

TITLE 39
HEALTH AND SAFETY

CHAPTER 35
IDAHO CERTIFIED FAMILY HOMES

39-3501. LEGISLATIVE INTENT AND DECLARATION. The purpose of a certified family home in Idaho is to provide a homelike alternative designed to allow individuals to remain in a more normal family-styled living environment, usually within their own community. Certified family homes provide a home to individuals who are elderly, individuals with a mental illness, developmental disabilities, physical disabilities or to those unable to live alone, and whose mental, emotional and physical condition can be met by the care provider to delay the need for more expensive congregate care or other institutional care. The home must obtain a waiver under section 39-1301A, Idaho Code, to care for two (2) persons requiring care described in section 39-1301(b), Idaho Code.

It is the intent of the legislature that certified family homes be available to meet the needs of those residing in these homes while providing a more homelike environment focused on integrated community living rather than other more restrictive environments and by recognizing the capabilities of individuals to direct their own care.

The certified family home shall be operated by a provider who has demonstrated the knowledge and experience required to provide safe and appropriate services to each resident of the certified family home. The provider shall protect each resident's rights and provide appropriate services to meet each resident's needs. For those residents whose care is not paid with public funds, the certified family home shall conduct an objective, individualized assessment to determine resident needs, develop a comprehensive negotiated plan of service to meet those needs, deliver appropriate services to meet resident needs and ensure resident rights are honored.

The department is responsible for monitoring and enforcing the provisions of this chapter. This responsibility includes, but is not limited to: monitoring the condition of the certified family home, ensuring that each resident has an individualized written plan of care that includes activities of daily living and support services, and managing enforcement procedures when violations occur.

[39-3501, added 2005, ch. 280, sec. 34, p. 899.]

39-3502. DEFINITIONS. As used in this chapter:

(1) "Abuse" means a nonaccidental act of sexual, physical or mental mistreatment or injury of a resident through the action or inaction of another individual.

(2) "Activities of daily living" means the performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment.

(3) "Adult" means a person who has attained the age of eighteen (18) years.

(4) "Advocate" means an authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by the certified family home.

(5) "Assessment" means the conclusion reached using uniform criteria which identifies resident strengths, weaknesses, risks and needs, to include functional, medical and behavioral. The assessment criteria shall be developed by the department and the advisory council.

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

(7) "Care provider" means the adult member of the home family responsible for maintaining the certified family home. The care provider and the legal owner may not necessarily be the same person. The care provider must live in the home.

(8) "Certified family home" means a family-styled living environment in which two (2) or fewer adults live who are not able to reside in their own home and who require care, help in daily living, protection and security, supervision, personal assistance and encouragement toward independence.

(9) "Certifying agent" means a person acting under the authority of the department to participate in the certification, inspection and regulation of a family home.

(10) "Chemical restraint" means any drug that is used for discipline or convenience and not required to treat medical symptoms.

(11) "Client" means any person who receives financial aid and/or services from an organized program of the department.

(12) "Core issues" means abuse, neglect, exploitation, inadequate care, inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system, and situations in which advocates, representatives and department certification staff are denied access to records, residents or the certified family home.

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

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

(15) "Exploitation" means the misuse of a vulnerable adult's funds, property or resources by another person for profit or advantage.

(16) "Governmental unit" means the state, any county, any city, other political subdivision, or any department, division, board or other agency thereof.

(17) "Home family" means all individuals related by blood, marriage or adoption, other than residents residing in the certified family home.

(18) "Inadequate care" occurs when a certified family home fails to provide the services required to meet the terms of the negotiated plan of service or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services or a safe living environment; or engages in violations of residents' rights or takes residents who have been admitted in violation of the provisions of section 39-3507, Idaho Code.

(19) "Medical foster home" means a private home approved by the department of veterans affairs in which a caregiver provides long-term primary health care to veteran residents with serious chronic disease and disability, as described in 38 CFR part 17.

