

I.C. § 39-1201

§ 39-1201. Policy

Currentness

It is hereby declared to be the policy of this state to insure that children of this state shall 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 predicated upon the fact that children are vulnerable, not capable of protecting themselves, and when their parents for any reason have relinquished their care to others, there arises the possibility of certain risks to the 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.

The provisions of this chapter shall apply only to those entities specifically addressed herein. It is not the intent of the legislature to restrict, regulate, or otherwise control private day schools or home schools.

I.C. § 39-1202

§ 39-1202. Definitions

Currentness

For the purposes of this chapter:

- (1) "Board" means the Idaho board of health and welfare.
- (2) "Child care" means that care, control, supervision or maintenance of children for twenty-four (24) hours a day which is provided as an alternative to parental care.
- (3) "Child" means an individual less than eighteen (18) years of age who is not enrolled in an institution of higher education.
- (4) "Children's agency" means a person who operates a business for the placement of children in foster homes or for adoption in a permanent home and who does not provide child care as part of that business. 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.
- (5) "Children's camp" means 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.
- (6) "Children's institution" means a person who operates a residential facility for children not related to that person if that person is an individual, for the purpose of providing child care. Children's institutions include, but are not limited to, foster homes, maternity homes, children's therapeutic outdoor programs, or any facilities providing treatment, therapy or rehabilitation for children. Children's institutions do not include: (a) facilities which provide only daycare as defined in chapter 11, title 39, Idaho Code; (b) facilities and agencies including hospitals, skilled

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nursing facilities, intermediate care facilities, and intermediate care facilities for people with intellectual disabilities licensed pursuant to chapter 13, title 39, Idaho Code; (c) day schools; (d) individuals acting in an advisory capacity, counseling a child in a religious context, and providing no child care associated with the advice; (e) 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.

(7) "Children's residential care facility" means a children's institution, excluding:

- (a) Foster homes;
- (b) Residential schools;
- (c) Children's camps.

No facility expressly excluded from the definition of a children's institution is included within the definition of a children's residential care facility.

(8) "Children's therapeutic outdoor program" is a program which is designed to provide behavioral, substance abuse, or mental health services to minors in an outdoor setting. This does not include children's camps, church camps, or other outdoor programs primarily designed to be educational or recreational, such as Boy Scouts, Girl Scouts, 4-H or sports camps.

(9) "Continued care" means the ongoing placement of an individual in a foster home, children's residential care facility, or transitional living placement who reaches the age of eighteen (18) years but is less than twenty-one (21) years of age.

(10) "Day school" means a public, private, parochial or secular facility offering an educational program in which the children leave the facility each day at the conclusion of the academic, vocational or school supervised activities.

(11) "Department" means the state department of health and welfare.

(12) "Director" means the director of the department of health and welfare.

(13) "Foster care" means child care by a person not related to the child, in lieu of parental care, in a foster home.

(14) "Foster home" means a home which accepts, for any period of time, with or without compensation, one (1) or more children who are not related to the foster parent as members of the household for the purpose of providing substitute parental care.

(15) "Group care" means foster care of a number of children for whom child care in a family setting is not available or appropriate, in a dormitory or cottage type setting, characterized by activities and discipline of a more regimented and less formal nature than found in a family setting.

(16) "Juvenile detention" is as defined in section 20-502(6), Idaho Code, of the juvenile corrections act.

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(17) “Juvenile detention center” means a facility established pursuant to sections 20-517 and 20-518, Idaho Code.

(18) “Person” includes any individual, group of individuals, association, partnership, limited liability company or corporation.

(19) “Placement” means finding a suitable licensed foster home or suitable adoptive home for a child and completing the arrangements for a child to be accepted into and adjusted to such home.

(20) “Relative” means a child’s grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling and half-sibling.

(21) “Representative” means an employee of the state department of health and welfare.

(22) “Residential facility” means any facility where child care is provided, as defined in this section, and which provides day and night accommodation.

(23) “Residential school” means a residential facility for children which:

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

(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

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

(d) Is not:

(i) A college or university; or

(ii) A children’s camp as defined in this section; or

(iii) A public or private day school in which the children leave the facility each day at the conclusion of the academic, vocational and school supervised activities.

(24) “Transitional living” means 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.

