

Dear Senators LODGE, Broadsword, and Bock and
Representatives BLOCK, Hartgen and Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the Department of Health and Welfare:

IDAPA 16.06.02 - Rules Governing Standards for Child Care Licensing (Fee Rule) (Docket No.
16-0602-1101)

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 07/29/2011. 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 08/26/2011.

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 334-4845, or send a written request to the address or FAX
number indicated on the memorandum enclosed.



Jeff Youtz
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

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

FROM: Principal Legislative Research Analyst - Brooke Murdoch

DATE: July 12, 2011

SUBJECT: Department of Health and Welfare

16.06.02 - Rules Governing Standards for Child Care Licensing (Fee Rule) (Docket No. 16-0602-1101)

The Department of Health and Welfare submits notice of temporary and proposed fee rulemaking at IDAPA 16.06.02 - Rules Governing Standards for Child Care Licensing. This rulemaking was prompted by House Bill No. 129a, which was passed by the 2011 Legislature. House Bill No. 129a amended Section 39-1107, Idaho Code, to increase the maximum total fee amount to be assessed for a basic daycare license. House Bill No. 129a also amended Section 39-1109, Idaho Code, to revise the safety standards and child:staff ratio requirements. The Department states that this temporary and proposed rule makes changes to the Child Care Licensing rules to meet statutory requirements for daycare licensing. This rulemaking also revises provisions concerning provisional licenses by removing language relating to a 180 day expiration of a provisional license and removing daycare centers, group daycare facilities and family daycare homes voluntarily licensed by the Department from the list of entities that may receive a provisional license.

We note that Section 39-1107, Idaho Code, requires the Department to "establish by rule the maximum total fee to be assessed for a basic daycare license which shall not exceed" certain specified amounts depending on the number of children in attendance or the type of facility. Rather than establishing the fee as directed by statute, this temporary and proposed rule repeats the statutory language. We may suggest that in new Section 320.01 of the rule, page 123, the language "must not exceed" be removed and replaced with "shall be."

The Department states that public hearings concerning this rulemaking will be held on July 14, 18, 26 and 27, 2011, at various times and locations throughout the state.

Aside from the above comment, the temporary and proposed rule is within the authority granted to the Department in Sections 39-1107 and 39-1111, Idaho Code.

cc: Department of Health and Welfare - Administrative Procedures Section
Tamara Prisock
Valerie Burgess

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING
DOCKET NO. 16-0602-1101 (FEE RULE)
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of this temporary rule is July 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005, Idaho Code, and House Bill (HB)129a.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

| | |
|--|---|
| Thursday, July 14, 2011 3:00 p.m. local time | Monday, July 18, 2011 1:00 p.m. local time |
| DHW - Region I 1250 Ironwood Dr. #100 Conf. Room 44 Coeur d Alene, ID | DHW - Region III 3402 Franklin Rd. Teton Room Caldwell, ID |
| Tuesday, July 26, 2011 2:00 p.m. local time | Wednesday, July 27, 2011 12:00 p.m. local time |
| DHW - Blackfoot Field Office 701 East Alice Self-Reliance Conf. Rm. Blackfoot, ID | DHW - Region V 601 Pole Line Road Front Conf. Rm. Twin 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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2011 Legislature adopted HB129a that increased the maximum fee amount that could be assessed for daycare centers in Section 39-1107, Idaho Code. Under Section 39-1109, Idaho Code, the safety standards and staff child ratios were also amended. This temporary and proposed rule docket makes changes to the Child Care Licensing rules to meet statutory requirements for daycare licensing effective July 1, 2011.

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

These temporary rules are necessary to protect the public health, safety, and welfare of children in daycare and to comply with statutory requirements. These rules became effective on July 1, 2011.

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

Section 39-1107, Idaho Code, established a maximum licensing fee for a basic daycare license not to exceed \$325 for daycare centers with more than 25 children, \$250 for daycare centers with 13 - 25 children, and \$100 for group daycare facilities and family daycare homes who choose to be voluntarily licensed.

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 projected income from fees is \$60,630. The Department estimates the health and safety inspections will cost \$102,660. The total fiscal impact of these rules is (\$42,030), which will be covered by the Federal Child Care Development Fund that is 100% federally funded.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted during 2011, because these licensing requirements were established by statutory requirements adopted by the 2011 Legislature in HB 129a.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Valerie Burgess (208) 334-5648.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2011.

DATED this 3rd day of June, 2011.

