

I.C. § 39-1101

§ 39-1101. Policy

Currentness

It is hereby declared to be the policy of this state to establish a minimum statewide system for the protection of children in daycare facilities. 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 shall not be construed as preempting more stringent regulation by county or city ordinance.

I.C. § 39-1102

§ 39-1102. Definitions

Currentness

As used in this chapter:

(1) "Board" means the Idaho board of health and welfare.

(2) "Child" means a person less than thirteen (13) years of age.

(3) "Daycare" means care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood, marriage 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.

(4) "Daycare center" means a place or facility providing daycare for compensation for thirteen (13) or more children.

(5) "Daycare facility" means a place or facility providing daycare services for compensation to seven (7) or more children not related to the provider.

(6) "Department" means the Idaho department of health and welfare.

(7) "Employee" means any person working for compensation in a facility that provides daycare.

(8) "Family daycare home" means a home, place, or facility providing daycare for six (6) or fewer children.

(9) "Group daycare facility" means a home, place, or facility providing daycare for seven (7) to twelve (12) children.

(10) "Group size" means the maximum number of children in one (1) group or classroom.

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(11) “Mixed age group” means a care group that includes children of multiple ages.

(12) “Ratio” means the number of staff required to supervise a certain number of children.

(13) “Single age group” means a care group that includes children of similar age.

(14) “Training” means continuing education in child development areas relating to child care. Training can be acquired through a variety of methods including, but not limited to, the viewing of audio visual materials, correspondence courses, community workshops and in-house training.

I.C. § 39-1103

§ 39-1103. Licensing authority

Currentness

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The department is hereby authorized and directed to issue “basic daycare licenses” as provided in this chapter. The department is authorized to establish procedures for issuing licenses to daycare facilities which shall be maintained and operated in conformity with the standards authorized in this chapter. Nothing in this chapter shall be construed to limit or restrict the teaching of religious doctrines, values, or tenets in a facility licensed under the provisions of this chapter. The provisions of this chapter shall not apply to:

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(1) The occasional care of a neighbor’s, relative’s or friend’s child or children by a person not ordinarily in the business of providing daycare;

(2) The operation of a private school or religious school for educational purposes for children over four (4) years of age or a religious kindergarten;

(3) The provision of occasional care exclusively for children of parents who are simultaneously in the same building;

(4) 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

(5) The provision of care for children of a family within the second degree of relationship.

I.C. § 39-1104

§ 39-1104. Application for license--Fire safety and health inspections

Currentness

(1) Application. A person who wishes to operate a daycare facility shall be a minimum of eighteen (18) years of age, shall submit an application on the forms provided by the department, and shall obtain the required certificates of

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inspection as provided herein.

(2) Inspections. A person who wishes to operate a daycare facility shall submit: (a) a certificate of a fire inspection of the proposed center, conducted by a fire department or fire district official, establishing compliance with the minimum standards specified in section 39-1109, Idaho Code; and (b) a health and safety inspection of the proposed facility conducted by a qualified inspector as designated by the department, establishing compliance with the minimum standards specified in sections 39-1109 and 39-1110, Idaho Code.

**(3) Continued compliance and reinspection. Daycare facilities shall at all times maintain compliance with the safety and health requirements identified in this chapter. The department may cause any daycare facility to be reinspected during the term of a license for safety and health compliance as determined necessary by the department. No charge for any reinspection after the initial inspection in any license period shall be made to the daycare facility.**

I.C. § 39-1105

§ 39-1105. Criminal history checks

Currentness

(1) The department shall obtain from the owner a criminal history check on the owners, operators and employees of a daycare facility who have direct contact with children, and on all other individuals thirteen (13) years of age or older who have unsupervised direct contact with children or are regularly on the premises of a daycare facility. The criminal history check shall include the following for all persons subject to the provisions of this section who are eighteen (18) years of age or older:

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

(2) Criminal history checks on those persons under eighteen (18) years of age shall include a check of the juvenile justice records of adjudications of the magistrate division of the district court, county probation services and department records as authorized by the minor and his parent or guardian.

(3) Notwithstanding the provisions of section 39-1103, Idaho Code, which provide for exemption from the provisions of this chapter, 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 shall comply with the provisions of this section.

