

1 HEALTH AND SAFETY

2 CHAPTER 11

3 BASIC DAY CARE LICENSE

4 39-1101. POLICY. It is hereby declared to be the policy of this  
5 state to establish a minimum statewide system for the protection of  
6 children in day care ~~center~~ **facilities**. This system is intended to  
7 establish minimum standards, while still leaving primary responsibility  
8 for evaluation and selection of day care services with parents. The  
9 minimum standards established by this chapter shall not be construed as  
10 preempting more stringent regulation by county or city ordinance.

11 39-1102. DEFINITIONS. As used in this chapter:

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

13 (2) "Child" means a person less than ~~twelve~~ **thirteen** (~~12~~**3**) years  
14 of age.

15 (3) "Day care" means care and supervision provided for  
16 compensation during part of a twenty-four (24) hour day, for a child or  
17 children not related by blood, ~~or~~ marriage **or legal guardianship** to the  
18 person or persons providing the care, in a place other than the child's  
19 or children's own home or homes.

20 (4) "Day care center" means a place or facility providing day care  
21 for compensation for thirteen (13) or more children.

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

23 (6) "District health board" means the district health boards of  
24 the respective public health districts as established in chapter 4,  
25 title 39, Idaho Code.

26 (7) "District health department" means the district health  
27 departments of the respective districts, created in section 39-409,  
28 Idaho Code.

1 (8) "Employee" means any person working for compensation in a  
2 facility that provides day care.

3 (9) "Family day care home" means a home, place, or facility  
4 providing day care for six (6) or fewer children.

5 (10) "Group day care facility" means a home, place, or facility  
6 providing day care for seven (7) to twelve (12) children.

7 (11) "Day care facility" means a group day care facility, day care  
8 center, place or facility providing day care services for compensation  
9 to seven (7) or more children not related to the provider.

10 (12) "Training" means continuing education in child development  
11 areas relating to child care including but not limited to the viewing  
12 of audio visual materials, correspondence courses, community workshops,  
13 and in-house training.

14 39-1103. LICENSING AUTHORITY. The department of health and  
15 welfare is hereby authorized and directed to issue "basic day care  
16 licenses" as provided in this chapter. The department is authorized to  
17 establish procedures for issuing licenses to day care ~~center~~ facilities  
18 which shall be maintained and operated in conformity with the standards  
19 authorized in this chapter. Nothing in this chapter shall be construed  
20 to limit or restrict the teaching of religious doctrines, values, or  
21 tenets in a facility licensed under the provisions of this chapter. The  
22 provisions of this chapter shall not apply to:

23 (1) The occasional care of a neighbor's, relative's or friend's  
24 child or children by a person not ordinarily in the business of child  
25 care;

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

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

3 (4) The operation of day camps, programs and religious schools for  
4 less than twelve (12) weeks during a calendar year or not more often  
5 than once a week; or

6 (5) The provision of care for children of only one (1) immediate  
7 family in addition to the person's own children.

8  
9 39-1104. APPLICATION FOR LICENSE -- FIRE SAFETY AND HEALTH  
10 INSPECTIONS.

11 (1) Application. A person who wishes to operate a day care ~~center~~  
12 facility shall be a minimum of eighteen (18) years of age, submit an  
13 application, on the forms provided by the department, and shall obtain  
14 the required certificates of inspection as provided herein.

15 (2) Inspections. A person who wishes to operate a day care ~~center~~  
16 facility shall submit: (a) a certificate of a fire inspection of the  
17 proposed center, conducted by a fire department or fire district  
18 official, establishing compliance with the minimum standards specified  
19 in section 39-1109, Idaho Code; and (b) a health inspection of the  
20 proposed center conducted by the district health department,  
21 establishing compliance with the minimum standards specified in section  
22 39-1110, Idaho Code.

23 (3) Continued compliance and reinspection. Day care ~~centers~~  
24 facilities shall at all times maintain compliance with the fire safety  
25 and health requirements identified in this chapter. The department may  
26 cause any day care ~~center~~ facility to be reinspected during the term of  
27 a license for fire safety and health compliance as determined

1 necessary. No charge for any reinspection after the initial inspection  
2 in any license period shall be made to the day care ~~center~~ **facility**.

