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NO. ~~38563-5-II~~

COURT OF APPEALS
DIVISION II
JUL 10 2013
BY: *cm*

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

JENNIFER L. TOBIN et al.,

Plaintiffs-Respondents,

v.

WASHINGTON STATE DEPARTMENT OF EARLY
LEARNING et al.,

Defendants-Appellants.

BRIEF OF APPELLANTS

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I. INTRODUCTION

This is an appeal of an \$11,781,668.45 verdict against the State of Washington based on the decision to license Little Fish's day care. Gabriel Tobin died after he unlocked and walked out the front door of the day care he had been attending for nearly two years, crossed through the yard and the street in front of the day care, and through a neighbor's front and back yards to Lake Tapps, where he drowned. These events occurred when the day care operator, Lisa Fish, was in her backyard leaving Gabriel Tobin unsupervised.

Judgment against the State was premised on the State's regulatory authority to license day cares. The Tobins' theory is that Lisa Fish's family home day care should not have been licensed unless she had a five-foot-high fence with a locking gate around the front yard.¹ The Tobins assert such a fence was required because the home site across the street from Little Fish's day care had backyard access to Lake Tapps. No statute or regulation required a front-yard fence.

On summary judgment, the trial court erroneously ruled that the State could be liable in tort for its licensing action even though the State's waiver of sovereign immunity does not extend to the licensing action at issue, and even though the State's conduct did not fall within

¹ There are three plaintiffs in this case, but for ease of reference they will be referred to as the "Tobins."

any exception to the public duty doctrine. At trial, the trial court erroneously admitted irrelevant evidence that the jury considered in determining damages and gave two jury instructions that misstated the law. This Court should hold as a matter of law that the licensing action at issue cannot give rise to tort liability and reverse the judgment below with instructions to dismiss the complaint.

II. ASSIGNMENTS OF ERROR

A. Grounds For Dismissal

1. The trial court erred by denying the State's motion for summary judgment based on sovereign immunity.

2. The trial court erred in granting partial summary judgment in favor of plaintiffs on the grounds that the Department of Social and Health Services (DSHS) owed a duty to parents and children for its licensing of home day care facilities and in holding DSHS had a duty to require Little Fish's to erect a five-foot-high fence around its front yard.

B. Grounds for Reversal And Remand For A New Trial

3. The trial court erred in denying a motion in limine to preclude evidence and argument of an allegedly negligent post-incident investigation.

4. The trial court erred in denying a motion in limine to preclude evidence and argument of post-incident modifications of the governing Washington Administrative Code provisions.

5. The trial court erred in giving Instruction No. 19 that improperly focused on only one portion of WAC 388-155-295 thereby constituting a comment on the evidence.

6. The trial court erred in failing to give defendants' proposed instruction (CP at 3933) that instructed the jury on the proper way to interpret a regulation.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the State of Washington waive sovereign immunity with respect to the regulatory function of licensing day care facilities when there is no private counterpart to licensing day care facilities? (Assignment of Error No. 1).

2. Does the public duty doctrine preclude liability when the State acts in its regulatory capacity to grant licensing applications? (Assignment of Error No. 2).

3. Should evidence and argument alleging that a post-incident investigation into the decedent's death was negligently performed have been precluded because the evidence was irrelevant and unduly prejudicial? (Assignment of Error No. 3).

4. Should evidence and argument alleging negligence in post-incident clarification/modification of regulations pertaining to day cares and water hazards have been precluded because the evidence was irrelevant and unduly prejudicial? (Assignment of Error No. 4).

5. Should the jury have been instructed on the entire WAC at issue in the case and been given proper instructions on interpreting a regulation? (Assignment of Error Nos. 5 and 6).

IV. STATEMENT OF FACTS

Little Fish's was a family home day care. The owner, Lisa Fish, applied to the Department of Social and Health Services (DSHS)² for an in-home child care license on November 20, 2000. CP at 2995. On

² Effective July 1, 2006, the newly-created Department of Early Learning took over childcare licensing. See RCW 43.215. Prior to that date, and at the time of the events at issue here, childcare licensing was a DSHS function under RCW 74.15. For simplicity, DSHS and the Department of Early Learning will simply be referred to as DSHS in this brief.