(20) "Neglect" means failure to provide food, clothing, shelter, or medical care necessary to sustain life and health of a resident.

(21) "Negotiated service agreement" means the agreement reached by the resident or their representative, if applicable, and the facility, based on the assessment, physician's orders if any, admission records if any, and desires of the resident and which outlines services to be provided and the obligations of the certified family home and the resident.

(22) "Personal assistance" means the provision by the certified family home of one (1) or more of the following services:

- (a) Assisting the resident with activities of daily living.
- (b) Arranging for supportive services.
- (c) Being aware of the resident's general whereabouts.
- (d) Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety and well-being.

(23) "Political subdivision" means a city or county.

(24) "Representative of the department" means an employee of the department.

(25) "Resident" means an adult who lives in a certified family home and who requires personal assistance or supervision.

(26) "Room and board" means lodging and meals.

(27) "Substantial compliance" means a certified family home has no core issue deficiencies.

(28) "Substitute caregiver" means an adult designated by the certified family home provider to provide care and services in a certified family home in the temporary absence of the regular care provider.

(29) "Supervision" means administrative activity which provides the following: protection, guidance, knowledge of the resident's whereabouts and monitoring activities. The care provider is responsible for providing appropriate supervision based on each resident's negotiated service agreement.

(30) "Supportive services" means the specific services that are provided to the resident in the community and that are required by the negotiated service agreement or reasonably requested by the resident.

[39-3502, added 1993, ch. 374, sec. 1, p. 1355; am. 1994, ch. 284, sec. 2, p. 890; am. 1996, ch. 207, sec. 25, p. 645; am. 2000, ch. 274, sec. 65, p. 833; am. 2005, ch. 280, sec. 35, p. 900; am. 2007, ch. 90, sec. 20, p. 257; am. 2015, ch. 47, sec. 1, p. 99.]

39-3503. PAYMENT AGREEMENTS. Each care provider shall negotiate a written, signed and dated agreement between the care provider and a resident specifying the amount of monthly payment to be paid by the resident and the method for payment.

[(39-3503) 39-3575, added 1994, ch. 284, sec. 1, p. 890; am. 2000, ch. 274, sec. 113, p. 854; am. and redesig. 2005, ch. 280, sec. 53, p. 911.]

39-3504. PHYSICAL AND ENVIRONMENTAL STANDARDS. Standards shall be developed through the regulatory process by the department to assure a safe, sanitary and comfortable environment for residents of certified family homes.

[(39-3504) 39-3578, added 1994, ch. 284, sec. 1, p. 890; am. 2000, ch. 274, sec. 116, p. 854; am. and redesig. 2005, ch. 280, sec. 55, p. 911.]

39-3505. RULES. The board shall have the power and it shall be its duty to promulgate appropriate rules necessary to implement and enforce the standards for certified family homes pursuant to this act including, but not limited to, the following:

(1) A home shall be certified for no more than two (2) adults, however, upon an application by the owner and upon a finding by the department that residents can be cared for safely and appropriately based on the residents' specific needs, the department may authorize not more than four (4) adults

to be placed in a certified family home which is owner-occupied and which applies to the department for the authorization. Certification as a four (4) resident certified family home shall not be transferable to another person or entity. Four (4) resident certified family homes shall be subject to all statutes and rules governing certified family homes but shall not be subject to the residential care facility administrator licensing requirements of chapter 42, title 54, Idaho Code, or section 39-3340, Idaho Code, licensing of residential care or assisted living facilities for individuals with mental illness, developmental disabilities or physical disabilities. This provision implementing four (4) resident certified family homes shall be effective on July 1, 2001. The department shall promulgate rules for four (4) resident certified family homes through the negotiated rulemaking process. Nothing in this subsection shall be construed to authorize increased group size for providers of any form of care other than certified family homes.

(2) A care provider is the adult who has applied to be the care provider and who is responsible for client care and following the laws and rules of the certified family home program.