3 39-1105. CRIMINAL HISTORY CHECKS. (1) The department shall obtain  
4 a criminal history check on the owners, operators and employees of a  
5 day care ~~center~~ **facility or family day care home** who have direct  
6 contact with children, and on all volunteers and other individuals  
7 ~~twelve~~ **thirteen** (12~~3~~) years of age or older who have unsupervised  
8 direct contact with children **or is regularly on the premises of a day**  
9 **care facility or family day care home. This includes individuals who**  
10 **may reasonably be expected to have unsupervised contact with children,**  
11 **but do not provide direct care, such as janitorial, lunchroom staff,**  
12 **pastors, and immediate family members of provider.** The criminal history  
13 check shall include the following for all persons subject to the  
14 provisions of this section who are eighteen (18) years of age or older:

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

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

24 (3) Notwithstanding the provisions of section 39-1103, Idaho Code,  
25 which provide for exemption from the provisions of this chapter, any  
26 person who owns, operates or is employed by a private school for  
27 educational purposes for children four (4) through six (6) years of age  
28 or a private kindergarten shall comply with the provisions of this  
29 section.

1           39-1106. ISSUANCE OF LICENSE -- RENEWAL. (1) Upon receipt of the  
2 application, inspection certificates and the criminal history, the  
3 department shall, upon a finding of compliance, issue a basic day care  
4 license to the applicant. The license shall be valid for two (2) years  
5 and shall be posted in a conspicuous place at the day care ~~center~~  
6 **facility**.

7           (2) After the criminal history check has been completed for any  
8 person, it shall not be necessary to repeat the check for renewal of a  
9 license. The department may, however, require the applicant for renewal  
10 of a license to declare on a form provided by the department that the  
11 applicant is in compliance with the original standards and conditions  
12 required for issuance of a license.

13           (3) The department shall maintain a list of all licensees for  
14 public use.

15  
16           39-1107. FEES. (1) The board shall establish by rule the maximum  
17 total fee to be assessed for a basic day care license which shall not  
18 exceed one hundred **fifty** dollars (\$~~10~~**50**.00). The board shall allocate  
19 the fee for fire and health inspections and for the criminal history  
20 check. The board shall also establish a renewal fee which shall not  
21 exceed ~~sixty~~ **ninety** dollars (\$~~6~~**90**.00).

22           (2) The applicable license fee in subsection (1) of this section  
23 shall be reduced by twenty-five percent (25%) for any day care facility  
24 which provides evidence that at least fifty percent (50%) of its staff  
25 is certified in infant/child first aid and pediatric rescue breathing.

26  
27           39-1108. LOCAL OPTION. If a city or county, within its respective  
28 jurisdiction, has adopted an ordinance for regulation and/or licensing  
29 of day care services, then the provisions of this chapter shall not

1 apply with such city or county unless the ordinance is subsequently  
2 repealed. To qualify for exemption, regulation of centers must include  
3 a criminal history check at least as stringent as the check required in  
4 section 39-1105, Idaho Code, compliance with fire safety standards at  
5 least as stringent as required in section 39-1109, Idaho Code,  
6 compliance with health standards at least as stringent as required in  
7 section 39-1110, Idaho Code, compliance with immunization requirements  
8 at least as stringent as required in section 39-1118, Idaho Code, and  
9 compliance with training requirements at least as stringent as required  
10 in section 39-1119, Idaho Code. Cities and counties are hereby granted  
11 authority and may adopt ordinances for regulation and/or licensing of  
12 day care services.

13 39-1109. FIRE SAFETY STANDARDS. (1) Day care ~~center~~ **facilities**  
14 shall comply with the following fire safety standards in the area of  
15 the day care ~~center~~ **facility** in which day care is provided: (a)  
16 adequate fire and smoke alarms; (b) a functional telephone **located on**  
17 **the day care premises during the hours of operation**; (c) adequate fire  
18 extinguishers or other suitable arrangements for extinguishing fires;  
19 and (d) adequate exits. ~~Separate standards in these categories shall~~  
20 ~~also be developed for group day care facilities.~~

21 (2) No fire standards developed pursuant to this chapter shall be  
22 more stringent than the standards contained in the International Fire  
23 Code, without supplementation by any other standard or code.

