

Dear Senators LODGE, Broadsword & LeFavour, and
Representatives BLOCK, Nielsen & Rusche:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Dept. Of Health & Welfare:

IDAPA 16.06.02 - Rules Governing Standards for Child Care Licensing

(Docket No. 16-0602-0901).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by
the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice
to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis
from Legislative Services. The final date to call a meeting on the enclosed rules is no later than
10-26-09. If a meeting is called, the subcommittee must hold the meeting within forty-two (42)
days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting
on the enclosed rules is 11-24-09.

_____The germane joint subcommittee may request a statement of economic impact with
respect to a proposed rule by notifying Research and Legislation. There is no time limit on
requesting this statement, and it may be requested whether or not a meeting on the proposed rule
is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the
address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

FROM: Research & Legislation Staff - Paige Alan Parker

DATE: October 6, 2009

SUBJECT: Department of Health and Welfare - IDAPA 16.06.02 - Rules Governing Standards for Child Care Licensing (Docket No. 16-0602-0901 (Proposed Fee))

By this Proposed Rule Docket, the Department of Health and Welfare amends chapter 06.02 of title 16, Idaho Administrative Code (Docket No. 16-0602-0901)(hereinafter, “proposed rule”). Since this rule has a fee component, it will not be effective unless approved by the Legislature. Section 67-5224, Idaho Code.

The Department states that the purpose of the proposed rule is to bring the rule chapter into compliance with SB 1112 (2009), which takes effect on January 1, 2010, and to make housekeeping changes. According to the Department, these amendments will help assure processes that will provide protection for the health and safety of children in a daycare licensed by the Department.

The Department states that the proposed rule is authorized by sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A and 56-1005, Idaho Code. Chapter 11, title 39, Idaho Code, deals with basic daycare licensing. Section 39-1111, Idaho Code, directs the Idaho board of health and welfare to establish procedures necessary to implement the chapter, but limits this rulemaking authority to the specific standards and procedures authorized by the chapter. Chapter 12, title 39, Idaho Code, is the Child Care Licensing Reform Act. Sections 39-1209, 39-1210, 39-1211 and 39-1213, Idaho Code, grants the Idaho Board of Health and Welfare the power to promulgate appropriate rules to implement and force listed standards with regard to licensing children’s agencies, children’s residential care facilities, private foster homes and children’s therapeutic outdoor programs. Chapter 10, title 56, Idaho Code, deals generally with the Department. Section 56-1003, Idaho Code, provides the Board of Health and Welfare broad rulemaking authority. Section 56-1004A, Idaho Code, adopted in 2005 and amended in 2006, deals specifically with criminal history and background checks. Subsection 56-1005(8), Idaho Code, permits the Board to adopt, amend or repeal rules of the Department.

According to the Department, section 39-1107, Idaho Code, as amended by SB 1112, increased the maximum fee for a basic daycare license from \$100 to \$175 for group daycare facilities and changed the fee to be charged for criminal history background checks is to be in addition, but at actual cost. The Department anticipates a 2011 fiscal year cost of \$45,000, the difference between the license fees collected and expenditures for health and safety inspections, to be covered by federal Child Care Development funds. Negotiated rulemaking was conducted which sought input from families, daycare providers and other stakeholders.

The Department states that public hearings were held on Wednesday, September 9, in Caldwell, Monday September 21, in Coeur d'Alene, and Wednesday, September 23, in Idaho Falls.. All written comments must be delivered to the Department on or before September 23, 2009.

ANALYSIS

A. Standard Rule Provisions

The scope of the chapter's rules has been expanded by the proposed rule to specify family daycare homes, voluntarily, and to provide application to alcohol-drug abuse treatment facilities for adolescent, certified pursuant to Department rule. Section 001.02. A new "purpose" subsection is included in the proposed rule. The purpose of Department licensing is 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." The Department disclaims that a license constitutes a representation that the program or facility is free from risk or makes any guarantees. The rule places primary responsibility on parents to evaluate and select daycare services. The Department disclaims liability for failure of any daycare facility to meet the proposed rule's minimum standards. Section 001.04.

The proposed rule moves the exemptions to licensing provisions from section 300.02 of the existing rule to section 100.05. Added to the list of exemptions are: private or religious schools for educational purposes for children over four years of age; occasional care for children or parents who are simultaneously in the same building; periodically conducted day camps, programs and religious schools; and care of child of a family within the second degree of relationship. These added exemptions are authorized by section 39-1103, Idaho Code.

The proposed rule lists the regional licensing authorities, section 005.07, and provides reference to authority governing release of information to the public related to individuals, programs or facilities subject to the rules, section 006.03.

The criminal history background check provision under the proposed rule applies to licensed individuals, rather than licensed or certified providers. Section 009.01. Any other adult living in the home must complete an application, rather than a self-declaration form. Section 009.02. The Department may require a check at any time of: an adult living in a licensed foster

home (permanent resident status is no longer required); a resident or adult living in or an employee, contractor, volunteer or staff member of a licensed residential facility; or a owner, operator or employee of a daycare facility or a family daycare home and all other individuals who are 13 years of age or older who have unsupervised direct contact with children or who are regularly on the premises. Section 009.05.

SB 1112 amended section 39-1105, Idaho Code, to require that the Department obtain the required criminal history checks from the owner of a daycare facility. The proposed rule does not address who is to provide the checks to the Department.

B. Definitions

The term “daycare” has been appropriately amended in the proposed rule to conform with the changes made by SB 1112 by specifying that legal guardianship, in addition to blood and marriage, qualifies for related status between a provider and a child. Section 010.15. The proposed rule’s definitions for “daycare center,” “family daycare home” and “group daycare facility,” incorporate part of the definition of “daycare,” specifying that care is being provided to unrelated children for compensation, and providing that the children regularly on the premises are to be counted irrespective of whether they are related to the provider. Sections 010.16, 20 and 24. Thus, in order to meet the definition of a “daycare center,” “group daycare facility” or “family daycare home,” there must be at least one unrelated child regularly on the premises for whom daycare is being provided for compensation, although all the children regularly on the premises, both related and unrelated, are counted.