(3) A home cannot be approved as certified for family home care if it also provides room and board for other persons. A waiver may be granted by the department where a married couple wishes to live together in the same certified family home and one (1) member of the couple does not require certified family home care.

(4) A home cannot be approved as a certified family home and for child foster care at the same time, unless a waiver is granted by the department.

(5) The care provider must have sufficient resources to maintain the home and the services offered.

(6) Information obtained by the care provider shall be held confidential except to representatives of the department to provide services or determine compliance with this chapter or upon consent of the individual or his legal guardian.

(7) Recordkeeping and reporting requirements as may be deemed necessary.

(8) Requirements to assure the safety and adequate care of residents to include the recording of incidents and accidents.

(9) Management of medications.

(10) Inspections. The certifying agency may inspect and investigate certified family homes as necessary to determine compliance with this chapter and the department's rules.

(11) Revocation of certification or other enforcement actions.

[(39-3505) 39-3561, added 1994, ch. 284, sec. 1, p. 887; am. 2000, ch. 274, sec. 101, p. 851; am. 2003, ch. 201, sec. 3, p. 531; am. and redesign. 2005, ch. 280, sec. 43, p. 908.]

39-3506. STATE CERTIFICATION TO SUPERSEDE LOCAL REGULATION. The provisions of this chapter, and the rules promulgated pursuant to this chapter, shall supersede any program of any political subdivision of the state which licenses or sets standards for certified family homes.

[39-3506, added 1993, ch. 374, sec. 1, p. 1357; am. 2000, ch. 274, sec. 68, p. 837; am. 2005, ch. 280, sec. 36, p. 902.]

39-3507. ADMISSIONS. A certified family home shall not admit or retain any resident requiring a level of services or type of service which the certified family home does not have the time or appropriate skills to provide.

[39-3507, added 1993, ch. 374, sec. 1, p. 1358; am. 1996, ch. 207, sec. 28, p. 648; am. 2000, ch. 274, sec. 69, p. 837; am. 2005, ch. 280, sec. 37, p. 902.]

39-3508. ASSESSMENT. The department shall employ uniform assessment criteria to assess functional and cognitive disability. The conclusions shall be deemed the assessment and shall be used to provide appropriate placement and funding for service needs.

[39-3508, added 1996, ch. 207, sec. 30, p. 649; am. 2005, ch. 280, sec. 38, p. 903.]

39-3509. NEGOTIATED SERVICE AGREEMENT OR PLAN OF SERVICE. Each resident shall be provided a negotiated service agreement or plan of service to provide for coordination of services and for guidance of the care provider where the person resides. Upon completion, the agreement shall clearly identify the resident and describe the services to be provided to the resident and how such services are to be delivered.

[39-3509, added 1996, ch. 207, sec. 32, p. 649; am. 2005, ch. 280, sec. 39, p. 903.]

39-3510. SEPARABILITY. If any section, subsection, paragraph, sentence, or any other part of this chapter is adjudged unconstitutional or invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter, but shall be confined to this section, subsection, paragraph, sentence, or any other part of this chapter directly involved in the controversy in which the judgment has been rendered.

[(39-3510) 39-3579, added 1994, ch. 284, sec. 1, p. 890; am. and redesign. 2005, ch. 280, sec. 56, p. 911.]

39-3511. ADVISORY COUNCIL. The department shall establish a state level advisory council consisting of twenty (20) members appointed by the organizations and/or agencies represented on the council. The chairman of the council shall be elected from the membership. The members of the council shall be determined by the bylaws of the council.

[39-3511, added 2005, ch. 280, sec. 40, p. 904; am. 2011, ch. 123, sec. 4, p. 347.]