24 (3) In addition to the fire safety standards identified in  
25 subsection (1) of this section, fire safety standards may be  
26 established to govern the maximum allowable ratio of children to staff  
27 subject to the following restrictions:

28 (a) In no event shall the child-staff ratio for **day care centers**  
29 require more than one (1) staff member to six (6) children for all

1 children age eighteen (18) months or less, more than one (1) staff  
2 member to ~~twelve~~ eight (8) children for all children above age  
3 eighteen (18) months but less than ~~five~~ two (2) years; more than one  
4 (1) staff member to ~~eighteen~~ ten (10) children for all children above  
5 age two (2) years but less than three (3) years; more than one (1)  
6 staff member to twelve (12) children for all children above age three  
7 (3) years but less than four (4) years; more than one (1) staff member  
8 to fifteen (15) children for all children above age four (4) years but  
9 less than five (5) years; more than one (1) staff member to eighteen  
10 (18) children for all children whose age is five (5) years or more;  
11 when children of varying ages are present in the same group, there  
12 shall be no time when the maximum number of children exceeds 12  
13 children or 10 points which ever is reached first using the following  
14 formula to determine child-staff ratios:

15 A child under the age of two (2) years = two (2) points

16 A child age two and under four (4) years = one (1) point

17 A child age four (4) and above = one-half (1/2) point

18 (b) No factors other than fire safety may be considered in  
19 establishing child-staff ratios;

20 (c) All Only adults ~~on the premises~~ providing direct supervision  
21 to the children shall be counted as staff for purposes of computing a  
22 child-staff ratio; and

23 (d) Each child on the premises, except for the licensee's own  
24 children over five years of age, shall count as one (1) child for  
25 purposes of computing a child-staff ratio.

26 (e) Group day care facilities shall have a maximum allowable  
27 child-staff ratio based on the age of the children in attendance. The  
28 maximum group size is twelve (12) children or ten (10) points,  
29 whichever is reached first, as determined by the following formula:

1 A child under the age of eighteen (18) months = two (2) points

2 A child age nineteen (19) months and under five (5) years = one  
3 (1) point

4 A child age five (5) years and above = one-half (1/2) point

5 39-1110. HEALTH STANDARDS. Day care ~~center~~ facilities shall comply  
6 with the following health standards:

7 (1) Food for use in day care ~~center~~ facilities shall be prepared  
8 and served in a sanitary manner with sanitized utensils and on surfaces  
9 that have been cleaned, rinsed and sanitized prior to use to prevent  
10 contamination;

11 (2) All food that is to be served in day care facilities shall be  
12 stored in such a manner that it is protected from potential  
13 contamination;

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

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

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

21 (6) The water supply, where the source is other than a public  
22 water system, must be approved by the district board of health;

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

25 (8) A functional telephone ~~or some type of emergency communication~~  
26 ~~system~~ located on the daycare facility premises during the hours of  
27 operation is required; and

28 (9) Smoking or alcohol consumption is prohibited on the premises  
29 of a day care facility during day care facility's hours of operation.

1       (10) Representatives of the district health department shall not be  
2 denied access to a day care center facility during hours of operation  
3 for purposes of control of communicable disease.

4       (11) Firearms or weapons are not permitted on day care facility  
5 premises that operate in non-residential buildings. Firearms or  
6 weapons on the premises of day care facility premises that operate in  
7 the licensee's residence must be stored, unloaded, in a locked storage  
8 cabinet that is inaccessible to children.

9       (12) Pools, hot tubs, ponds and other bodies of water that are on  
10 the day care facility premises or adjacent to their property must  
11 provide the following safeguards:

12       (a) The area surrounding the body of water must be fenced and  
13 locked in a manner that prevents access by children;

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

20       (ii) If the house forms one (1) side of the barrier for  
21 the pool, doors that provide unrestricted access to the pool must have  
22 alarms that produce an audible sound when the doors are opened;

23       (iii) Furniture or other large objects must not be left  
24 near the fence that would enable a child to climb on the furniture and  
25 gain access to the pool.

26       (b) If the area surrounding a body of water is not fenced and  
27 locked, there must be a secured protective covering that will not allow  
28 access by a child;

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

1 (d) Children must be under direct supervision of an adult while  
2 using a pool, hot tub, pond or other body of water.

3  
4 39-1111. RULES AUTHORIZED. In order to implement the provisions of  
5 this chapter, the following rule making authority is authorized:

6 (1) The state fire marshal, in addition to other duties imposed by  
7 law, is hereby authorized and directed to establish rules necessary to  
8 implement the provisions of sections 39-1109 and 39-1114, Idaho Code;

9 (2) District health boards, in addition to other duties imposed by  
10 law, are hereby authorized and directed to establish necessary health  
11 standards to implement the provisions of section 39-1110, Idaho Code;  
12 and

13 (3) The board, in addition to other duties imposed by law, is  
14 hereby authorized and directed to establish procedures necessary to  
15 implement the provisions of this chapter including procedure for  
16 submission of required certificates as provided in sections 39-1109 and  
17 39-1110, Idaho Code, and conduct of the criminal history check provided  
18 in section 39-1105, Idaho Code.