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

**THE FOLLOWING IS THE TEMPORARY RULE AND PROPOSED TEXT
OF FEE DOCKET NO. 16-0602-1101**

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. (4-7-11)

01. Approval of Application. A license will be issued to any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential facility, children's therapeutic outdoor program, children's camp, or children's agency found to be in conformity with these rules governing the home or facility. The license is issued according to the terms specified in the licensing study and will be mailed to the applicant. (4-7-11)

02. Regular License. A regular license will be issued to any daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, or children's agency found to be in conformity with these

- rules governing the facility and will specify the terms of licensure, such as: (4-7-11)
- 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 for a foster home, children's agency, children's residential care facility, children's therapeutic outdoor program, or children's camp is in effect for one (1) year from the date of issuance unless suspended or revoked earlier; (4-7-11)
 - e. A regular license for a daycare 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 (4-7-11)
 - 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 may be issued to the foster home of a relative who has received a waiver of licensing rules provided: (4-7-11)
- 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 requirements have been met; (4-7-11)
 - 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 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: (4-7-11)
- 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.** A provisional license may be issued to a ~~daycare center, group daycare facility, family daycare home voluntarily licensed by the Department,~~ foster home, children's residential care facility, children's therapeutic outdoor program, children's camp, 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. (~~4-7-11~~)(7-1-11)T

- a. A provisional license will be in effect for not more than six (6) months. (4-7-11)
- b. Only one (1) provisional license will be issued to a ~~daycare center, group daycare facility, family daycare home voluntarily licensed by the Department,~~ foster home, children's residential care facility, children's agency, children's therapeutic outdoor program, or children's camp in any twelve-month period of time under Sections 39-1216 ~~and 39-1102,~~ Idaho Code. ~~(4-7-11)~~(7-1-11)T
- 06. Limited License.** A limited license for a foster home may be issued for the care of a specific child in a home which may not meet the requirements for a license, provided that: (3-30-01)
- a. The child is already in the home and has formed strong emotional ties with the foster parents; and (3-30-01)
- b. It can be shown that the child's continued placement in the home would be more conducive to their welfare than would removal to another home. (3-30-01)
- 07. Denial of Application.** In the event that an application is denied, a signed letter will be sent directly to the applicant by registered or certified mail, advising the applicant of the denial and stating the basis for such denial. An applicant whose application has been denied may not reapply until after one (1) year has elapsed from the date on the denial of application. (4-7-11)
- 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)

(BREAK IN CONTINUITY OF SECTIONS)

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 operator is not in compliance with these rules. Children in a daycare center, group daycare facility, or family daycare home voluntarily licensed by the Department, 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: (4-7-11)

- 01. Endangers Health or Safety.** Any condition that endangers the health or safety of any resident or child. (4-7-11)
- 02. Not in Substantial Compliance.** A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility is not in substantial compliance with these rules. (4-7-11)
- 03. No Progress to Meet Plan of Correction.** A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted a plan of correction. (4-7-11)
- 04. Repeat Violations.** Repeat violations of any requirement of these rules or provisions of Title 39,

Chapters 11 and 12, Idaho Code.

(4-7-11)

05. Misrepresented or Omitted Information. A foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility has knowingly misrepresented or omitted information on the application or other documents pertinent to obtaining a license. (4-7-11)

06. Refusal to Allow Access. Refusal to allow Department representatives full access to the foster home, children's agency, daycare center, group daycare facility, family daycare home voluntarily licensed by the Department, children's therapeutic outdoor program, children's camp, or children's residential care facility and its grounds facilities and records. (4-7-11)

07. Violation of Terms of Provisional License. A children's agency, ~~daycare center, group daycare facility, family daycare home voluntarily licensed by the Department~~ foster home, children's therapeutic outdoor program, children's camp, or children's residential care facility that has violated any of the terms or conditions of a provisional license. ~~(4-7-11)~~(7-1-11)T

310. -- 32019. (RESERVED)

320. DAYCARE LICENSING MAXIMUM TOTAL FEES.

A nonrefundable licensing fee must be paid to the Department prior to the issuance or renewal of a daycare license. (7-1-11)T

01. Daycare Licensing Maximum Total Fee Amounts. The maximum total fee for initial licensure or renewal of a daycare center, group daycare facility, or family daycare home voluntarily licensed must not exceed the following amounts: (7-1-11)T

a. For a daycare center with more than twenty-five (25) children in attendance at any given time - three hundred twenty-five dollars(\$325). (7-1-11)T

b. For a daycare center with thirteen (13) to twenty-five (25) children in attendance at any given time - two hundred fifty dollars (\$250). (7-1-11)T

c. For a group daycare facility - one hundred dollars (\$100). (7-1-11)T

d. For a family daycare home voluntary license - one hundred dollars (\$100). (7-1-11)T

02. Daycare Fire Inspection Fee. Daycare fire inspection fees are payable to the local fire department or fire district official. (7-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

325. ISSUANCE OF LICENSE.

01. Department Action. The Department will order a health and safety inspection of the daycare facility once the application for licensure is complete and the licensing fee has been paid. (4-7-11)

02. Issuance of a Regular License. If the Department determines the applicant is in compliance with the rules and minimum standards set forth in these rules, the Department will, within sixty (60) days from the date the completed application is submitted, issue one (1) of the following licenses: (4-7-11)

a. Daycare Center License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; (4-7-11)

b. Group Daycare Facility License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect; or (4-7-11)

c. Family Daycare Home License, stating the type of facility, the number of children who may be in attendance, and the length of time the license is in effect. (4-7-11)

~~**03.** *Issuance of Provisional License.* A provisional daycare license may be issued for a period of time not to exceed one hundred eighty (180) days provided this does not effect the health, safety, and well being of any child in daycare at the home or facility and the Department determines that a licensing standard cannot be met but is expected to be corrected within six (6) months. A provisional daycare license automatically expires after one hundred eighty (180) days and can only be issued one (1) time in any twelve month period. (4-7-11)~~