39-3512. APPLICATION OF PROVISIONS. (1) Any individual providing care and housing commercially to the elderly, or individuals with mental illness, developmental disabilities, or physical disabilities shall at a minimum, meet the requirements of this chapter or other provision of law governing care and housing for the elderly, individuals with mental illness, developmental disabilities or physical disabilities if those provisions are more restrictive.

(2) Medical foster homes are exempt from the certification requirements under this chapter if the home provides care only to veterans who are not medicaid recipients and who are approved by the department of veterans affairs to receive care in the home.

(3) Homes that provide care to nonveterans as well as veterans shall not be exempt from the certification requirements of this chapter.

[(39-3512) 39-3580, added 1996, ch. 207, sec. 49, p. 658; am. 2000, ch. 274, sec. 117, p. 855; am. and redesign. 2005, ch. 280, sec. 57, p. 912; am. 2015, ch. 47, sec. 2, p. 101.]

39-3513. TRAINING. The department shall assure that care providers receive, at a minimum, training which shall include the rights of the resident, and a basic understanding of the psychosocial and physical needs of residents to be served. The department will require annual continuing education requirements for care providers as defined by rules promulgated pursuant to this chapter.

[(39-3513) 39-3577, added 1994, ch. 284, sec. 1, p. 890; am. 2000, ch. 274, sec. 115, p. 854; am. and redesign. 2005, ch. 280, sec. 54, p. 911.]

39-3516. RESIDENT RIGHTS. A certified family home must protect and promote the rights of each resident, including each of the following rights:

(1) Resident records. Each certified family home must maintain and keep current a record of the following information on each resident:

(a) A copy of the resident's current negotiated plan of service and physician's history and physical that includes current medications and special treatments.

(b) Written acknowledgement that the resident has received copies of the rights.

(c) A record of all personal property and funds which the resident has entrusted to the certified family home, including copies of receipts for the property.

(d) Information about any specific health problems of the resident which may be useful in a medical emergency.

(e) The name, address and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident.

(f) Any other health-related, emergency or pertinent information which the resident requests the certified family home to keep on record.

(g) The current admission agreement between the resident and the certified family home.

(2) Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups.

(3) Humane care and environment (dignity and respect).

(a) Each resident shall have the right to humane care and a humane environment, including the following:

(i) The right to a diet which is consistent with any religious or health-related restrictions.

(ii) The right to refuse a restricted diet.

(iii) The right to a safe and sanitary living environment.

(b) Each resident shall have the right to be treated with dignity and respect, including:

(i) The right to be treated in a courteous manner by staff.

(ii) The right to receive a response from the certified family home to any request of the resident within a reasonable time.

(4) Personal possessions. Each resident shall have the right to:

(a) Wear his own clothing.

(b) Determine his own dress or hair style.

(c) Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity.

(d) Be provided a separate storage area in his own living area and at least one (1) lockable cabinet or drawer for keeping personal property if requested by the resident.

(5) Personal funds. Residents whose board and care is paid for by public assistance shall retain, for their personal use, the difference between their total income and the applicable board and care allowance established by department rules.

(a) A certified family home shall not require a resident to deposit his personal funds with the certified family home.

(b) Once the certified family home accepts the written authorization of the resident, the certified family home must hold, safeguard and account for such personal funds under a system established and maintained by the certified family home in accordance with this subparagraph.

(6) Management of personal funds. Upon a certified family home's acceptance of written authorization of a resident, the certified family home must manage and account for the personal funds of the resident deposited with the certified family home. Upon the death of a resident with such an account, the certified family home must promptly convey the resident's personal funds, and a final accounting of such funds, to the individual administering the resident's estate. For clients of the department, the remaining balance of funds shall be refunded to the department.

(7) Access and visitation rights. Each certified family home must permit:

(a) Immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designee, or by the resident's individual physician.

(b) Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives.

(c) Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident.

(d) Reasonable access to a resident by any entity or individual that provides health, social, legal or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(e) Access by protection and advocacy system. The certified family home shall permit advocates and representatives of the protection and advocacy system designated by the governor pursuant to 42 U.S.C. 15043 and 42 U.S.C. 10801 et seq. access to residents, certified family homes and records in accordance with applicable federal law and regulations.