February 26, 2001, DSHS child care licensor and defendant, Amy Cichowski, went to Lisa Fish's home to inspect the premises and determine whether they complied with the applicable statutes and regulations.

As part of the in-home inspection, Cichowski used a form entitled "Family Home Licensing Study," which is a checklist with all licensing requirements applicable to a family home day care facility. *See* CP at 2964-65. Following the initial inspection, Fish was required to install fencing in her backyard so the play area was completely fenced. VRP at 490 ll. 17-25; 491 l. 24 to 492 l. 13. Under WAC 388-155-320, outdoor play areas require fencing to aid the day care provider in supervising children by helping keep them in the back yard, as well as keeping other things, such as strangers or dogs, out of the play area. VRP at 792-93; 1132-33. WAC 388-155-120(3) and -320 require supervision in order to keep the children in the areas where day care is to be provided, and children are not supposed to be in the front yard or off-premises unsupervised. VRP at 764 l. 14 to 765 l. 7; 785 ll. 20-23; 793; 801 l. 5-12; 1112.

On December 11, 2001, following another full, in-home inspection and after the fencing of the backyard was completed, DSHS issued a day care license to Lisa Fish for the period of October 26, 2001, through

April 26, 2004, authorizing her to care for six children, ages birth through 11 years, including her own children, at Little Fish's day care. CP at 2995.

On or about January 24, 2004, DSHS received an application for renewal of Lisa Fish's day care license. CP at 2998. On March 23, 2004, DSHS child care licenser and named defendant, Victor Berdecia, conducted an in-home inspection of Little Fish's day care to verify that the home still met minimum licensing requirements. *Id.* During the in-home inspection, Fish asked Berdecia how she could keep her front door safe from intruders because the children had the propensity to run to the door when somebody knocked.³ VRP at 611 l. 1 to 614 l. 3; 1313 l. 13 to 1318 l. 24. Fish was concerned about the children opening the door for strangers because the door was required to remain easily opened from the inside. Lisa Fish was told that the door could be locked from the outside but must be easy to open from the inside in the event of an emergency. VRP at 754 ll. 4-10; 688 ll. 7-17.

On April 12, 2004, having concluded that the Fish home met minimum licensing requirements, DSHS renewed Lisa Fish's license to run Little Fish's day care for another three years. CP at 2999.

³ Fish did not express specific concerns about Gabriel Tobin or any particular child getting out the front door. VRP at 1329-30 l. 17-1331 l. 4.

Gabriel Tobin started attending Little Fish's day care in the summer of 2002, about three months after his birth. CP at 2891. Gabriel attended the day care continuously until July 13, 2004.

On the morning of July 13, Gabriel and two other children were watching TV in the front room of Little Fish's day care, while three other children were in the backyard playing. CP at 2869. Lisa Fish left the house and went outside to break up an altercation; she spent about five to ten minutes in the backyard resolving the dispute and pulling weeds. *Id.*; VRP at 1281 1. 6 to 1282 1. 22. It is undisputed that Lisa Fish violated the supervision requirements by leaving Gabriel and the other children in the front room unattended. VRP at 1108.⁴

When Lisa Fish returned to the inside of her home, she discovered that the front door was open and Gabriel Tobin was missing. CP at 2869. Fish went out into the neighborhood and yelled for Gabriel, but failing to find him, returned home and called Jennifer Tobin, Gabriel's mother. *Id.* Ms. Tobin arrived in ten minutes and joined the search. About 30 minutes later, after an unsuccessful search by Fish, Ms. Tobin, and neighbors, Fish

⁴ Under WAC 388-155-120(3), the child care provider must ensure that the child is supervised by continuous visual or auditory contact. Under WAC 388-155-320, children playing outside in the play area must be in visual or auditory range. It was a violation of the regulations requiring continuous supervision to allow some children to play in the backyard while others watched TV in the front room because Fish could not supervise both groups of children at the same time. When she was outside pulling weeds, she was not supervising the children inside watching TV. CP at 2040.