A key component of SB 1112 (2009) is the amendment of section 39-1102, Idaho Code, to include the new term “daycare facility,” defined a “as a place or facility providing daycare for compensation to seven (7) or more children not related to the provider.” (Underlined emphasis added.) “Daycare facility” may include a “group daycare facility” (seven to 12 children) and a “daycare center” (13 or more children), if the children are unrelated to the provider, but excludes a “family daycare home” (six or fewer children). However, with the “not related to the provider” qualification, related children are not counted in determining whether a “group daycare facility” or a “daycare center” meets the definition of a “daycare facility.” The problem is with the statute, not with the rule. The proposed rule has tried to use “group daycare facility” and “daycare center” in lieu of the more inclusive “daycare facility,” but has not been consistent in that effort. The term “daycare facility” is used in a number of places within the proposed rule without a definition being provided for that term.

The proposed rule appropriately defines “child,” in its provision dealing with daycare, as a person less than 13 years of age. Similarly, the definitions for “regularly on the premises” and “supervision” are confined to the proposed rule’s daycare provisions. An appropriate definition is provided for “second degree of relationship.”

Newly defined term “child-staff ratio” is defined as “the maximum number of children

allowed under the care and supervision of one (1) staff person.” SB 1112 included a definition of “ratio” as “the number of staff required to supervise a certain number of children.” Using different terminology in rule than used in the statute may cause confusion.

The proposed rule neither defines or uses the terms “mixed age group” and “single age group,” which are defined in SB 1112. “Group size” is a term defined in SB 1112, used in the proposed rule but left undefined therein. Defining this term in the proposed rule in a manner consistent with the statute would be helpful. The proposed rule deletes the definition of “licensing authority,” probably because it was unnecessary, since its continued use of that term is not confusing.

The definition of “training” in this chapter has not been changed by the proposed rule, resulting in a variance between the chapter’s existing definition and the new definition provided by SB 1112. Having a rule definition that varies from the statutory definition creates confusion and possible legal problems. Since the statute provides the authority upon which the rulemaking is based, questions may arise as to whether the deviant rule definition has gone beyond what has been authorized.

C. Licensing and Certification

References to “certification” have been removed from the daycare related provisions except for the title for sections 100 through 299 and with references to CPR/First Aid at section 330.06 and certification pediatric rescue breathing at section 335.04. The retention of “certification” in the title to sections 100 through 299 is likely an oversight.

The local option for regulating or licensing daycare services has been moved to section 300.01 of the proposed rule with greater specifics as to what must be contained in the city or county daycare ordinance.

In addition to daycare centers and group daycare facilities, family daycare homes voluntarily licensed by the Department are covered by the licensing provisions contained in the proposed chapter. SB 1112 amended section 39-1114, Idaho Code, to permit a family daycare home providing care for fewer than seven children to elect to comply with daycare licensing provisions.

The proposed rule has added the prohibition against an applicant whose application has been denied from reapplying for one year. Section 102.07. Under the proposed rule, licenses are 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 state in the application for the period and services specified. An issued license is nontransferable with regard to holder or location. A change in ownership, operator or location requires reapplication. The new owner or operator must obtain a license before starting operations. Section 103.

Investigations may include collateral contacts with the operator. Section 106.01. The operator has been added to the list of individuals who may have engaged in specified misconduct. Section 109.02. The proposed rule clarifies that prohibited misconduct applies not only to residents but also to children. Children in a center/facility/home will not be transported from the facility in the event the license has been suspended or revoked. The parent or legal guardian must be contacted instead. Section 111 and 112.

D. Standards for Daycare

Section 300 through 399 of the proposed rule provide additional requirements specific to centers/facilities/homes. The Standards for Daycare provisions have been extensively rewritten.

As noted above, the local option, under the proposed rule, requires that the city or county regulation or licensing ordinance must be at least as stringent as the Idaho Code sections dealing with criminal history check, safety standards, health standards, immunization requirements and training requirements. Section 300.01.

The proposed chapter lists four types of daycare licenses: daycare center, group daycare facility, family daycare home and license based upon facility size. Section 301. The descriptions of daycare center, group daycare facility and family daycare home parallel the definitions for those terms in section 010 with the exception that “care or supervision” is provided service in the section 301 descriptions while “daycare” is the provided service in the section 010 definitions. “Daycare,” of course, is a defined term. The license is based upon facility size is based upon the Department’s count of the children regularly on the premises, regardless of relationship to the provider. This license is likely the Department’s response to the confusion created by the statutory definition of “daycare center” discussed above.

The forty-five dollar fee for the criminal history check is deleted by the proposed rule. Under the proposed rule, each owner, operator or applicant seeking licensure must submit satisfactory evidence that owners, operators, employees and other individuals 13 years or older (who have unsupervised direct contact with children or who are regularly on the premises) have successfully completed and received a clearance for a Department criminal history and background check pursuant to statute. Section 309.01. The proposed rule requires a check of specified juvenile justice records for any individual under 18 years of age. Section 309.02. Family daycare homes caring for four or more children are required to comply with statutory requirements for the check as mandated by SB 1112. Section 309.03 The proposed rule also requires any person who owns, operates or is employed by a private school for educational purposes for children four through six years of age or a private kindergarten to obtain a check pursuant to statute. Section 309.04. The cost of the checks is the responsibility of the owner, operator or applicant. Section 309.05. Following the check, there must be self-disclosure by the individual to the owner or operator of any additional criminal convictions and juvenile justice adjudications for disqualifying crimes specified by statute with reporting to the Department within five days. Section 309.06.

The license fee structure provided by the proposed rule is “not to exceed” \$175 for a daycare center and \$100 for a group daycare facility or a family daycare home seeking a voluntary license. The nonrefundable license fee is inclusive of fire and health and safety inspections. Section 320. These fees are authorized by SB 1112. Under the existing rule, the fee is \$100, with partial refunds if certain certification thresholds are met, and additional \$45 criminal history check fee, \$35 health inspection fee and \$20 fire inspection fee.