19 The rule making authority granted in this section shall be limited  
20 to the specific standards and procedures required by this chapter.

21  
22 39-1112. VISITATION. Any parent or guardian shall have the  
23 absolute right to enter the premises of any facility during the period  
24 of care for the parent's or guardian's child or children. Any failure  
25 or refusal to allow entry to a parent or guardian may be grounds for  
26 suspension or revocation of the license, pursuant to section 39-1113,  
27 Idaho Code. If a parent or guardian has been granted limited or has  
28 been denied visitation rights by a court of competent jurisdiction,  
29 this section shall not confer a right to visitation.

1  
2 39-1113. DENIAL, SUSPENSION OR REVOCATION OF LICENSE. (1) A  
3 license may be denied, suspended or revoked by the department if the  
4 department finds that the applicant or licensee does not comply with  
5 the provisions of this chapter.

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

11 (a) Injuring a child, section 18-1501, Idaho Code.

12 (b) The sexual abuse of a child under sixteen (16) years of age,  
13 section 18-1506, Idaho Code.

14 (c) The ritualized abuse of a child under eighteen (18) years of  
15 age, section 18-1506A, Idaho Code.

16 (d) The sexual exploitation of a child, section 18-1507 or 18-  
17 1507A, Idaho Code.

18 (e) Lewd conduct with a child under the age of sixteen (16) years,  
19 section 18-1508, Idaho Code.

20 (f) The sale or barter of a child for adoption or other purposes,  
21 section 18-1511, Idaho Code.

22 (g) Murder, section 18-4001 or 18-4003, Idaho Code.

23 (h) Voluntary manslaughter, section 18-4006, Idaho Code.

24 (i) Rape, section 18-6101 or 18-6108, Idaho Code.

25 (j) Incest, section 18-6602, Idaho Code.

26 (k) Forcible sexual penetration by use of foreign object, section  
27 18-6608, Idaho Code.

28 **(1) Abuse, neglect or exploitation of a vulnerable adult, as**  
29 **defined by section 18-1505, Idaho Code.**

1 (m) Aggravated, first degree and second-degree arson, as defined  
2 by Sections 18-801 through 18-805, Idaho Code.

3 (n) Crimes against nature, as defined by Section 18-6605, Idaho  
4 Code.

5 (o) Kidnapping, as defined by Sections 18-4501 through 18-4503,  
6 Idaho Code.

7 (p) Mayhem, as defined by Section 18-5001, Idaho Code.

8 (q) Poisoning, as defined by Sections 18-4014 and 18-5501, Idaho  
9 Code.

10 (r) Possession of sexually exploitive material, as defined by  
11 Section 18-1507A, Idaho Code.

12 (s) Robbery, as defined by Section 18-6501, Idaho Code.

13 (t) Felony stalking, as defined by Section 18-7905, Idaho Code.

14 (u) Any felony punishable by death or life imprisonment; or

15 (v) Attempt, conspiracy, or accessory after the fact as defined by  
16 Sections 18-306, 18-1701, and 18-205, Idaho Code, to commit any of the  
17 designated crimes.

18 (3) A license may be denied, suspended or revoked by the department if  
19 the department finds any of the following:

20 (a) that illegal activity has occurred on the day care facility  
21 premises.

22 (b) that the activity, use, or privilege authorized under  
23 Chapter 39 of Idaho Code is being or has been exercised so as to be  
24 detrimental to the public health, safety and welfare.

25 (c) that a person required to undergo a criminal history  
26 background check under the provisions of section 39-1105 has been found  
27 guilty of or received a withheld judgment for any offense involving  
28 neglect or any physical injury to, or other abuse of a child as  
29 provided under the provisions of this chapter.

1 (d) a substantiated complaint that the health and/or safety of a  
2 child is threatened due to the child's enrollment in day care facility.

3 (e) a day care facility license or privilege to operate a family  
4 day care home will be denied or revoked if a registered sex offender  
5 resides on the premises where day care services are provided.

6 (34) The denial, suspension or revocation of a license under this  
7 chapter may be appealed to the district court of the county in which  
8 the affected day care ~~center~~ **facility** is located and the appeal shall  
9 be heard de novo in the district court.

10 39-1114. LIMITED APPLICATIONS. The fire inspection for **family day**  
11 **care homes and** group day care facilities may be conducted by the  
12 district health department. **Family day care home providers must comply**  
13 **with the criminal history background provisions required in section 39-**  
14 **1105, Idaho Code.** ~~The fire inspection certificate and the criminal~~  
15 ~~history check, if one is required,~~ shall be available for inspection on  
16 the premises.

