. (7-1-10)T

**a.** If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least four (4) feet high without any holes or spaces greater than four (4) inches in diameter. (7-1-10)T

**b.** Outdoor equipment, such as climbing apparatus, slides and swings, must be anchored firmly and placed in a safe location and in accordance with the manufacturer's instructions. (7-1-10)T

**c.** Outdoor play areas must be designed so that all parts are always visible and are easily supervised by a staff member. (7-1-10)T

**d.** Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges and sharp corners. Unguarded ladders on slides must be kept in good repair and well maintained. (7-1-10)T

e. Toys and objects with a diameter of less than one (1) inch (two point five (2.5) centimeters), objects with removable parts that have a diameter of less than one (1) inch (two point five (2.5) centimeters), plastic bags, styrofoam objects and balloons must not be accessible to children ages three (3) and under or children who are known to place such objects in their mouths. (7-1-10)T

**366. -- 389. (RESERVED).**

**390. CONTINUED COMPLIANCE, REPORTING CHANGES, AND CRITICAL INCIDENTS.**  
Each daycare owner or operator must remain in compliance at all times with fire, safety, and health requirements as required in this chapter of rules. (7-1-10)T

**01. Posting of License and Other Information. (7-1-10)T**

a. A daycare license issued by the Department to operators meeting the standards in these rules must be posted in plain view where it can be seen by parents and the public upon entering the facility. (7-1-10)T

b. A daycare must post contact information of the Department and the statewide number to file daycare complaints. (7-1-10)T

**02. Reporting Changes.** The Department must be notified of any changes that would affect the terms of licensure or could affect the health, well-being or safety of children. (7-1-10)T

**03. Critical Incidents.** A daycare operator must report any of the following to the Department within twenty four (24) hours: (7-1-10)T

a. Serious injury or death of a child at the facility; (7-1-10)T

b. Any arrests, citations, withheld judgments, or criminal convictions of disqualifying crimes associated with Section 39-1113, Idaho Code, of an operator or any other individual regularly on the premises of the facility and provide documentation that the individual is not working with children or is not on the premises. (7-1-10)T

**391. -- 394. (RESERVED).**

**395. FAILURE TO COMPLY.**

**01. Misdemeanors to Operate Without a License.** It is a misdemeanor to operate a daycare center or group daycare facility within this state without first obtaining a daycare license from the Department or to operate a daycare center or group daycare facility without posting the license in a place easily seen by a parent or the general public. (7-1-10)T

a. The Department may grant a grace period of no more than sixty (60) days to allow the daycare facility to come into compliance with the minimum standards in this chapter and with Title 39, Chapter 11, Idaho Code. (7-1-10)T

b. The operator or owner must agree to begin the application process as described in Section 321 of these rules within one (1) business day of identification by the Department that a daycare owner or operator is not in compliance with Title 39, Chapter 11, Idaho Code or this chapter of rules. (7-1-10)T

**02. Misdemeanor to Operate a Family Daycare Home for Four or More Children Without Obtaining a Criminal History Check.** It is a misdemeanor to operate a family daycare home caring for four (4) or more children without obtaining the required criminal history check in Section 39-1105, Idaho Code. In the event of an initial citation for violation of the provisions of Section 39-1115, if a person makes the applications required within twenty (20) days, the complaint will be dismissed. Operating a family daycare home for four (4) or more children after failure to pass the required criminal history check is a misdemeanor. (7-1-10)T

03. Misdemeanor to Provide Daycare if Guilty of Certain Offenses. It is a misdemeanor to provide daycare services if found guilty of any offenses listed in Section 39-1113, Idaho Code. (7-1-10)T

~~30796.~~ -- 399. (RESERVED).

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