The proposed rule’s provisions on license procedures are new. The applicant must be at least 18 years of age; submit a completed, signed and dated Department-provided form; pay the required fee; submit reports regarding local building, electrical, fire and planning and zoning requirements, where applicable; provide proof of current fire and liability insurance; submit evidence that the required criminal history and background clearance has been met; submit a written statement of intent to comply with the rules; disclose any license revocation or disciplinary action taken against the applicant as a daycare provider in any jurisdiction; and provide additional, relevant information requested by the Department. The daycare license must be renewed every two years by providing the fee and required information to the Department 45 days prior to the expiration of the existing license. Failure to cooperate, including failure to timely provide the required information or failure to use proper forms, may result in termination of the application process. Section 320.

Once the application is complete, the Department will order a health and safety inspection. If the applicant is deemed in compliance, the appropriate license will be issued within 30 days of receiving the completed application. If the licensing standards have not been met, but the deficiencies are correctable, a 180 day provisional license may be issued. The licensee will receive 90 days notice from the Department prior to the expiration of the license. The Department will maintain a public list of all licensed daycare facilities. Section 325.

The owner or operator of a licensed facility must maintain a current list covering all employees and individuals 13 years or older (who have unsupervised direct contact with children or are regularly on the premises) for the past 12 months, containing specified information. Section 330. Certain information must also be kept for each child regularly on the premises, covering the past 12 months. Section 331. These provisions are not mandated by SB 1112.

Staff-to-child ratios were key safety standard provisions to SB 1112, which gave the Department the authority to establish maximum allowable ratios, subject to specified restrictions. In computing ratios, the proposed rule provides that all adults providing direct supervision to the children, including employees age 16 and 17 years under the direct supervision of an adult employee, are counted as staff. The proposed rule specifies that the maximum allowable group size is determined by the age of the youngest child; that each child regularly on the premises is counted, regardless of whether the child is related or unrelated to the provider. The maximum group size for all groups cannot exceed twice the number of children allowed for a single staff member, except if no more than two children under the age of 24 months are in attendance, the maximum group size is ten, or if three or more children under the age of 25 months are in

attendance, the maximum group size is nine. The child-staff ratios and maximum group size table provided in the proposed rule is consistent with SB 1112.

Consistent with SB 1112, the proposed rule requires at least one adult currently certified in pediatric rescue breathing and first-aid treatment is awake and on duty at all times when children are present. The proposed rule adds the operator and all employees are responsible for the direct care, protection, supervision and guidance of children through active involvement or direct observation; napping children who are not within sight of an employee must be within easy hearing distance; and, for overnight care, a sleeping child must be on the same level as the employee, the employee must be able to hear the children and an employee must be awake and on duty to release and receive a child. Section 335.

Although SB 1112 did not amend section 38-1119, Idaho Code, dealing with training requirements, although it did provide a definition for “training” (“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”). However, the proposed rule provides additional training requirements: training must be related to continuing education in child development; the owner or operator is responsible for ensuring that employees have completed and documented the four hours of annual training required by statute and for maintaining that documentation; and first aid and CPR training will not count towards those four hours. Section 340.

Daycare personnel who have reason to believe that a child has been abused, abandoned or neglected or is being subjected to conditions or circumstance which would reasonably result in abuse, abandonment or neglect, are required to provide this information to the Department or the proper law enforcement agency within 24 hours. Section 345. This requirement is consistent with section 16-1605, Idaho Code.

The proposed rule provides that parents and guardians have the absolute right to enter the daycare premises when their child is in the care of the operator, unless the right to access has been limited or denied pursuant to court order. Failure to provide such access may result in suspension or revocation of the license. Although not in the existing rule, these access provisions and limitations are addressed in section 39-1112, Idaho Code. Licensed facilities must allow access to the Department for reinspection at any time during the licensing period. Section 346.

Section 39-1109 mandates safety standards in the area of the daycare facility in which daycare is provided. That statute provides that no fire standards developed pursuant to the chapter shall be more stringent than the proposed rule provides that fire inspections must be completed by the local fire official or designee and that the Department can designate an approved inspector for daycare licensing purposes only for a daycare located outside of the area of authority outlined in section 39-1109. Section 350.01. Section 39-1109 cryptically requires adequate fire and smoke alarms, adequate fire extinguishers and adequate exits. The proposed

rule expands on these statutory requirements with detailed provisions for unobstructed exits, section 350.02, fire extinguishers, alarms, smoke detectors and automatic sprinkler systems (where the facility is greater than 20,000 square feet or the number of children under the age of 18 months exceeds 100), section 352, and fire safety and evacuation plans, section 353.

The proposed rule also provides facility capacity and occupancy load criteria to be determined by the local fire official using standards in the International Fire Code for Daycare Facilities. Section 351. Facility capacity and occupancy load are not addressed in chapter 11, title 39, Idaho Code, as amended by SB 1112. Section 39-1109, Idaho Code, provides that no fire standards developed pursuant to the chapter shall be more stringent than the standards contained in the International Fire Code as adopted by Idaho, and section 39-1111, Idaho Code provides that the rulemaking authority granted in that section shall be limited to the specific standard and procedures required by the chapter. Unless authorized by some other authority, section 351 of the proposed rule may be beyond the Department's rulemaking authority.

The health standards contained in section 360 of the proposed rule are new. Section 39-1110, Idaho Code, deals with daycare health standards, addressing: food use and service; diaper changing; maintenance of sleeping and play areas, restrooms and fixture in a safe, sanitary condition; hand washing; water supply; keeping items out of the reach of children; smoking and alcohol consumption; and health and safety inspections. Proposed rule section 360 provides new detailed standards on food source; food preparation; food temperatures; food storage; food contact surfaces; dishwashing sanitizing; utensil storage; garbage; hand washing; diaper changing; sleeping areas; restrooms, water supply and sewage; water supply; sewage disposal; use of alcohol and illegal drugs; smoke free environment; medication administration and storage; and adequate heat, light and ventilation.