(8) Employment. Each resident shall have the right to refuse to perform services for the certified family home except as contracted for by the resident and the care provider of the home. If the resident is hired by the certified family home to perform services as an employee of the home, the wage paid to the resident shall be consistent with state and federal law.

(9) Confidentiality. Each resident shall have the right to confidentiality of personal and clinical records.

(10) Freedom from abuse, neglect and restraints. Each resident shall have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints.

(11) Freedom of religion. Each resident shall have the right to practice the religion of his choice or to abstain from religious practice. Residents shall also be free from the imposition of the religious practices of others.

(12) Control and receipt of health-related services. Each resident shall have the right to control his receipt of health-related services, including:

- (a) The right to retain the services of his own personal physician, dentist and other health care professionals.
- (b) The right to select the pharmacy or pharmacist of his choice.
- (c) The right to confidentiality and privacy concerning his medical or dental condition and treatment.

(13) Grievances. Each resident shall have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the certified family home to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(14) Participation in other activities. Each resident shall have the right to participate in social, religious and community activities that do not interfere with the rights of other residents in the certified family home.

(15) Examination of home inspection reports. Each resident shall have the right to examine, upon reasonable request, the results of the most recent home inspection of the certified family home conducted by the department with respect to the certified family home and any plan of correction in effect with respect to the certified family home.

[39-3516, added 1993, ch. 374, sec. 1, p. 1360; am. 1996, ch. 207, sec. 38, p. 651; am. 2000, ch. 274, sec. 74, p. 838; am. 2005, ch. 280, sec. 41, p. 904.]

39-3519. ACCESS BY ADVOCATES AND REPRESENTATIVES. A certified family home shall permit advocates and representatives of community legal services programs, including the protection and advocacy system pursuant to 42 U.S.C. 15043 and 42 U.S.C. 10801 et seq., whose purposes include rendering assistance without charge to residents, to have access to the certified family home at reasonable times.

[39-3519, added 1993, ch. 374, sec. 1, p. 1363; am. 2000, ch. 274, sec. 76, p. 841; am. 2005, ch. 280, sec. 42, p. 907.]

39-3520. APPLICATION FOR CERTIFICATION. An application for certification shall be made to regional offices of the department upon forms provided by the department and shall contain such information as the department reasonably requires which will include a background check and fingerprinting through the department. Following receipt of an application, the department shall conduct a study, including a visit to the home, to determine the capability of the provider to provide care as a certified family home.

[(39-3520) 39-3562, added 1994, ch. 284, sec. 1, p. 888; am. 2000, ch. 274, sec. 102, p. 852; am. 2000, ch. 469, sec. 97, p. 1549; am. and redesig. 2005, ch. 280, sec. 44, p. 909.]

39-3521. ISSUANCE AND RENEWAL OF CERTIFICATION. Each certificate shall be issued only for the home and provider named in the application and shall not be transferable or assignable. Each certified family home is required to renew its certification annually. The application for renewal shall be filed with the regional office of the department within thirty (30) days prior to the date of expiration. The existing certificate, unless suspended

or revoked, shall remain in force and effect until the department has acted upon the application renewal when such application for renewal is timely filed.

[(39-3521) 39-3563, added 1994, ch. 284, sec. 1, p. 888; am. 2000, ch. 274, sec. 103, p. 852; am. and redesig. 2005, ch. 280, sec. 45, p. 909.]

39-3522. PROVISIONAL CERTIFICATION. Upon initial investigation, should an applicant for a certificate be unable to meet a standard because of conditions that are unlikely to endure beyond six (6) months, the department may grant a provisional certificate pending the satisfactory correction of all deficiencies and provided that the deficiencies do not jeopardize the health and safety of residents. No more than one (1) provisional certificate shall be issued to the same certified family home in any twelve (12) month period.