I.C. § 39-1203

§ 39-1203. Filing of disclosure reports

Currentness

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All children's institutions except foster homes shall file with the department a disclosure report as designed by the department and containing only such information as set forth in section 39-1204, Idaho Code. All such disclosure reports shall be signed under oath by the administrative employee responsible for operation of the children's institution.

(1) An initial disclosure report shall be filed with the department:

(a) Within six (6) months of the effective date of this chapter for all children's institutions which are providing child care on the effective date of this chapter; or

(b) At least thirty (30) days prior to the acceptance of any child for child care.

(2) An annual update disclosure report shall be filed by all children's institutions except foster homes each year within thirty (30) days of the anniversary of the filing of the initial disclosure report. The department may waive the filing of an annual disclosure report by any children's institution.

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§ 39-1204. Form for disclosure report

Currentness

(1) The department shall design a form for the initial disclosure report which shall contain only the following information:

(a) The name, address and telephone number(s) for each children's agency or children's institution.

(b) The name(s), address and telephone number(s) of the individual(s) in charge at each children's agency or children's institution.

(c) The number of children that can be accommodated for child care at each children's institution and a description of such accommodations.

(d) Whether and how the children's institution seeks, receives or enrolls students for treatment of special needs such as substance abuse, mental illness, emotional disturbance, developmental disability, intellectual disability, or students who have been identified by the judicial system as requiring treatment, therapy, rehabilitation or supervision.

(e) A complete description of the child care services to be provided at each children's institution.

(f) Whether and how the children's institution expects to receive payment, including payment from health insurance carriers, for identified treatment needs such as substance abuse, mental illness, emotional disturbance, developmental disability, or intellectual disability.

(g) Whether and how the children's institution represents to the payor of the child care services provided by the children's institution that such payment may qualify for health insurance reimbursement by the payor's carrier or may qualify for tax benefits relating to medical services.

(h) A description of the educational programs provided at each children's institution and their accreditation status.

(2) The department shall design a form for the annual update disclosure report which shall reference the information provided in the initial disclosure report and shall request identification of any changes in the information provided on the initial report or the previous annual update disclosure report.

#### I.C. § 39-1205

#### § 39-1205. Evaluation of disclosure reports

Currentness

The department shall review all initial and annual update disclosure reports and shall categorize each children's institution, based on the type of care provided, into one (1) of the following categories:

(1) Foster homes;

(2) Residential schools;

(3) Children's camps;

(4) Children's therapeutic outdoor program; or

(5) Each children's institution not otherwise categorized in subsections (1) through (4) of this section, except any day school, shall be designated as a "children's residential care facility."

#### I.C. § 39-1206

#### § 39-1206. Children's camps

Currentness

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 shall constitute a children's treatment facility. A children's camp which also constitutes a residential school shall be governed under the provisions of this chapter as a residential school. A children's camp which provides child care for any one (1) child for less than nine (9) consecutive weeks in any one (1) year period shall be exempt from the licensure and disclosure provisions of this chapter.

#### I.C. § 39-1207

#### § 39-1207. Residential schools

Currentness

(1) Upon receipt of an initial disclosure report from a children's institution that the department categorizes as a residential school, the department shall provide a copy of such initial disclosure report to the Idaho department of education.

(2) The Idaho department of education shall certify to the department whether each residential school has been accredited according to the accrediting standards promulgated by the Idaho department of education, the Idaho state board of education or a secular or religious accrediting association recognized by the Idaho department of education.

(3) If a residential school has been certified as accredited under subsection (2) of this section, then the department shall exercise no further jurisdiction under this chapter over that accredited residential school so long as the accreditation for the residential school remains in effect.

(4) Upon certification of accreditation, the Idaho department of education shall notify the accredited residential school that all future update disclosure reports or other reports as the Idaho department of education may require shall be filed with the Idaho department of education so long as the accreditation remains in effect.

(5) Upon the determination by the Idaho department of education that a residential school is no longer accredited, it shall notify the department and shall notify the residential school that all future update disclosure reports must be filed with the department.

(6) A residential school that is not certified or accredited pursuant to this section or has lost accreditation shall be subject to the jurisdiction of the department as a children's treatment facility pursuant to section 39-1210, Idaho Code, unless and until accreditation is certified by the Idaho department of education pursuant to this section.