The miscellaneous safety requirements contained in section 361 of the proposed rule address: telephone types and services; heat producing equipment; portable heating devices; storage of weapons, firearms and ammunition; animals and pets; and storage of hazardous materials. Some of these requirements expand upon the safety requirements contained in section 39-1109, Idaho Code, while some are in addition to the section 39-1109 requirements. For example, section 39-1109(1)(a) merely requires a functional telephone be located on the premises, while section 361.01 permits a cell phone to meet the requirement, requires that the telephone not have an unlisted number and requires the posting of emergency information and numbers in an immediately visible location. Section 39-1109(1)(e) requires that firearms or other weapons which are stored on the premises be kept in a locked container that is inaccessible to children attendees. In addition to those requirements, section 361.05 of the proposed rule requires that ammunition must be stored in a locked container separate from firearms and that means of starting fire and other weapons that could cause harm to children must be kept away from and out of the reach of children. Chapter 11, title 39, Idaho Code, does not address heat producing equipment, portable heating devices, animals and pets, or storage of hazardous materials.

Building grounds, furnishings and equipment standards are addressed at section 365 of the proposed rule. These include: appliance and electrical cords; balconies and stairways; stairway protection; hazard areas restrictions; fueled equipment; water hazards; indoor play areas and toys; and outdoor play areas and toys. Except for water hazards, which are addressed at section 39-1109(1)(f), Idaho Code, as added by SB 1112, none of the remainder of these safety items are addressed in chapter 11, title 39. Again, the rulemaking limitation in section 39-1111, Idaho Code, to specific standards and procedures required by chapter 11, title 39, is implicated.

Section 390 of the proposed rule requires compliance with the fire, safety and health requirements at all times. In addition to license, compliance and contact information posting requirements, section 390 requires notification to the Department of any changes that would affect the terms of licensure or could affect the health, well-being or safety of children and the reporting of critical incidents.

Consistent with section 39-1115, Idaho Code, the proposed rule makes it a misdemeanor to operate without a required license to fail to properly post such license. The proposed rule incorporates the 60 day grace period to come into compliance as provided in SB 1112.

SUMMARY

The noted proposed rule definitions that vary from the statutory definitions should be examined to determine if they comply with legislative intent. A number of the fire, safety and health requirements contained in this proposed rule may not have authorization as limited by section 39-1111, Idaho Code. Otherwise, the proposed rule appears to be authorized by sections 39-1111, 56-1003, 56-1004A and 56-1005(8), Idaho Code.

cc: Department of Health and Welfare: Tamara Prisock and Landis Rossi

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING
DOCKET NO. 16-0602-0901 (FEE RULE)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 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 held as follows:

Wednesday, September 9, 2009 7:00 p.m. MDT	Monday, September 21, 2009 7 p.m. PDT	Wednesday, September 23, 2009 7:00 p.m. MDT
Dept. of Health & Welfare Region 4 DHW - Region III Office 3402 Franklin Road Sawtooth Room Caldwell, ID	Dept. of Health & Welfare Region 1 1120 Ironwood Drive 1st Floor Large Conference Rm. Coeur d'Alene, ID	Dept. of Health & Welfare Region 7 State Office Building 150 Shoup Ave. 2nd Floor Conference Room Idaho Falls, ID

The hearing sites 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Under Senate Bill 1112, the 2009 Legislature amended the statewide system for the protection of children in daycare facilities. These changes to Title 39, Chapter 11, Idaho Code, take effect January 1, 2010. These amendments to statute necessitated corresponding changes and clarification in this chapter of rules.

These rule changes provide requirements for areas related to daycare licensing including fees, criminal history checks, safety and health standards, licensure requirements, suspension, denial, and revocation of licenses. While amending these rules for daycare standards, other updates were made for consistency in language and for clarification, deleting obsolete language and updating references. These amendments will help assure processes that will provide protection for the health and safety of children in a daycare licensed by the Department.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The 2009 Legislature amended Section 39-1107, Idaho Code, establishing a maximum licensing fee for a basic daycare license not to exceed \$175 for daycare centers, and \$100 for group daycare facilities. Criminal history and background checks are the responsibility of the applicant and are based on the actual cost of the check.

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 that the cost for the State Fiscal Year 2011 will be approximately \$45,000, which is the difference for licensing fees collected and expenditures for the health and safety inspections. This cost will be covered by the Federal Child Care Development Funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), negotiated rulemaking was conducted. A Notice of Negotiated Rulemaking was published in the July 1, 2009, Idaho Administrative Bulletin, Vol.09-7, page 91. The Department entered into negotiated rulemaking to seek input from families, daycare providers, and other stakeholders in the development of rules to align with changes in statute.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Landis Rossi at 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 September 23, 2009.

DATED this 31st day of July, 2009.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0602-0901

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 licensing or certification of daycare centers, group daycare facilities, family daycare homes, foster homes, children's agencies and children's residential care facilities in Idaho. (7-1-09)()

001. TITLE, SCOPE, AND POLICY, PURPOSE, AND EXCEPTIONS 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~~ licensing or certification of: ()

- a.** Daycare centers; ()
- b.** Group daycare facilities; ()
- c.** Family daycare homes, voluntarily; ()
- d.** ~~Foster homes;~~ ()
- e.** ~~Children's agencies; and;~~ ()
- f.** Children's residential care facilities, including non-accredited residential schools; ()
- 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; ()

h. ~~e~~Children's therapeutic outdoor programs; in Idaho; ()

i. ~~Alcohol-drug abuse treatment facilities for adolescents certified according to IDAPA 16.06.03, "Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs"; and~~ ()

j. ~~f~~Facilities specializing in maternity care to 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)()

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. (7-1-09)

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. ()

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 licenses does not guarantee adequacy of care, services, safety, or the well-being of any child, employee, contractor, volunteer, or visitor of a daycare facility. It is the parents primary responsibility for evaluation and selection of daycare services. ()

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. ()

05. Exceptions to Licensing. The minimum standards and licensing requirements in these rules do not apply to: ()

a. 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; ()