[(39-3522) 39-3564, added 1994, ch. 284, sec. 1, p. 888; am. 2000, ch. 274, sec. 104, p. 852; am. and redesig. 2005, ch. 280, sec. 46, p. 910.]

39-3523. DENIAL OR REVOCATION OF A CERTIFICATE. The department may deny the issuance of a certificate or revoke any certificate when persuaded by a preponderance of evidence that such conditions exist as to endanger the health or safety of any resident, or when the home is not in substantial compliance with the provisions of this chapter or rules promulgated pursuant to this chapter.

[(39-3523) 39-3565, added 1994, ch. 284, sec. 1, p. 889; am. and redesig. 2005, ch. 280, sec. 47, p. 910.]

39-3524. PROCEDURE FOR DENIAL OR REVOCATION OF A CERTIFICATE. Immediately upon the denial of any application for a certificate, or the revocation of a certificate, the department shall notify the applicant in writing. The proceedings shall be conducted in accordance with the Idaho administrative procedure act and the department's rules.

[(39-3524) 39-3566, added 1994, ch. 284, sec. 1, p. 889; am. and redesig. 2005, ch. 280, sec. 48, p. 910.]

39-3525. EFFECT OF PREVIOUS REVOCATION OR DENIAL OF A CERTIFICATE. The department is not required to review the application of an applicant who has had a certificate denied or revoked until five (5) years have elapsed from the date of certificate denial, revocation, or appeals.

[(39-3525) 39-3567, added 1994, ch. 284, sec. 1, p. 889; am. and redesig. 2005, ch. 280, sec. 49, p. 910.]

39-3526. RULES PROVIDED. Upon initial certification, certified family homes shall be provided a printed copy of all applicable statutes and rules by the department, without charge.

[(39-3526) 39-3568, added 1994, ch. 284, sec. 1, p. 889; am. 2000, ch. 274, sec. 105, p. 853; am. and redesig. 2005, ch. 280, sec. 50, p. 910.]

39-3527. RESPONSIBILITY FOR INSPECTIONS AND TECHNICAL ASSISTANCE. The certifying agency shall inspect and provide technical assistance to certified family homes. The department may provide consulting services upon request to any certified family home to assist in the identification and correction of deficiencies and in the upgrading of the quality of care provided by the certified family home.

[39-3527, added 2005, ch. 280, sec. 51, p. 911.]

39-3528. OPERATING WITHOUT CERTIFICATION -- MISDEMEANOR. Any person who operates a certified family home within the state without first obtaining certification as provided in this chapter shall be guilty of a misdemeanor.

[(39-3528) 39-3571, added 1994, ch. 284, sec. 1, p. 889; am. 2000, ch. 274, sec. 108, p. 853; am. and redesign. 2005, ch. 280, sec. 52, p. 911.]

39-3554. WAIVER OR VARIANCE. The board shall provide, by rule, a procedure whereby a temporary variance or a permanent waiver of a specific standard may be granted in the event that good cause is shown for such a variance or waiver and providing that a variance or waiver of a standard does not endanger the health and safety of any resident. The decision to grant a variance or waiver shall not be considered as precedent or be given any force of effect in any other proceeding.

[39-3554, added 1993, ch. 374, sec. 1, p. 1370.]

39-3556. COMPLAINTS. (1) A person who believes that any provision of this chapter has been violated may file a complaint with the certifying agency. Any such complaint shall be subject to the exemption from disclosure set forth in section 74-105(16), Idaho Code.

(2) The certifying agency shall investigate, or cause to be investigated, any complaint alleging a violation of this chapter or applicable rules. If the certifying agency reasonably believes there has been such a violation, it shall conduct an inspection of the facility.

[39-3556, added 2006, ch. 282, sec. 2, p. 869; am. 2015, ch. 141, sec. 90, p. 445.]