I.C. § 39-1106

§ 39-1106. Issuance of license--Renewal

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Currentness

(1) Upon receipt of the application, inspection certificates and the criminal history, the department shall, upon a finding of compliance with the minimum standards set forth in this chapter, issue a basic daycare license to the applicant. The license shall be valid for two (2) years and shall be posted in a conspicuous place at the daycare facility.

(2) The department shall send a renewal application to the owner of the daycare facility no later than ninety (90) days prior to the expiration of an existing license. The owner shall submit to the department the renewal application with the required renewal fee and a criminal history check prior to the expiration of the existing license. A complete criminal history check shall be provided for any new persons requiring a criminal history check in accordance with section 39-1105, Idaho Code. A limited criminal history check shall be provided for those persons eighteen (18) years of age or older who where [were] previously checked. The limited criminal history check shall include:

(a) Statewide criminal identification bureau;

(b) National crime information center; and

(c) Statewide child abuse registry.

(3) Criminal history checks on those persons under eighteen (18) years of age shall include a check of the juvenile justice records of adjudications of the magistrate division of the district court, county probation services and department records as authorized by the minor and his parent or guardian.

(4) The department shall maintain a list of all licensees for public use.

(5) Submission of a renewal application, fee and required criminal history check shall entitle the daycare facility owner to continue daycare services, subject to action by the department pursuant to section 39-1113, Idaho Code.

I.C. § 39-1107

§ 39-1107. Fees

Currentness

(1) The department shall establish by rule the maximum total fee to be assessed for a basic daycare license which shall not exceed three hundred twenty-five dollars (\$325) for daycare centers with more than twenty-five (25) children in attendance at any given time, two hundred fifty dollars (\$250) for daycare centers with thirteen (13) to twenty-five (25) children in attendance at any given time and one hundred dollars (\$100) for group daycare facilities. Criminal history background check fees shall be in addition, but at actual cost. No other fees shall be charged for each license period. The department may allocate the fees to daycare licensing administration costs as it deems appropriate.

(2) The department is authorized to utilize Idaho child care program funds as otherwise allowed by law to pay for the costs associated with licensing of daycare facilities to the extent that fees collected from the facilities do not fully

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cover such costs. It is the intent of the legislature that licensing fees and Idaho child care program funds shall fully fund daycare facility licensing administration.

I.C. § 39-1108

§ 39-1108. Local option

Currentness

(1) If a city or county, within its respective jurisdiction, has adopted an ordinance for regulation and/or licensing of daycare services, then the provisions of this chapter shall not apply with such city or county unless the ordinance is subsequently repealed. To qualify for exemption, regulation of centers must include a criminal history background check at least as stringent as the check required in section 39-1105, Idaho Code, compliance with safety standards at least as stringent as required in section 39-1109, Idaho Code, compliance with health standards at least as stringent as required in section 39-1110, Idaho Code, compliance with immunization requirements at least as stringent as required in section 39-1118, Idaho Code, and compliance with training requirements at least as stringent as required in section 39-1119, Idaho Code. Cities and counties are hereby granted authority and may adopt ordinances for regulation and/or licensing of daycare services.

(2) For purposes of determining whether or not local options are more stringent than as required in section 39-1109, Idaho Code, a city or county within its respective jurisdiction may, but is not required to, count a child or children of a provider for purposes of determining child: staff ratios.

I.C. § 39-1109

§ 39-1109. Safety standards

Currentness

(1) Daycare facilities, owners and operators shall comply with the following safety standards in the area of the daycare facility in which daycare is provided:

(a) Adequate fire and smoke alarms;

(b) A functional telephone located on the daycare premises during the hours of operation;

(c) Adequate fire extinguishers;

(d) Adequate exits;

(e) Firearms or other weapons which are stored on the premises of a daycare facility must be kept in a locked container that is inaccessible to children while daycare attendees are present;

(f) Pools, hot tubs, ponds and other bodies of water that are on the daycare facility premises must provide the following safeguards:

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(i) 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:

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

2. 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;

3. 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; and

(ii) 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 not allow access by a child;

(iii) Wading pools must be empty when not in use;

(iv) Children must be under direct supervision of at least one (1) adult employee while using a pool, hot tub, pond or other body of water; and

(v) 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; and

(g) The owner or operator of a daycare facility shall ensure that at all times when a child or children are present, at least one (1) adult employee on the premises has current certification in pediatric rescue breathing and first-aid treatment from a certified instructor.