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

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

d. 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; ()

e. The provision of care for children of a family within the second degree of relationship as defined in Section 011 of these rules; or ()

f. Foster homes that have been approved by a licensed children's agency, 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, operated, and conforms with these rules and standards of the Board and the provisions in Section 39-1213(b), Idaho Code. ()

(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~~)()

07. Daycare Licensing Authority Locations. The Department's daycare licensing authorities for daycare centers, group daycare facilities, and family daycare homes are located in the Department's Regional Offices listed below: ()

a. Region I Office Address: 2195 Ironwood Court, Coeur d'Alene, ID 83814. ()

b. Region II Office Address: 1118 "F" Street, P. O. Drawer B, Lewiston, ID 83501. ()

c. Region III Office Address: 3402 Franklin Rd., Caldwell, ID 83605. ()

d. Region IV Office Address: 1720 Westgate Dr., Boise, ID 83704. ()

e. Region V Office Address: 823 Harrison Dr., Twin Falls, ID 83301. ()

f. Region VI Office Address: 421 Memorial Drive, Pocatello, ID 83204. ()

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. ()

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)()

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)()

03. **Applicants and Providers Subject to Criminal History Check Requirements.** The following applicants and providers must receive a criminal history and background check: (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)()

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)()

d. **Children's Residential Care Facility-~~Staff~~.** The criminal history and background check requirements for a children's residential care facility are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. (3-30-07)()

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~~ 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 ~~4309~~ of these rules and in Sections 39-1105, 39-1113, and 39-1114, Idaho Code. (3-30-07)()

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)()

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: ()

a. ~~is a permanent~~ is a resident ~~of~~ or an adult living in a licensed foster home ~~or~~; ()

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

c. Is a owner, operator, or employee 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. ()

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 16.06.03, "Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs." (3-30-01)()

03. Board. The Idaho State Board of Health and Welfare. (3-30-01)

04. 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)

05. Child. ()

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

b. For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, "child" means a person less than thirteen (13) years of age. ()

06. 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)

07. Child-Staff Ratio. For requirements of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules, "child-staff ratio" means the maximum number of children allowed under the care and supervision of one (1) staff person. ()

078. 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)

089. 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)

0910. 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)

101. 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)

112. 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)

123. 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)

134. Contraband. Goods or merchandise, the possession of which is prohibited, such as weapons and drugs. (3-30-01)

145. 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, 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)()

156. Daycare Center. A place or facility providing daycare for compensation ~~for to a child or children not related by blood, marriage, or legal guardianship to the person or persons providing the care, where~~ thirteen (13) or more children, regardless of relationship to the person or persons providing the care, are regularly on the premises. (~~3-30-01~~)()

167. Department. The Idaho Department of Health and Welfare ~~or its designee.~~ (7-1-09)()

178. 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)

189. Director. Director of the Idaho Department of Health and Welfare ~~or designee.~~ (~~3-30-01~~)()

1920. Family Daycare Home. A home, place, or facility providing daycare for compensation to a child or children not related by blood, marriage, or legal guardianship to the person or persons providing the care, where six (6) or fewer children during part of a twenty-four (24) hour day, regardless of relationship to the person or persons providing the care, are regularly on the premises. (~~3-30-01~~)()

201. 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)

~~242.~~ **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)

~~223.~~ **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~~)()

~~234.~~ **Group Daycare Facility.** A home, place, or facility providing daycare for compensation to a child or children not related by blood, marriage or legal guardianship to the person or person providing the care, where seven (7) to twelve (12) children, regardless of relationship to the person or persons providing the care, are regularly on the premises. (~~3-30-01~~)()

~~245.~~ **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~~)

~~26.~~ **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)

~~27.~~ **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)

~~28.~~ **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. Organization. A children's agency or a children's residential care facility. (3-30-01)

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

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

06. 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)

07. Plan of Correction. The detailed procedures and activities developed between the licensing authority and caregiver required to bring a foster family, facility, or children's agency into conformity with these licensing rules. (3-30-01)

08. Regularly on the Premises. For the purposes of Sections 300 through 399 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. ()

- ~~089~~. **Relative.** Individuals related to a child by blood, marriage or adoption. (3-30-01)
- ~~0910~~. **Representative.** An employee of the Department of Health and Welfare. (3-30-01)
- ~~101~~. **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)
- ~~142~~. **Restraint.** Interventions to control the range and motion of a child. (3-30-01)
- ~~123~~. **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)
- 14.** **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. ()
- ~~135~~. **Secure.** A physically restrictive setting, as in a locked or guarded residential facility. (3-30-01)
- ~~146~~. **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)
- ~~157~~. **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)
- ~~168~~. **Shelter Care.** The temporary or emergency out-of-home care of children in a foster home or residential facility. (3-30-01)
- ~~179~~. **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)
- ~~1820~~. **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)
- 21.** **Supervision.** For requirements of 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. ()
- ~~1922~~. **Time-Out.** Separation of a child from group activity as a means of behavior management. (3-30-01)

203. 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)

214. 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)

225. 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)

236. 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)(____)

~~**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)(____)~~

~~**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 agency covered by the license ~~or certification~~, and for conforming to them at all times; and (3-30-01)(____)~~

~~**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 agency. 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)(____)~~

~~**04. 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)(____)~~

~~**ia.** Changes of management or address; ~~or~~ (3-30-01)(____)~~

~~##b.~~ Upon suspension or revocation of the license ~~or certification~~ by the Department; or (3-30-01)(____)

~~##c.~~ 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, 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)(____)

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)(____)

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 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)(____)

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, 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)(____)

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 residential facilities will be in effect for one (1) year from the date of issuance unless suspended or revoked earlier; (7-1-09)(____)

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)(____)

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)()

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)()

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)()

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, 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)()

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

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 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)()

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)(____)

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, 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, 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)(____)

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. (____)

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. (____)

(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, 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)(____)

106. COMPLAINTS AGAINST DAYCARE CENTERS, FOSTER HOMES, CHILDREN'S RESIDENTIAL CARE FACILITIES 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 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, 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. (____)