called 9-1-1. About 45 minutes after their arrival, emergency services found Gabriel behind the house across the street from the day care under a dock in Lake Tapps. He was pronounced dead a short time later. *Id.*

V. PROCEDURAL HISTORY AND RULINGS AFFECTING THE OUTCOME OF THE CASE

On October 23, 2006, the Tobins filed an amended complaint asserting wrongful death and survival claims based on negligence and civil rights violations. DSHS removed this matter to federal court based on the civil rights claims. The federal court granted DSHS's summary judgment on the civil rights claims and remanded the state-based negligence claims to the Pierce County Superior Court.⁵

On March 13, 2008, the Tobins moved for partial summary judgment asking the trial court to rule that DSHS owed them a duty of due care based on its regulatory role. On March 28, 2008, DSHS moved for summary judgment asking the trial court to dismiss all claims because, under the public duty doctrine, there was no duty owed to the Tobins. CP at 2903. The State also sought dismissal based on sovereign immunity. *Id.* On April 25, 2008, the trial court denied DSHS's motion for summary judgment and granted the Tobins' partial motion for summary judgment. The trial court ruled a duty existed, ruled that each of

⁵ The Ninth Circuit Court of Appeals affirmed in *Tobin v. Washington*, No. 07-36012, 2009 WL 1370808 (9th Cir. May 18, 2009) (unpublished).

the four recognized exceptions to the public duty doctrine applied to the Tobins' claim, and left it to the jury to determine whether DSHS breached the duty declared by the trial court. CP at 3221-26.

A jury trial began on September 5, 2008, and ended on October 1, 2008. VRP at 1869. On October 2, 2008, the jury returned a verdict in favor of the Tobins and awarded damages of \$11,781,668.45. *See* CP at 4185-97; VRP at 2009. DSHS timely appealed, challenging the denial of summary judgment to DSHS, the grant of partial summary judgment to the Tobins, various trial rulings regarding the law to be applied and the evidence to be admitted, and two jury instructions. The specific rulings and jury instructions are identified in the Assignments of Error, above, and are set forth in the Argument section of this brief.

VI. SUMMARY OF ARGUMENT

The Tobins claim, and the jury found, that the State was liable for the death of Gabriel Tobin based on alleged negligence in licensing the Little Fish's day care. The claim is premised on the Tobins' contention that a Washington Administrative Code provision required the front yard of the Little Fish's day care to be fenced. The language of the provision does not require front-yard fencing where children are not allowed to play in the front yard, and DSHS has never interpreted it that way.

The trial court erred in failing to dismiss this case and allowing it to go to the jury. As a matter of law, the State's licensing and regulation of day cares does not give rise to tort liability. First, the State of Washington has waived sovereign immunity only to the extent that a private actor may be held liable in tort. Because there is no private analog to the licensing function performed by the State, sovereign immunity has not been waived for such functions. The jury verdict should be reversed and the Tobins' claims dismissed.

Second, the Tobins' claims are independently barred by the public duty doctrine, under which regulation undertaken to protect the public health, safety, and welfare should not be discouraged by imposing tort liability for individual damages. The doctrine applies to the day care licensing function performed by the State, and none of the recognized exceptions to the public duty doctrine apply in this case:

- The "special relationship exception" does not apply because there is no evidence that the defendants provided any assurances regarding Little Fish's day care upon which the Tobins justifiably relied.
- The "legislative intent exception" does not apply because the day care licensing statutes do not express an explicit intent to protect a particular and circumscribed class.

- The “failure to enforce exception” does not apply because the Tobins cannot identify any statute that was violated and that imposes a mandatory duty to act on the defendant.
- The “volunteer rescue exception” does not apply because there is no evidence that the defendants made any promises to the Tobins nor did they attempt to rescue Gabriel Tobin from any imminent danger.

Because none of the public duty doctrine exceptions apply, defendants did not owe the Tobins any duty in tort. The complaint should have been dismissed on summary judgment, and the jury’s verdict should be reversed with directions to dismiss.