(2) No fire standards developed pursuant to this chapter shall be more stringent than the standards contained in the International Fire Code, as adopted by Idaho.

(3) At least one (1) adult employee must be present at all times when a child or children are in attendance.

(4)(a) The maximum allowable child: staff ratio shall be a maximum of twelve (12) points per staff member using the following point system:

(i) Each child in attendance under the age of twenty-four (24) months shall equal two (2) points.

(ii) Each child in attendance from twenty-four (24) months to under thirty-six (36) months of age shall equal one and one-half (1 ½) points.

(iii) Each child in attendance from thirty-six (36) months to under five (5) years of age shall equal one (1)

point.

(iv) Each child in attendance from five (5) years to under thirteen (13) years of age shall equal one-half ( ½ ) point.

(b) Each child in attendance shall be counted by the department for purposes of calculating maximum allowable points, counting the number of children in attendance and for determining compliance with child: staff ratios.

I.C. § 39-1110

§ 39-1110. Health standards

Currentness

**Daycare facilities shall comply with the following health standards:** green, burgundy

**(1) Food for use in daycare facilities shall 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 contamination;**

**(2) All food that is to be served in daycare facilities shall be stored in such a manner that it is protected from potential contamination;**

(3) Diaper changing shall be conducted in such a manner as to prevent the spread of communicable diseases;

(4) Sleeping and play areas, restrooms and fixtures shall be maintained in a safe, sanitary condition;

(5) Children and facility personnel shall be provided with individual or disposable towels for handwashing and the handwashing area shall be equipped with soap and hot and cold running water;

**(6) The water supply, where the source is other than a public water system, must be approved in accordance with the rules adopted by the department;**

(7) Medicines, cleaning supplies and other hazardous substances must be stored out of reach of children;

**(8) Smoking or alcohol consumption is prohibited on the premises of a daycare facility during the daycare facility's hours of operation; and**

(9) Representatives of health and safety inspectors shall not be denied access to a daycare facility during hours of operation for purposes of control of communicable disease or inspection.

I.C. § 39-1111

**§ 39-1111. Rules authorized**

Currentness

In order to implement the provisions of this chapter, the department, in addition to other duties imposed by law, is hereby authorized and directed through rulemaking to establish procedures necessary to implement the provisions of this chapter including procedure for submission of required certificates as provided in sections 39-1109 and 39-1110, Idaho Code, and to conduct the criminal history check provided in section 39-1105, Idaho Code.

The rulemaking authority granted in this section shall be limited to the specific standards and procedures required by this chapter.

I.C. § 39-1112

§ 39-1112. Visitation

Currentness

Any parent or guardian shall have the absolute right to enter the premises of any facility during the period of care for the parent's or guardian's child or children. Any failure or refusal to allow entry to a parent or guardian may be grounds for suspension or revocation of the license, pursuant to section 39-1113, Idaho Code. If a parent or guardian has been granted limited or has been denied visitation rights by a court of competent jurisdiction, this section shall not confer a right to visitation.

I.C. § 39-1112A

§ 39-1112A. Access to information

Currentness

The department shall make available to daycare consumers an informational pamphlet, created by the department, to educate daycare consumers with informational tools useful in identifying quality daycare. The department may deliver pamphlets during direct contact with daycare consumers, or by delivering pamphlets to daycare providers during the licensing or renewal process, during inspections or through other appropriate means. The pamphlet shall include:

- (1) The importance of parents being vigilant for the safety, emotional health and training of their children that cannot be replaced by any other institution or individual;
- (2) The basic characteristics of a quality daycare;
- (3) A strong suggestion to parents to inquire about criminal history checks for any provider in a family daycare home;
- (4) A link to a department approved website that contains more detailed information; and
- (5) A department or other phone number for parents to report unsafe, dangerous or harmful activities within the daycare.

I.C. § 39-1113

§ 39-1113. Denial, suspension or revocation of license

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Currentness

(1) A license may be denied, suspended or revoked by the department if the department finds that the applicant or licensee does not comply with the provisions of this chapter.