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 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)(____)

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, 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)(____)

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)(____)

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 39-11720, Idaho Code, or the Child Care Licensing Reform Act, Sections 39-12081 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, or foster home when any of the following in Subsection 109.01 and 109.02 of this rule is determined: (7-1-09)(____)

01. Criminal Record. Anyone providing direct care or working onsite under these rules refuses to comply with the requirements in IDAPA 16.05.06, "Criminal History and Background Checks." (7-1-09)

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

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, or children's agency. (7-1-09)(____)

(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, 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)(____)

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 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)(____)

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

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, or children's residential care facility is not in substantial compliance with these rules. (7-1-09)(____)

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, 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)(____)

04. Repeat Violations. Repeat violations of any requirement of these rules or provisions of Title 39, Chapter 11 and Chapter 12, Idaho Code. (7-1-09)(____)

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, or children's residential care facility has knowingly misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate. (7-1-09)(____)

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, or children's residential care facility and its grounds facilities and records. (7-1-09)(____)

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, or children's residential care facility that has violated any of the terms or conditions of a provisional license. (7-1-09)(____)

(BREAK IN CONTINUITY OF SECTIONS)

300. STANDARDS FOR DAYCARE.

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. ()

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."~~ **Local Option.** If a city or county, within its respective jurisdiction, has adopted an ordinance for regulation or licensing of daycare services, then the provisions of Title 39, Chapter 11, Idaho Code, and Sections 300 through 399 of these rules will not apply within such city or county, unless the ordinance is subsequently repealed. To qualify for local option exemption, the local ordinance of a county or a city must include: (4-9-09)()

- a.** A criminal history check at least as stringent as the check required in Sections 39-1105 and 39-1113, Idaho Code; ()
- b.** Compliance with safety standards at least as stringent as required in Section 39-1109, Idaho Code; ()
- c.** Compliance with health standards at least as stringent as required in Section 39-1110, Idaho Code; ()
- d.** Compliance with immunization requirements at least as stringent as required in Section 39-1118, Idaho Code; and ()
- e.** Compliance with training requirements at least as stringent as required in Section 39-1119, Idaho Code. ()

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)()

- 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 set forth in this chapter, the Department may issue the following types of daycare licenses: ()

01. Daycare Center License. A license is issued for a place or facility providing care and supervision for compensation to a child or children not related by blood, marriage, or legal guardianship to the person or persons providing the care, where thirteen (13) or more children, regardless of relationship to the person or persons providing the care, are regularly on the premises. ()

02. Group Daycare Facility. A license is issued for a place or facility providing care and supervision for compensation to a child or children not related by blood, marriage or legal guardianship to the person or persons providing the care, where seven (7) to twelve (12) children, regardless of relationship to the person or persons providing the care, are regularly on the premises. ()

03. Family Daycare Home. A place or facility providing care or supervision for compensation to a child or children not related by blood, marriage, or legal guardianship to the person or persons providing the care, where six (6) or fewer children, regardless of relationship to the person or persons providing the care, are regularly on the premises. A family daycare home is not required to be licensed; however, a family daycare home may voluntarily elect to submit an application for a license to the Department. ()

04. License Based Upon Facility Size. The Department will determine the type of license required by a place or facility providing daycare by counting each child, regularly on the premises, regardless of relationship to the person or person providing the care. ()

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: ()

a. Owners, operators, and employees: ()

b. All other individuals thirteen (13) years of age or older who have unsupervised direct contact with children or are regularly on the premises. ()

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: ()

a. Juvenile justice records of adjudication of the magistrate division of the district court: ()

b. County probation services; and ()

c. Department records. ()

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. ()

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. ()

05. Cost of Criminal History and Background Check and Juvenile Justice Records. Each owner, operator, or applicant seeking licensure of a daycare center, group daycare facility, or family daycare home is responsible for the cost of the criminal history and background check and check of the juvenile justice records.()

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. ()

310. -- 319. (RESERVED).

320. LICENSING FEES.

The nonrefundable licensing fee must be paid directly to the Department at the time of initial application or at the time the application for renewal is submitted. ()

01. Licensing Fee Amounts. The maximum fee for initial application of an unlicensed daycare or renewal must not exceed the following amounts. ()

a. Daycare center license fee must not exceed one hundred seventy-five dollars (\$175). ()

b. Group daycare facility license fee must not exceed one hundred dollars (\$100). ()

c. Family daycare home voluntarily license fee must not exceed one hundred dollars (\$100). ()

02. Inspection Fees. Fees for fire inspections and health and safety inspections are included in application fees paid to the Department. ()

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. ()

01. Completed and Signed Application. A completed application form signed and dated by the applicant. ()

02. Application Fee. The applicant must include the appropriate licensing fee described in Subsection 320.01 of this rule at the time the initial application is submitted to the Department. ()

03. Inspection Reports. The following reports must be submitted to the Department with the application: ()

a. Proof that the proposed facility meets local building code, where required; ()

b. Proof that the proposed facility meets local electrical code, where required; ()

c. Proof that the proposed facility meets fire code, where required; and ()

d. Proof that the facility meets local planning and zoning requirements. ()

04. Proof of Insurance. The applicant must provide proof of current fire and liability insurance coverage for the daycare facility. ()

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. ()

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. ()

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. ()

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. ()

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. ()

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 in a timely manner, or not provided in the form requested by the Department, or both. ()

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. ()

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 thirty (30) days from the date the completed application is submitted issue one (1) of the following licenses: ()

a. Daycare Center License, stating the type of facility, the number of children who may receive care at any one (1) time, and the length the license is in effect; ()

b. Group Daycare Facility License, stating the type of facility, the number of children who may receive care at any one (1) time, and the length the license is in effect; or ()

c. Family Daycare Home License, stating the type of facility, the number of children who may receive care at any one (1) time, and the length the license is in effect. ()

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

a. Daycare Center License, stating the type of facility, the number of children who may receive care at any one (1) time, and the length the license is in effect; ()

b. Group Daycare Facility License, stating the type of facility, the number of children who may receive care at any one (1) time, and the length the license is in effect; or ()

c. Family Daycare Home License, stating the type of facility, the number of children who may receive care at any one (1) time, and the length the license is in effect. ()

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. ()

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

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

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

326. --329. (RESERVED).