Finally, if the Tobins’ claim is not dismissed on either of the above grounds, the jury’s verdict should be reversed with an order for a new trial based on evidentiary and instructional errors committed by the trial court. The trial court erroneously admitted evidence of a post-incident investigation and post-incident revision of the administrative regulation at issue that allowed the Tobins’ counsel to unfairly prejudice the defendants by arguing they were engaged in a conspiracy and cover-up. In addition, the court improperly instructed the jury by taking a portion of the regulation at issue out of context and instructing the jury that it required a fence in the front yard of the Little Fish’s day care.

VII. ARGUMENT

A. **The State Has Not Waived Sovereign Immunity For Regulatory Activities Such As Licensing that Have No Private Analog**

The legislature waived the State's sovereign immunity to make it liable in tort to the same extent as private entities:

The State of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct **to the same extent as if it were a private person or corporation.**

RCW 4.92.090 (emphasis added).⁶ Accordingly, the State's waiver of sovereign immunity is not absolute. A person asserting a claim against the State must show that the conduct complained of constitutes a tort that would be actionable if it were done by a private person in a private setting. *Edgar v. State*, 92 Wn.2d 217, 226, 595 P.2d 534 (1979) (action alleging threats, intimidation, and harassment of a national guardsman by his superior officer, resulting in suspension of duties and reduction in pay, was outside the State's waiver of sovereign immunity because the plaintiff had drawn "no analogy between the conduct complained of and any

⁶ The fact that the state's waiver of sovereign immunity was never intended to subject the state to liability for purely governmental functions for which there is no private sector counterpart is thoroughly analyzed and outlined in Michael Tardif & Rob McKenna, *Washington State's 45-year Experiment in Governmental Liability*, 29 Seattle U. L. Rev. 1 (2005).

conduct of a private individual which would be actionable” in tort).⁷ As the court unanimously concluded:

[W]e are here concerned with a state statute [RCW 4.92.090] which we are not at liberty to extend beyond the intent expressed in the act. The statute was not designed to create new causes of action. *LaPlante v. State*, 85 Wn.2d 154, 531 P.2d 299 (1975). As we said in *Evangelical United Brethren Church v. State*, 67 Wn.2d 246, 407 P.2d 440 (1965), the statute does not render the State liable for every harm that may flow from governmental action, but only the harm which is the result of tortious misconduct.

Edgar, 92 Wn.2d at 228.

The licensing and regulation of businesses and professions, including day care facilities, is done pursuant to the government’s police power, with the overriding goal to protect public health, safety, and welfare. At common law, there is no private sector activity analogous to

⁷ Washington’s conditional waiver of sovereign immunity is not unique. In *Donohoe v. State*, 135 Wn. App. 824, 142 P.3d 654 (2006), for example, the court noted that Vermont has waived its sovereign immunity in a statute similar to Washington’s and that the Supreme Court of Vermont has interpreted that waiver as follows:

[S]tate government: (1) may be liable only to the extent a plaintiff’s cause of action is comparable to a recognized cause of action against a private entity; (2) remains immune ‘for governmental functions for which no private analog exists’; and (3) is not liable for the negligence of licensed industries because there is no private analog for a claim of negligent enforcement of safety standards under a regulatory scheme.

Donohoe, 135 Wn. App. at 843 n.14 (citations omitted).

The federal government’s waiver of sovereign immunity also contains a provision similar to RCW 4.92.090. Under 28 U.S.C. § 1346(b)(1), tort actions against the United States are authorized “under circumstances where the United States, if a private person, would be liable to the claimant.” See *United States v. Olson*, 546 U.S. 43, 126 S. Ct. 510, 163 L. Ed. 2d 306 (2005) (United States waived sovereign immunity where a private person would be liable, not in situation where a state or municipality would be liable).

licensing. In *Linville v. State*, 137 Wn. App. 201, 208, ¶¶ 17, 18, 151 P.3d 1073 (2007), this Court held that there was no common law duty to license day cares for the benefit of those using those facilities by requiring the day care operator to obtain liability insurance for sexual abuse. With regard to the plaintiffs' negligent licensing claim in that case, this Court observed:

At common law, the State was immune from lawsuit. At common law, "it is not a tort for government to govern" or, conversely, not to govern. *Evangelical United Brethren Church v. State*, 67 Wn.2d 246, 253, 407 P.2d 440 (1965)

Only where the legislature has expressly waived sovereign immunity by statute can there be the possibility of an actionable duty owed by the State. *Donohoe v. State*, 135 Wn. App. 824 , 832, 142 P.3d 654, 657 (2006).