(2) No person who pleads guilty to, has been found guilty of or received a withheld judgment for any offense involving neglect or any physical injury to, or other abuse of a child including the following offenses or a similar provision in another jurisdiction, shall be eligible for a license under the provisions of this chapter:

- (a) Felony injury of a child, section 18-1501, Idaho Code.
- (b) The sexual abuse of a child under sixteen years of age, section 18-1506, Idaho Code.
- (c) The ritualized abuse of a child under eighteen years of age, section 18-1506A, Idaho Code.
- (d) The sexual exploitation of a child, section 18-1507, Idaho Code.
- (e) Sexual abuse of a child under the age of sixteen years, section 18-1506, Idaho Code.
- (f) Lewd conduct with a child under the age of sixteen years, section 18-1508, Idaho Code.
- (g) The sale or barter of a child for adoption or other purposes, section 18-1511, Idaho Code.
- (h) Murder in any degree, section 18-4001 or 18-4003, Idaho Code.
- (i) Assault with intent to murder, section 18-4015, Idaho Code.
- (j) Voluntary manslaughter, section 18-4006, Idaho Code.
- (k) Rape, section 18-6101 or 18-6108, Idaho Code.
- (l) Incest, section 18-6602, Idaho Code.
- (m) Forcible sexual penetration by use of foreign object, section 18-6608, Idaho Code.
- (n) Abuse, neglect or exploitation of a vulnerable adult, section 18-1505, Idaho Code.
- (o) Aggravated, first degree, second degree and third degree arson, sections 18-801 through 18-805, Idaho Code.

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(p) Crimes against nature, section 18-6605, Idaho Code.

(q) Kidnapping, sections 18-4501 through 18-4503, Idaho Code.

(r) Mayhem, section 18-5001, Idaho Code.

(s) Poisoning, section 18-4014 or 18-5501, Idaho Code.

(t) Robbery, section 18-6501, Idaho Code.

(u) Stalking in the first degree, section 18-7905, Idaho Code.

(v) Video voyeurism, section 18-6609, Idaho Code.

(w) Enticing of children, section 18-1509 or 18-1509A, Idaho Code.

(x) Inducing individuals under eighteen years of age into prostitution, section 18-5609, Idaho Code.

(y) Inducing person under eighteen years of age to patronize a prostitute, section 18-5611, Idaho Code.

(z) Any felony punishable by death or life imprisonment.

(aa) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701, Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.

(3) No person who has pleaded guilty to, been found guilty of or received a withheld judgment for any offense involving neglect or any physical injury to, or other abuse of a child, including the following offenses or a similar provision in another jurisdiction shall be eligible for a license for a period of five (5) years under the provisions of this chapter.

(a) Aggravated assault, section 18-905, Idaho Code.

(b) Aggravated battery, section 18-907(1), Idaho Code.

(c) Burglary, section 18-1401, Idaho Code.

(d) Felony theft, sections 18-2403 and 18-2407(1), Idaho Code.

(e) Forgery of a financial transaction card, section 18-3123, Idaho Code.

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- (f) Fraudulent use of a financial transaction card or number, section 18-3124, Idaho Code.
  - (g) Forgery or counterfeiting, chapter 36, title 18, Idaho Code.
  - (h) Misappropriation of personal identifying information, section 18-3126, Idaho Code.
  - (i) Insurance fraud, section 41-293, Idaho Code.
  - (j) Damage to or destruction of insured property, section 41-294, Idaho Code.
  - (k) Public assistance fraud, section 56-227, Idaho Code.
  - (l) Provider fraud, section 56-227A, Idaho Code.
  - (m) Attempted strangulation, section 18-923, Idaho Code.
  - (n) Attempt, section 18-306, Idaho Code, conspiracy, section 18-1701, Idaho Code, or accessory after the fact, section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.
  - (o) Misdemeanor injury to a child, section 18-1501(2), Idaho Code.
- (4) A daycare facility license may be denied, suspended or revoked by the department if the department finds that the daycare facility is not in compliance with the standards provided for in this chapter or criminal activity that threatens the health or safety of a child.
- (5) A daycare facility license or privilege to operate a family daycare home shall be denied or revoked if a registered sex offender resides on the premises where daycare services are provided.
- (6) The denial, suspension or revocation of a license under this chapter may be appealed to the district court of the county in which the affected daycare facility is located and the appeal shall be heard de novo in the district court.