(7) The department has the authority to postpone for up to one (1) year the designation of a nonaccredited residential school as a children's treatment facility upon receipt of an affidavit under oath signed by a legally authorized agent of the nonaccredited residential school that application for accreditation has been made to the Idaho department of education, the Idaho state board of education or an affiliated accrediting association recognized by the Idaho department of education; and the department determines that the application is being pursued in good faith.

#### I.C. § 39-1208

#### § 39-1208. Standards for children's therapeutic outdoor programs

##### Currentness

The board shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the following standards for licensing a children's therapeutic outdoor program:

(1) Assure the organizational stability of the program, which may require incorporation under the laws of Idaho.

(2) Require from the policymaking authority of the program the promulgation of a statement setting forth the program's purposes and objectives and describing the character and extent of the services which it offers and maintains, and the geographical area to be served.

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- (3) Require a statement of solvency sufficient to maintain programs and personnel necessary to achieve its purposes and objectives and to maintain its services.
- (4) Assure such recordkeeping and reporting as may be deemed necessary to the program's services and to the department's licensing responsibility.
- (5) Assure the safety and physical care of children for whom the program assumes or accepts responsibility.
- (6) Establish the legal status of each child accepted for care and the legal authority and responsibility of the program for the child.
- (7) Require a statement of intake policy which shall set forth criteria for accepting children for care or service in relation to the program's purposes and physical demands.
- (8) The department shall obtain a criminal history check on the owners, operators and employees of all children's therapeutic outdoor programs. The criminal history check shall be fingerprint based and include the following:
  - (a) Statewide criminal identification bureau;
  - (b) Federal bureau of investigation (FBI) criminal history;
  - (c) National crime information center; and
  - (d) Statewide child abuse register.

I.C. § 39-1209

§ 39-1209. Standards for children's agencies

Currentness

The board shall have the power and it shall be its duty to promulgate appropriate rules and regulations necessary to implement and enforce the following standards for licensing children's agencies to:

- (1) Assure the organizational stability of children's agencies, which may require incorporation under the laws of this state;
- (2) Require from the policy-making authority of the agency a statement setting forth the agency's purposes and objectives and describing the character and extent of the services which it offers and maintains, and the geographical area to be served;
- (3) Require a statement of financial solvency sufficient to maintain facilities and personnel necessary to achieve its purposes and objectives and to maintain its services.

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I.C. § 39-1210

§ 39-1210. Standards for children's residential care facilities

Currentness

The board of health and welfare shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the following standards for licensing a children's residential care facility:

- (1) Assure the organizational stability of the facility, which may require incorporation under the laws of Idaho.
- (2) Require from the policy-making authority of the facility the promulgation of a statement setting forth the facility's purposes and objectives and describing the character and extent of the services which it offers and maintains, and the geographical area to be served.
- (3) Require a statement of solvency sufficient to maintain facilities and personnel necessary to achieve its purposes and objectives and to maintain its services.
- (4) Assure such recordkeeping and reporting as may be deemed necessary to the facility's services and to the department's licensing responsibility.
- (5) Assure the safety and physical care of children for whom the facility assumes or accepts responsibility.
- (6) Establish the legal status of each child accepted for care and the legal authority and responsibility of the facility for the child.
- (7) Require a statement of intake policy which shall set forth criteria for accepting children for care or service in relation to the facility's purposes and facilities.
- (8) Provide through observation and collateral inquiry for studies of homes into which children may be placed sufficient to enable a judgment determining the adequacy of the homes in relation to the needs of the children.
- (9) In the case of an institution specializing in maternity care to unmarried mothers:
  - (a) Assure social services on behalf of both the mother and infant; and
  - (b) Assure protection of the legal rights and rights to confidential treatment of minor unmarried mothers and their children which shall be subject to disclosure according to chapter 3, title 9, Idaho Code.
- (10) The department shall obtain a criminal history check on the owners, operators and employees of all children's residential care facilities. The criminal history check shall include the following:
  - (a) Statewide criminal identification bureau;

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- (b) Federal bureau of investigation (FBI) criminal history;
- (c) National crime information center; and
- (d) Statewide child abuse register.