Id.

The proper focus in determining whether sovereign immunity has been waived under RCW 4.92.090 is if a private person would be liable. Because private persons do not promulgate regulations or grant and revoke licenses in the public interest, there is no comparable liability for negligent licensing. Accordingly, there is no analogous private sector liability and the waiver of sovereign immunity contained in RCW 4.92.090 does not encompass the plaintiffs' claims in this case. *See Morgan v. State*, 71 Wn.2d 826, 430 P.2d 947 (1967) (sovereign immunity not waived on claim that State should have erected a fence to keep children from wandering onto highway).

The trial court erred in ruling that the State's waiver of sovereign immunity extended to negligent licensure. Because the State's general waiver of sovereign immunity does not extend to tort claims in which there is no private analog, as held in *Edgar* and *Morgan*, all tort claims in the Tobins' complaint should have been dismissed as a matter of law. RCW 4.92.090.

B. Regulatory Statutes Such As The Day Care Licensing Statutes Do Not Give Rise To Liability Unless An Exception To The Public Duty Doctrine Applies And None Of The Recognized Exceptions Apply In This Case

The trial court granted summary judgment to the Tobins on the issue of duty, ruling that RCW 74.15.010 created a duty to safeguard Gabriel Tobin and to deny a license to providers who do not meet minimum licensing requirements, and that former WAC 388-155-295(5) established a minimum licensing requirement for Little Fish's. CP at 3221-26. Even if sovereign immunity were waived for a claim of negligent licensure, which the State does not concede, the Tobins are unable to demonstrate the elements of a negligence claim.

The threshold determination in any claim of negligence is the existence of a duty owed to a plaintiff. *Taylor v. Stevens Cy.*, 111 Wn.2d 159, 163, 168, 759 P.2d 447 (1988). This determination is a question of law, which the court reviews de novo. *Donohoe*, 135 Wn. App. at 833,

(citing *Tincani v. Inland Empire Zoological Soc'y*, 124 Wn.2d 121, 128, 875 P.2d 621 (1994)); *Linville*, 137 Wn. App. at 208 (citing *Hansen v. Friend*, 118 Wn.2d 476, 479, 824 P.2d 483 (1992)). If a plaintiff cannot establish that the defendant owes a duty of care, there is no need to determine the remaining elements of a negligence claim. *Linville*, 137 Wn. App. at 208 (citing *Folsom v. Burger King*, 135 Wn.2d 658, 671, 958 P.2d 301 (1998)). Since there is no common law cause of action for negligent licensing of day cares, see *Linville*, 137 Wn. App. at 208, the Tobins must establish a duty by demonstrating that the statute requiring DSHS to engage in regulatory oversight of day cares, RCW 74.15, was intended by the legislature to create a tort cause of action on behalf of someone injured while at day care.

Regulatory statutes, such as RCW 74.15, are appropriately analyzed under the public duty doctrine:

The traditional rule is that a regulatory statute imposes a duty on public officials which is owed to the public as a whole, and that such a statute does not impose any duties owed to a particular individual which can be the basis for a tort claim. *Halvorson v. Dahl*, 89 Wn.2d 673, 676, 574 P.2d 1190 (1978). The rule is almost universally accepted regardless of the exact nature of the statute relied upon by the plaintiff.