17 ~~A group day care facility or~~ **A** family day care home may elect to  
18 comply with the provisions of this chapter and upon a finding of  
19 compliance by the department, shall receive a basic day care license.

20  
21 39-1115. MISDEMEANOR. (1) It shall be a misdemeanor to operate a  
22 day care ~~center~~ **facility** within this state without first obtaining a  
23 basic day care license from the department or to operate a day care  
24 ~~center~~ **facility** without posting a basic day care license in a  
25 conspicuous place. A copy of this chapter shall be available  
26 on the premises at all times for staff and parents to read on request.

27 (2) If a day care facility is found to be operating without a  
28 license, the licensing agency may grant a grace period of no more than

1 thirty (30) days to allow for the facility to be in compliance with the  
2 provisions of this chapter.

3 (2) It shall be a misdemeanor to operate a ~~group~~ family day care  
4 home ~~facility~~ without obtaining the ~~certificates~~ criminal history  
5 background check required in section 39-1114, Idaho Code; provided,  
6 that in the event of an initial citation for violation of the  
7 provisions of this subsection, if a person makes the applications  
8 required within twenty (20) days, the complaint shall be dismissed.  
9 ~~Operation of a group family home day care facility after failure to~~  
10 ~~pass a criminal history background check denial of the certificates~~  
11 ~~required shall be a misdemeanor.~~

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

16  
17 39-1116. PROSECUTION. It shall be the duty of the prosecuting  
18 attorney of the county in which the day care ~~center~~ facility or ~~group~~  
19 ~~day care facility~~ family day care home is located to prosecute  
20 violations of the provisions of this chapter.

21  
22 39-1117. NO LIABILITY TO STATE OR POLITICAL SUBDIVISIONS. The  
23 issuance of a license or certificate pursuant to this chapter shall not  
24 constitute a representation of affirmance to any person that the day  
25 care ~~center~~ facility to which a license is issued or a ~~group day care~~  
26 ~~facility~~ family day care home ~~to which a certificate is issued~~ is free  
27 from risk with regard to the standards in this chapter. The state and  
28 its political subdivisions or any employees or agents of the state or

1 its political subdivisions shall not be liable for nor shall a cause of  
2 action exist for any loss or damage based upon the failure of any  
3 person to meet the standards contained in this chapter.

4 39-1118. IMMUNIZATION REQUIRED. (1) Within fourteen (14) days of a  
5 child's initial attendance at any licensed day care facility, the  
6 parent or guardian shall provide a statement to the operator of the day  
7 care facility regarding the child's immunity to certain childhood  
8 diseases. This statement shall provide a certificate signed by a  
9 physician or a representative of a health district, that the child has  
10 received, or is in the process of receiving immunizations as specified  
11 by the board of health and welfare; or can effectively demonstrate,  
12 through verification in a form approved by the department of health and  
13 welfare, immunity gained through prior contraction of the disease.

14 Immunizations required and the manner and frequency of their  
15 administration shall be as prescribed by the state board of health and  
16 welfare and shall conform to recognized standard medical practices in  
17 the state. The state board of health and welfare shall promulgate  
18 appropriate rules and regulations for the enforcement of the required  
19 immunization program and specify reporting requirements of day care  
20 ~~center~~ **facilities**, pursuant to the provisions of chapter 52, title 67,  
21 Idaho Code.

22 (2) Any minor child whose parent or guardian has submitted to  
23 officials of a licensed day care facility a certificate signed by a  
24 physician licensed by the state board of medicine stating that the  
25 physical condition of the child is such that all or any of the required  
26 immunizations would endanger the life or health of the child shall be  
27 exempt from the provisions of this section. Any minor child whose  
28 parent or guardian has submitted a signed statement to officials of the

1 day care facility stating their objections on religious or other  
2 grounds shall be exempt from the provisions of this section.

3  
4 39-1119. TRAINING REQUIREMENTS. The owner or operator of a day  
5 care ~~center~~ facility shall ensure that each employee receives ~~four~~  
6 eight (4 8) hours of ongoing training every twelve (12) months after  
7 the employee's hire date, with no more than four (4) hours completed  
8 through internal training performed on the premises of day care  
9 facility. The owner or operator of a day care facility shall ensure  
10 that at all times children are present at least one (1) adult on the  
11 premises has current certification in pediatric rescue breathing and  
12 first aid treatment from a certified instructor.