330. EMPLOYEE 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 employees and other individuals thirteen (13) years of age or older who have unsupervised direct contact with children, or are regularly on the premises, regardless of how many hours worked or volunteered. The list must specify, at a minimum, the following: ()

01. Legal name. ()

02. Proof of Age. ()

03. Phone Number. ()

04. Record of Training. ()

05. Results of Criminal History and Background Check. ()

06. Certification. Verification of CPR/First Aid certification, when applicable. ()

07. Record of Hours. The times, dates, and records of hours on the premises each day. ()

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 regularly on the premises covering the previous twelve-month period. The record must contain, at a minimum, the following: ()

01. Child's Full Name. ()

02. Date of Birth. ()

03. Parent or Guardian's Name, Address, and Contact Information. ()

04. Emergency Contact Information. ()

05. Child's Health Information. ()

a. Immunization record; ()

b. Any medical conditions that could affect the care of the child; ()

c. Medications the child is taking or may be allergic to. ()

06. Record of Hours. The times, dates, and record of hours on the premises each day. ()

332. -- 334. (RESERVED).

335. CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZES.

Each owner or operator of a daycare center, group daycare facility, or family daycare home licensed by the

Department must maintain, at all times during hours of operation, or when children are present, child-staff ratios and maximum group size according to Section 39-1109, Idaho Code. ()

01. Computing the Child-Staff Ratio. The Department will compute the child-staff ratios as follows: ()

a. The maximum ratio of children to staff is determined by the age of the youngest child; ()

b. Each child regularly on the daycare premises, regardless of relationship to the person or persons providing the care, is counted for the purposes of determining the child-staff ratio; ()

c. All adults providing direct supervision to the children are counted as staff for the purpose of computing the child-staff ratio; and ()

d. Employees sixteen (16) and seventeen (17) years of age under the supervision of an adult employee, when providing direct supervision to children, may be counted as staff for the purpose of computing the child-staff ratio. ()

02. Computing the Maximum Group Size. The Department will compute the maximum group size as follows: ()

a. The maximum allowable group size is determined by the age of the youngest children on the premises. ()

b. Each child, regularly on the premises, regardless of relationship to the person or persons providing the care, is counted for the purpose of determining the maximum group size; ()

c. The maximum group size for all groups cannot exceed twice the number of children allowed for a single staff member except; ()

i. If no more than two (2) children are in attendance under the age of twenty-four (24) months, the maximum group size is ten (10) children; or ()

ii. If three (3) or more children are in attendance under the age of twenty-four (24) months the maximum group size is nine (9) children. ()

03. Child-Staff Ratios and Maximum Group Sizes. Child-staff ratios and maximum group sizes must be maintained during all hours of operation or when children are present on the premises as described in the table below:

CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZE Based on Age of Youngest Child TABLE 335.03		
<u>Ages and Counts Based on Age of Youngest Child</u>	<u>Child:Staff Ratio</u>	<u>Maximum Group Size</u>
<u>1 child under the age of 24 months</u>	<u>6:1 or 12:2</u>	<u>12</u>
<u>2 children under the age of 24 months</u>	<u>6:1 or 10:2</u>	<u>10</u>
<u>3 or more children under the age of 24 months</u>	<u>6:1 or 9:2</u>	<u>9</u>
<u>All children at least 2 years of age but less than 3 years of age</u>	<u>8:1 or 16:2</u>	<u>16</u>
<u>All children at least 3 years of age but less than 4 years of age</u>	<u>10:1 or 20:2</u>	<u>20</u>

CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZE		
Based on Age of Youngest Child		
TABLE 335.03		
<u>Ages and Counts Based on Age of Youngest Child</u>	<u>Child:Staff Ratio</u>	<u>Maximum Group Size</u>
All children at least 4 years of age but less than five years of age	12:1 or 24:2	24
All children at least 5 years of age or more	18:1 or 36:2	36

()

04. Supervision of Children. 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 who has current certification in pediatric rescue breathing and first-aid treatment from a certified instructor is awake and on duty on the premises at all times during regular business hours or when children are present. The operator and all employees are responsible for the direct care, protection, supervision, and guidance of children through active involvement or direct observation. ()

05. Napping Children. Napping children who are not within sight of an employee must be within easy hearing distance at all times. ()

06. Overnight Daycare. For daycare operators providing overnight care of children the following must apply: ()

a. A sleeping child must sleep on the same level as the employee and the employee must be able to hear the children; and ()

b. An employee must be awake and on duty to release and receive a child. ()

336. -- 339. (RESERVED).

340. TRAINING REQUIREMENTS.

Each owner or operator of a daycare center, group daycare facility, or family daycare home licensed by the Department, must ensure that each employee receives four (4) hours of ongoing training every twelve (12) months after the employee's date of hire. ()

01. Child Development Training. Training must be related to continuing education in child development. ()

02. Documented Training. It is the responsibility of the daycare owner or operator to ensure that employees have completed and documented four (4) hours of training each year. ()

03. First Aid and CPR. First aid and CPR training will not count towards the required four (4) hours of annual training. ()

04. Employee Training Records. Each daycare owner or operator is responsible for maintaining documentation of employee training and may be asked to produce documentation at the time of license renewal. ()

342. -- 344. (RESERVED).