I.C. § 39-1211

§ 39-1211. Standards for foster homes--Board authorized to implement and enforce

Currentness

The board of health and welfare shall have the power, and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the following standards for licensing private foster homes pursuant to this chapter. Such rules shall:

- (1) Require evidence of income and resources sufficient to maintain the home and the services offered.
- (2) Require such recordkeeping and reporting regarding children's status and progress as may be deemed necessary.
- (3) Assure the safety and adequate physical care of children under care.
- (4) Require that foster parents be physically and emotionally suited to care for unrelated children and to deal with problems presented by children away from their own homes and own parents and shall require a criminal background check.

Provided, however, nothing in this chapter shall be construed to cover 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.

I.C. § 39-1211A

§ 39-1211A. Relative foster care--Limited variance or waiver

Currentness

- (1) A relative providing foster care for a related child pursuant to chapter 16, title 16, Idaho Code, must be licensed in accordance with this chapter.
- (2) Notwithstanding the provisions of subsection (1) of this section, the department may expedite placement with a relative, issue a foster care license or grant a limited variance or waiver of a licensing standard or requirement if, in the department's judgment, the health and safety of the related child is not thereby endangered.
- (3) If the department grants a limited variance or waiver of a licensing standard or requirement to the child's relative

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pursuant to this section, the department shall document the grounds for granting the limited variance or waiver and the reasons the limited variance or waiver will not compromise the related child's safety and health.

(4) A limited variance or waiver of a licensing standard or requirement granted to a child's relative pursuant to this section shall be reviewed by the department for continuing compliance, need, and approval at regular intervals, subject to the provisions of section 39-1113, Idaho Code.

(5) The board shall promulgate appropriate rules necessary to implement and enforce the provisions of this section.

I.C. § 39-1212

§ 39-1212. Application of administrative procedures act

Currentness

Actions of the department relating to adoption of rules and regulations, notice, hearings, appeals from decisions of the department or the director, and review shall be governed by the provisions of chapter 52, title 67, Idaho Code, the administrative procedures act.

I.C. § 39-1213

§ 39-1213. Licensing authority

Currentness

(a) The board of health and welfare is hereby authorized and directed to establish procedures for licensing foster homes, children's agencies, children's therapeutic outdoor programs and children's residential care facilities which are maintained and operated in conformity with the rules and standards authorized herein. Such procedures shall include the manner and form for making application for license, investigation upon application and notice of decision.

(b) It is recognized that children's agencies may have their own procedure for approval of foster homes affiliated with their program. Any foster home which has been approved by a licensed children's agency shall be exempt from the licensing provisions of this chapter, provided that the standards for approval by such agency are no less restrictive than rules and standards established by the board of health and welfare, and provided further that such children's agency is maintained and operated in conformity with rules and standards of the board of health and welfare. The board of health and welfare may promulgate rules necessary to implement the provisions of this section.

(c) The board of health and welfare is hereby authorized to establish rules allowing for continued care for appropriate individuals eighteen (18) to twenty-one (21) years of age who have been receiving services by, through, or with the authorization of the department of health and welfare or the department of juvenile corrections prior to their eighteenth birthday.

I.C. § 39-1214

§ 39-1214. Eligibility for license

Currentness

Any foster home, children's agency, children's therapeutic outdoor program or children's residential care facility which applies for a license in the manner and form prescribed by the board of health and welfare and is found upon investigation by the department to be established in conformity with the rules and standards established by the department under the authority conferred herein shall be licensed for a period of one (1) year.

I.C. § 39-1215

§ 39-1215. Expiration--Renewal

Currentness

If a licensee desires to apply for a renewal of its license, an application for renewal shall be filed sixty (60) days prior to the expiration date of the license in force. When such application for renewal has been made in the proper manner and form, the existing license shall, unless officially revoked, remain in force until the department has acted on the application for renewal.

I.C. § 39-1216

§ 39-1216. Provisional license

Currentness

Upon initial investigation, should an applicant for a license be unable to meet a standard because of conditions that are unlikely to endure beyond six (6) months from the date of such investigation, the department may, if in its judgment the health and safety of any child is not thereby endangered, issue a provisional license for a period not to exceed six (6) months. No more than one (1) provisional license shall be issued to the same foster home, children's agency, children's therapeutic outdoor program or children's residential care facility in any twelve (12) month period.