I.C. § 39-1114

§ 39-1114. Limited applications

Currentness

**(1) Any person providing daycare for four (4) or more children in a family daycare home shall not be required to be licensed, but shall comply with the requirements of section 39-1105, Idaho Code, for a criminal history check.**

(2) Fire inspections may be conducted by department designated health and safety inspectors where necessary. The fire inspection certificate and the criminal history check shall be available for inspection on the premises.

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(3) A family daycare home providing care for fewer than seven (7) children may elect to comply with the provisions of this chapter and upon a finding of compliance by the department, shall receive a basic daycare license.

I.C. § 39-1115

§ 39-1115. Misdemeanor

Currentness

(1) It shall be a misdemeanor to operate a daycare facility within this state without first obtaining a basic daycare license from the department or to operate a daycare facility without posting a basic daycare license in a conspicuous place. A copy of this chapter shall be available on the premises at all times for staff and parents to read on request.

(2) If a daycare facility is found to be operating without a license, the licensing agency may grant a grace period of no more than sixty (60) days to allow the daycare facility to come into compliance with the provisions of this chapter.

(3) It shall be a misdemeanor to operate a family daycare home caring for four (4) or more children without obtaining the criminal history check required in section 39-1105, Idaho Code; provided, that in the event of an initial citation for violation of the provisions of this subsection, if a person makes the applications required within twenty (20) days, the complaint shall be dismissed. Operation of a family daycare home caring for four (4) or more children after failure to pass a required criminal history check shall be a misdemeanor.

(4) It is a misdemeanor for any person to provide daycare services if such person has been found guilty in this state's courts, in any other state's courts, or in any federal court, of any offense listed under the provisions of section 39-1113, Idaho Code.

I.C. § 39-1116

§ 39-1116. Prosecution

Currentness

It shall be the duty of the prosecuting attorney of the county in which the daycare facility is located to prosecute violations of the provisions of this chapter.

I.C. § 39-1117

§ 39-1117. No liability to state or political subdivisions

Currentness

The issuance of a license or certificate pursuant to this chapter shall not constitute a representation of affirmance to any person that the daycare facility to which a license is issued is free from risk with regard to the standards in this chapter. The state, its political subdivisions or any employees or agents of the state or its political subdivisions shall not be liable for nor shall a cause of action exist for any loss or damage based upon the failure of any person to meet the standards contained in this chapter.

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I.C. § 39-1118

§ 39-1118. Immunization required

Currentness

(1) Within fourteen (14) days of a child's initial attendance at any licensed daycare facility, the parent or guardian shall provide an immunization record to the operator of the daycare facility regarding the child's immunity to certain childhood diseases. This record, signed by a physician or his representative or another licensed health care professional, shall verify that the child has received or is in the process of receiving immunizations as specified by the board; or can effectively demonstrate, through verification in a form approved by the department, immunity gained through prior contraction of the disease.

Immunizations required and the manner and frequency of their administration shall be as prescribed by the board and shall conform to recognized standard medical practices in the state. The board shall promulgate appropriate rules for the enforcement of the required immunization program and specify reporting requirements of daycare facilities, pursuant to the provisions of chapter 52, title 67, Idaho Code.

(2) Any minor child whose parent or guardian has submitted to officials of a licensed daycare facility a certificate signed by a physician licensed by the state board of medicine stating that the physical condition of the child is such that all or any of the required immunizations would endanger the life or health of the child shall be exempt from the provisions of this section. Any minor child whose parent or guardian has submitted a signed statement to officials of the daycare facility stating their objections on religious or other grounds shall be exempt from the provisions of this section.

I.C. § 39-1119

§ 39-1119. Training requirements

Currentness

The owner or operator of a day care center shall ensure that each employee receives four (4) hours of ongoing training every twelve (12) months after the employee's hire date.

I.C. § 39-1120

§ 39-1120. Nondelegable duties and responsibilities

Currentness

The department's duties and responsibilities under this chapter are nondelegable.