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

Under Section 16-1605, Idaho Code, daycare personnel, including the owners, operators, employees, 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. ()

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. ()

02. Court Ordered Denied or Limited Visitation Rights. 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. ()

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. ()

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. ()

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. ()

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. ()

a. Exit doors must open from the inside without the use of a key or any special knowledge or effort. ()

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: ()

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

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. ()

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. ()

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. ()

i. Approved egress windows from sleeping areas must be operable from the inside without the use of separate tools. ()

ii. In lieu of egress windows, an approved exit door is acceptable. ()

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. ()

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. ()

351. FACILITY CAPACITY AND DETERMINING OCCUPANT LOAD.

Occupant load is determined by the local fire official or designee using the standards provided in the International Fire Code for Daycare Facilities. ()

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. ()

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. ()

a. Exit doors must swing in the direction of egress. ()

b. Exit doors from rooms, if provided with a latch, must have panic hardware installed. ()

03. Exit Signs. Exit signs must be installed at required exit doorways and wherever else necessary to clearly indicate the direction of egress. ()

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. ()

01. Portable Fire Extinguisher. There must be a 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. ()

02. Kitchen Area. A fire extinguisher or flame suppressant system must be kept in the kitchen area. ()

03. Fire Code. Fire extinguishers must be maintained as per the International Fire Code/National Fire Protection Association. ()

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. ()

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

06. Smoke Detectors. Smoke detectors must be installed and maintained in the following locations: ()

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

b. In each room used for sleeping purposes; and ()

c. In each story within a facility including basements. ()

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. ()

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). ()

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: ()

01. **Evacuation.** Procedures and policies for accounting for employees and children after an evacuation is completed. ()

02. **Assembly Point.** Evacuation plan and assembly point for children and employees. ()

03. **Locations of Facility Exits.** ()

04. **Evacuation Routes.** ()

05. **Location of Fire Alarms.** ()

06. **Location of Fire Extinguishers.** ()

07. **Annual Review.** Fire safety and evacuation plans must be reviewed or updated annually and available in the facility for reference and review. ()

08. **Frequency of Fire and Emergency Evacuation Drills.** Fire and evacuation drills must be conducted on a routine schedule and all employees and children must participate. ()

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. ()

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." ()

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 the use to prevent cross-contamination. ()

a. Frozen food must not be thawed at room temperature and must be cooked to proper temperatures. ()

b. Individuals preparing food must use proper hand-washing techniques, minimize bare hand contact with food, and wear clean clothes. ()

03. **Food Temperatures.** Potentially hazardous foods must be kept refrigerated at forty-one degrees Fahrenheit (41°F) or less. Refrigerators must be equipped with an accurate thermometer. ()

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. ()

05. Food Contact Surfaces. Food contact surfaces must be kept clean and sanitized, including counters, serving tables, high chair trays, and cutting boards. ()

06. Dishwashing Sanitizing. Dishes, glasses, utensils, silverware and all other objects used for food preparation and eating must be sanitized using appropriate sanitizing procedures. ()

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. ()

08. Garbage. Garbage must be kept covered and inaccessible to children. ()

09. Hand Washing. Children and facility employees 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. ()

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. ()

11. Sleeping Areas. Children sleeping at the facility must have separate cots, mats, or beds and blankets. ()

12. Restrooms, Water Supply, and Sewage. All daycare facilities must have restrooms. ()

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. ()

b. Plumbing and bathroom fixtures must be in good condition. ()

c. In addition, daycare centers must comply with requirements of the International Building Code incorporated by reference in Section 004 of these rules. ()

13. Water Supply. The facility's water supply must meet one (1) of the following requirements: ()

a. Be from a source that is approved for a private home by the health authority 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 ()

b. Water used for consumption at a daycare facility must be from an acceptable source, bottled water from an acceptable source, or boiled for a period specified by the local health authority according to IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." ()

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." ()

15. Use of Alcohol and Illegal Drugs. Alcohol and illegal drugs must not be used by operators, children, employees, volunteers, or visitors at daycare facilities or in the presence of children during hours of operation or in vehicles while transporting children. ()

a. Any individual under the influence of alcohol or drugs must not be permitted at or in the daycare facility. ()

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. ()

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 employees must ensure that no smoking or other tobacco use occurs within the facility or in outdoor areas when children are present. ()

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. ()

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. ()

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." ()

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. ()

01. Telephone. An operable telephone or cell phone must be available on the facility at all times and the following conditions shall apply: ()

a. The telephone used to meet this standard must not have an unlisted number and the number must be made available to parents and guardians. ()

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. ()

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. ()

04. Portable Heating Devices. Portable heating devices shall be limited and approved for use and location by the Fire Inspector prior to use within a facility. ()

05. Storage of Weapons, Firearms, and Ammunition. Firearms at a daycare facilities must be unloaded and stored in a locked cabinet, gun safe, or container that is inaccessible to children. ()

a. Ammunition must be stored in a locked container separate from firearms. ()

b. Matches, lighters, and any other means of starting fires must be kept away from and out of the reach of children. ()

c. Other weapons that could cause harm to children must be stored out of reach of children. ()

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. ()

07. Storage of Hazardous Materials. Cleaning materials, flammable liquids, detergents, aerosol cans, 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. ()

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. ()

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

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. ()

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. ()

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. ()

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. ()

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

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: ()

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. ()

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. ()

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. ()

c. Wading pools and buckets must be empty when not in use. ()

d. Children must be under direct supervision of an employee who is certified in CPR and first aid while using a bath tub, pool, hot tub, pond, or other body of water. ()

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. ()

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. ()

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

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. ()

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. ()

c. Outdoor play areas must be designed so that all parts are always visible and are easily supervised by an employee. ()

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. ()

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. ()

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. ()

01. Posting of License and Other Information. ()

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. ()

b. A daycare must post contact information of the Department and the statewide number to file daycare complaints. ()

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. ()

03. Critical Incidents. A daycare operator must report any of the following to the Department within twenty four (24) hours: ()

a. Serious injury or death of a child at the facility; ()

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. ()

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 without first obtaining a daycare license from the Department or to fail to post the license in a place easily seen by a parent or the general public. ()

02. Grace Period. The Department may grant a grace period of no more than sixty (60) days to come into compliance with the minimum standards set forth in this chapter and with Title 39, Chapter 11, Idaho Code. The individual must agree to begin the application process as described in Section 321 of these rules within one (1) business day. ()

~~396.~~ -- 399. (RESERVED).