I.C. § 39-1217

§ 39-1217. Visitation

Currentness

For the purpose of determining whether every licensed foster home, licensed children's agency, licensed children's therapeutic outdoor program and licensed children's residential care facility consistently maintains conformity with the standards established under the authority conferred herein, the department, through an authorized representative, shall visit each such home and facility as often as it deems necessary or desirable, but in any event at intervals not to exceed twelve (12) months.

I.C. § 39-1218

§ 39-1218. License--Denial--Suspension--Revocation--Nonrenewal--Hearing

Currentness

(1) Any license issued pursuant to this chapter may be denied, suspended, revoked or not renewed, by notice in writing by the director or his authorized representative served upon the applicant or licensee by registered or certified mail, setting forth the reasons therefor, if upon investigation it is found that the licensee has failed or refused to comply with any of the provisions of this chapter or with any of the rules, regulations or standards established pursuant to this chapter.

(2) Within fifteen (15) days from receipt of notice of grounds for denial, suspension, revocation or nonrenewal, the applicant or licensee may serve upon the director by registered or certified mail, a written request for hearing. Upon receipt of such request, the director shall fix a date for hearing, which date shall not be more than thirty (30) days from receipt of the request and shall give the applicant or licensee at least fifteen (15) days' notice of said hearing date.

(3) If no request for hearing is made within the time specified, the license shall be deemed denied, suspended or revoked. The department shall notify the applicant or licensee of the decision of the director or his authorized representative within thirty (30) days after conclusion of the hearing.

I.C. § 39-1219

§ 39-1219. Appeal from decision of director

Currentness

If an applicant or licensee feels aggrieved by a decision rendered as a result of a hearing, as provided in section 39-1218, Idaho Code, appeal may be taken to the district court of the county in which the group or foster home, facility, program or agency is located, in the manner and form as provided in section 39-1212, Idaho Code, provided, however, the filing of notice of appeal shall not, unless otherwise ordered, stay the proceedings of the director.

I.C. § 39-1220

§ 39-1220. Operating without license misdemeanor

Currentness

Any person or persons who operate a foster home, children's agency, children's therapeutic outdoor program or children's residential care facility, within this state, without first obtaining a license as provided in this chapter shall be guilty of a misdemeanor. However, in the event of an initial citation for violation of the provisions of this section, if a person makes the application required within thirty (30) days, the complaint shall be dismissed. The penalty for violation of the provisions of this section shall be three hundred dollars (\$300) for each day of a continuing violation, which penalty shall accrue from thirty (30) days following the initial notice of violation in the event of a finding of violation.

I.C. § 39-1221

§ 39-1221. Removal of children

Currentness

Any child or children receiving child care in a children's residential care facility or children's therapeutic outdoor program found to be operating without a license may be removed from such home, agency or institution upon order of the magistrate court of the county in which the child is receiving care and returned to the child's own home, or

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placed in the custody of the department if the child's custodial parent is not available. The prosecuting attorneys of the several counties shall represent the department at all stages of the proceedings before the magistrate court. The magistrate court shall retain jurisdiction relative to child custody pursuant to the provisions of this section. In the event that the prosecuting attorney in the county where the alleged violation occurred fails or refuses to act within sixty (60) days of notification of the violation, the attorney general is authorized to prosecute violations under this chapter.

I.C. § 39-1222

§ 39-1222. Action against unlicensed foster home, children's agency, children's therapeutic outdoor program or children's residential care facility

Currentness

Notwithstanding the existence or pursuit of any other remedy, the department shall, upon showing good cause to the prosecuting attorney who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or other process against a person as defined herein who shall hereafter operate or maintain any foster home, children's agency, children's therapeutic outdoor program or children's residential care facility without first having secured a license pursuant to the provisions of this chapter. Upon a finding that the safety of children at a foster home, children's agency, children's therapeutic outdoor program or children's residential care facility is endangered, the department has the authority to immediately revoke a license.

I.C. § 39-1223

§ 39-1223. Construction of act

Currentness

This act shall be liberally construed to the end that the legislative policy expressed herein is attained.

I.C. § 39-1224

§ 39-1224. Title of act

Currentness

This act shall be known and cited as the "Child Care Licensing Reform Act," and the caption for chapter 12, title 39, Idaho Code, shall so designate.