Baerlein v. State, 92 Wn.2d 229, 231, 595 P.2d 930 (1979) (State Securities Act). See also *Honcoop v. State*, 111 Wn.2d 182, 188, 759 P.2d

1188 (1988) (livestock control program). *Taylor*, 111 Wn.2d at 166 (quoting and overruling *J & B Dev. Co. Inc. v. King Cy.*, 100 Wn.2d 299, 304-05, 669 P.2d 468 (1983)) (building codes); *Donohoe*, 135 Wn. App. at 833 (nursing homes).

Under the public duty doctrine, no liability may be imposed for a public official's negligent conduct unless it is shown that "the duty breached was owed to the injured person as an individual and was not merely the breach of an obligation owed to the public in general (*i.e.*, a duty to all is a duty to no one)." *Cummins v. Lewis Cy.*, 156 Wn.2d 844, 852, 133 P.3d 458 (2006) (quoting *Taylor*, 111 Wn.2d at 163). As explained in *Osborn v. Mason Cy.*, 157 Wn.2d 18, 27-28, 134 P.3d 197 (2006):

The public duty doctrine simply reminds us that a public entity—like any other defendant—is liable for negligence only if it has a statutory or common law duty of care. And its "exceptions" indicate when a statutory or common law duty exists. "The question whether an exception to the public duty doctrine applies is thus another way of asking whether the State had a duty to the plaintiff." . . . In other words, the public duty doctrine helps us distinguish proper legal duties from mere hortatory "duties."

(Internal citations omitted.)

The rationale of the public duty doctrine has historically been to (1) prevent excessive governmental liability and (2) avoid hindering governmental process. *J & B Dev.*, 100 Wn.2d at 304. The premises of

the public duty doctrine are, first, that it is better to have some regulation to protect the public, even if that regulation is imperfect, than to have no protection for the public, and, second, that government's well-intentioned efforts to improve conditions in regulated business and industries should not be discouraged by imposing liability for imperfect regulation. *See Donohoe*, 135 Wn. App. at 834 (citing *Taylor*, 111 Wn.2d at 170). That policy was articulated clearly by the Kentucky Supreme Court:

There is no public policy requiring government to guarantee the success of its efforts. When the governmental entity is performing a self-imposed protective function as it was in the case at hand, the individual citizen has no right to demand recourse against it though he is injured by its failure to efficiently perform such function . . .

We of course concede that the State may act imperfectly at times; but such is the risk which this court believes is the natural concomitant of our form of government. We perceive that the public interest is better served by a government which can aggressively seek to identify and meet the needs of its citizenry, uninhibited by the threat of financial loss should its good faith efforts provide less than optimal—or even desirable—results.

Com., Dep't of Banking & Sec. v. Brown, 605 S.W.2d 497, 499 (1980).

The rationale and policy underlying the public duty doctrine apply to Washington's regulatory function of licensing day cares. The purpose of licensing day cares, just as with any other occupational or industrial regulation, is to generally improve the conditions in the regulated industry,

not ensure perfection or absolute safety. Government does not and cannot ensure that injuries will not occur in day cares simply by regulating them. Under the Tobins' theory, however, the State becomes a guarantor against any harm children suffer while in day care. This was never the purpose of the legislation, nor could the State reasonably assume such a duty given the number of day care facilities in Washington and the autonomy afforded each operator.⁸ Ultimately, the responsibility for maintaining a safe operation and compliance with the law rests on the day care operator, not the State.

Accordingly, the public duty doctrine precludes liability in this case unless one of the exceptions to the doctrine applies. There are four recognized exceptions to the public duty doctrine: (1) special relationship; (2) legislative intent; (3) failure to enforce; and (4) volunteer rescue. *Donohoe*, 135 Wn. App. at 834. The trial court erroneously concluded

⁸ When Lisa Fish's application for a day care license was granted in 2001, the state of Washington licensed approximately 7,208 family day care facilities. CP at 3020-21. In 2004 when Fish's license was renewed, there were approximately 6,875 family home day cares. Currently, there are approximately 5,395 family home day cares. CP at 3020-21. In September 2008, it was reported that there were 175,000 children in licensed care facilities in Washington. Appendix A, *Child Care in Washington State* (prepared by the Washington State Child Care Resource and Referred Network, available at <http://www.childcarenet.org/partners/data/2008-data-reports/partners/data/2008-data-reports/08-4-statewide-final.pdf>, last visited July 2, 2009).