043. **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. (4-7-11)

054. **Incomplete Application.** The Department is not required to take any action on an application until the application is complete. (4-7-11)

065. **Notification of License Renewal.** The Department will notify the licensed daycare operator at least ninety (90) days prior to expiration of the license. (4-7-11)

076. **List of Licensed Daycare Facilities.** The Department will maintain a list of all licensed daycare facilities for public use. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

335. CHILD-STAFF RATIOS AND MAXIMUM GROUP SIZES.

Under Section 39-1109, Idaho Code, the Department determines the maximum allowable child-staff ratio of children to staff and maximum group size as described in the tables provided in Subsections 335.01 and 335.02 of this rule based on a point system. (4-7-11)(7-1-11)T

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

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

The maximum allowable points for each staff member is twelve (12), using the following point system which is based on the age of each child in attendance: (4-7-11)(7-1-11)T

- a. Under the age of twenty-four (24) months, each child equals two (2) points. (7-1-11)T
- b. From the age of twenty-four (24) months to under the age of thirty-six (36) months, each child equals one and one-half (1 1/2) points. (7-1-11)T
- c. From the age of thirty-six (36) months to under the age of five (5) years, each child equals one (1) point. (7-1-11)T
- d. From the age of five (5) years to under the age of thirteen (13) years, each child equals one-half (1/2) point. (7-1-11)T

~~02. Group Daycare Facilities and Licensed Family Daycare Homes — Child Staff Ratios and Maximum Group Size.~~

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

(4-7-11)

~~03. Compliance with Child-Staff Ratios and Maximum Group Sizes.~~ Child-staff ratios ~~and maximum group sizes~~ must be maintained at all times during all hours of operation when children are in attendance and when transporting children. (4-7-11)(7-1-11)T

a. Each child in attendance is counted by the Department ~~as one (1) child~~ for the purposes of ~~calculating maximum allowable points, counting the number of children in attendance, and for determining compliance with child-staff ratios;~~ (4-7-11)(7-1-11)T

~~b. The ratio of children to staff and maximum group size in mixed age groups is determined by the age of the youngest child in attendance;~~ (4-7-11)

~~eb.~~ Each adult staff member who is providing direct care for a child or children is counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios; and (4-7-11)

~~dc.~~ Each staff member sixteen (16) and seventeen (17) years of age under the supervision of an adult staff member, when providing direct care for a child or children, may be counted by the Department as one (1) staff member for the purposes of counting the number of staff on-duty and determining compliance with child-staff ratios. (4-7-11)

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

one (1) adult staff member is:

~~(4-7-11)~~(7-1-11)T

a. Awake and on duty on the premises at all times during regular business hours or when children are in attendance, and (4-7-11)

b. Currently certified in pediatric rescue breathing, infant-child CPR, and first-aid treatment. (4-7-11)

05. Napping Children. Napping children who are not within sight of a staff member must be within easy hearing distance at all times. (4-7-11)

06. Overnight Daycare. For daycare operators providing overnight care of children, the following must apply: (4-7-11)

a. A sleeping child must sleep on the same level as the staff member who must be able to hear the child; and (4-7-11)

b. A staff member must be awake and on duty to release and receive a child. (4-7-11)

COST/BENEFIT ANALYSIS FORM
Department of Health and Welfare
Administrative Procedures Section (APS)

Docket Number: 16-0602-1101

Agency Contact: Valerie Burgess
Phone: (208) 334-5648

Rules Specialist: Bev Barr
Phone: (208) 334-5736

Date Analysis Completed: 4/12/11

IDAPA Chapter Number and Title: IDAPA 16.06.02, "Rules Governing Standards for Child Care Licensing"

Fee Rule Status: **Proposed** **Temporary** **Effective date:** 7/1/11 T

Instructions:

Section 67-5223(3), Idaho Code, adopted by the 2010 Legislature, requires that all proposed rules in which a fee or charge is imposed or increased must include a cost/benefit analysis of the rule change at the time the rule text is submitted for publication. This analysis needs to include an estimated cost to the agency to implement the rule and an estimated cost to be borne by citizens, or the private sector, or both. This statute change is effective July 1, 2010, and must be completed for fee rules published in the *Idaho Administrative Bulletin* after that date.

Cost/Benefit Analysis For This Rule Change:

The licensing fees in Docket 16-0602-1101 for a basic daycare license will cost a provider the following:
Daycare Center (with more than 25 children in attendance at any given time) - \$325;
Day care Center (with 13 to 25 children in attendance at any given time) - \$250;
Group Daycare Facility (with 7 to 12 children) - \$100; and
Family Daycare Home Voluntarily Licensed (for 6 or fewer children) - \$100

The cost to the Department will be approximately \$42,030, which is the difference for licensing fees collected and the expenditures for the health and safety inspections. This amount will be covered by the Idaho Child Care Development Fund which is 100% federally funded.

State daycare licensing helps to ensure the safety of children in daycare settings by establishing minimum health and safety standards.