that all four exceptions apply. CP at 3221-26. In fact, none of them apply in this case.⁹

1. There Is No Special Relationship Between The State And Those Who Attend Day Care

There are two types of “special-relationship exceptions” to the public duty doctrine. *Donohoe*, 135 Wn. App. at 835. The trial court erroneously concluded both types of special relationship existed. CP at 3221-26

a. The Tobins Did Not Make Any Specific Inquiry Resulting In An Express Assurance Regarding Little Fish’s Day Care Which They Justifiably Relied On

The first type of special-relationship exception arises where there is justifiable reliance on an express assurance from a government agency or official. The Tobins asserted that a special relationship was created when Jennifer Tobin received the name of Lisa Fish’s day care from DSHS’s toll-free telephone referral line, which provided the Tobins with a list of licensed day care facilities in their area. After visiting several day cares, the Tobins chose Lisa Fish’s day care without further communication with DSHS. CP at 2891. The Tobins argued that

⁹ Although the trial court granted plaintiffs’ motion for summary judgment and held that a duty existed under both the special relationship and the volunteer rescue exceptions to the public duty doctrine. Plaintiffs did not propose jury instructions based on the special relationship exceptions or the volunteer rescue doctrine, but chose to limit their instructions to the duties the court found under the legislative intent and failure to enforce exceptions to the public duty doctrine. CP at 3860-3901, 3955-98.

receiving a list of licensed day care facilities from DSHS was sufficient to create a special relationship. CP at 1982. The trial court agreed. CP at 3224-25.

To establish a special relationship based on an express assurance, a plaintiff must prove (1) there is direct contact or privity between the public official and injured plaintiff that sets the injured plaintiff apart from the general public, and (2) there is an express assurance given by the public official, which (3) gives rise to justifiable reliance by the injured plaintiff. *Cummins*, 156 Wn.2d at 854; *Beal for Martinez v. City of Seattle*, 134 Wn.2d 769, 785, 954 P.2d 237 (1998); *Taylor*, 111 Wn.2d at 166; *Donohoe*, 135 Wn. App. at 835. The Tobins cannot satisfy any of these elements.

First, the fact that Ms. Tobin called the referral line does not establish the type of direct contact that sets the Tobin family apart from the general public. The referral line is available to anyone in Washington and provides only generic information as to whether a facility is licensed or not. Anyone who calls the referral line receives the same generic referral based on the location information from the caller. This is not the type of specific inquiry which would set the Tobins apart from the general public and would support the imposition of a duty of care. Moreover, it is well established that a specific inquiry from the plaintiff must be

incorrectly answered by a public official charged with responsibility to provide accurate information. *See Taylor*, 111 Wn.2d at 171. There was no specific inquiry from the Tobins about Little Fish's day care, nor were the Tobins supplied with any incorrect information.

Second, there was no express assurance in this case.

An "express assurance" occurs where an individual makes a direct inquiry and the government clearly sets forth incorrect information, the government intends that the individual rely on this information, and the individual does rely on it 'to his detriment.

Donohoe, 135 Wn. App. at 835, (quoting *Babcock v. Mason County Fire Dist. No. 6*, 144 Wash.2d 774, 30 P.3d 1261 (2001)). In *Donohoe*, DSHS approved an application for funding and provided a list of nursing homes where Mrs. Donohoe was qualified to reside, an even more-involved process than the referral line at issue in this case. Despite this individualized reference, the *Donohoe* court did not find that DSHS had a special relationship with the decedent because "there was no showing that DSHS expressly promised" the plaintiffs "that it would guarantee" the licensee's "compliance with nursing home regulations or ensure immediate correction" of the licensee's "identified deficiencies." *Donohoe*, 135 Wn. App. at 836. "Not only was there no express assurance, but there was also no implied assurance." *Id.*

Here, there is no evidence of an express assurance that Gabriel would be free from harm in a day care. The Tobins were provided with a list of family home day cares, which included Lisa Fish's, when they called the referral line. Consistent with *Donohoe*, providing a list of licensed day cares in a particular geographic area does not constitute a guarantee that any particular day care is compliant with licensing standards, that deficiencies would be immediately corrected, or that a child would be free from hazards located off the day care premises. Nor does the mere act of licensing create an express, or even an implied, assurance that children who attend day cares will be free from harm. No such guarantee was ever communicated by DSHS to the Tobins.

Finally, the Tobins cannot establish justifiable reliance on any assurance by the defendants. The Tobins contend Gabriel was harmed because DSHS did not require the Fishes to fence their front yard to prevent access to Lake Tapps. That the front yard was not fenced and that there was a lake across the street were apparent to anyone visiting the day care, and there is no evidence that any state agent offered any representation or assurance to the contrary. There was no express assurance upon which justifiable reliance could rest; reliance on the mere fact of licensure as a guarantee of absolute safety is not justifiable.

This Court should follow the holding in *Donohoe* and reverse the trial court's ruling that a special relationship existed because the Tobins learned of Lisa Fish's day care in a call to a 1-800 line operated by DSHS.

b. The Day Care Licensing Scheme Does Not Create A "Take Charge" Relationship Between The State And Day Care Providers

The second type of special relationship may arise where a special relation exists between the actor and a third person that imposes upon the actor a duty to control the third person's conduct. *Taggart v. State*, 118 Wn.2d 195, 218, 822 P.2d 243 (1992). This duty arises only where there is a definite, established, and continuing relationship between the defendant and the third party. This special-relationship exception is grounded on Restatement (Second) of Torts § 315 and is, "typically custodial or supervisory in nature." *Donohoe*, 135 Wn. App. at 836-37.¹⁰ *Taggart*, 118 Wn.2d at 224. The Tobins alleged, and the trial court agreed, that the State's regulatory authority created a special relationship between the State and Lisa Fish's day care, which gave rise to duty owed to the Tobins. CP at 1980-81.

¹⁰According to the Restatement (Second) of Torts § 315, there is no duty to control the conduct of a third person so as to prevent him from causing harm to another unless: (a) a special relationship exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relationship exists between the actor and the other which gives to the other a right to protection. *Donohoe*, 135 Wn. App. at 836.

There is no definite, established and continuing relationship between the State and Lisa Fish's day care giving rise to a duty to control Lisa Fish's conduct. The relationship between DSHS and Lisa Fish's day care is legally indistinguishable from that in *Donohoe*. Mrs. Donohoe was a vulnerable adult who received state benefits for nursing home care, but the *Donohoe* court did not find a special relationship because DSHS "apart from its general public duty to regulate nursing homes, DSHS did not employ, supervise, or otherwise oversee Mrs. Donohoe's care or treatment at [the licensed nursing home]." *Donohoe*, 135 Wn. App. at 840. DSHS was not responsible for the "individual daily care" at the private nursing home, but only for "monitoring" the nursing home's "general, regulatory-compliance status and licensing, a duty DSHS owed to the public in general, but not to Mrs. Donohoe individually." *Id.* at 842. In summarizing the special relationship issue, the *Donohoe* court stated,

[W]e can find no Washington case extending this type of special relationship and corresponding duty to a governmental regulatory entity, such as DSHS, charged with licensing and overseeing regulatory compliance, by any particular private industry, such as private nursing homes.

Id. (footnote omitted).

Here, as in *Donohoe*, DSHS's role is limited to licensing and monitoring for regulatory compliance. DSHS was not responsible for the

day-to-day supervision of the children, and it is the licensee's obligation to remain in compliance with regulations on a day-to-day basis. WAC 388-155-120(3). The State's relationship with day cares is no different from its relationship with any other licensed agency, be it nursing homes, doctors, lawyers, or any other profession or industry requiring licensure and regulation for the health, welfare and safety of the general public. *See, e.g.* Title 18 RCW. Mere "regulatory control over a third party is not sufficient to establish the necessary 'control' that can give rise to an actionable duty." *Honcoop v. State*, 111 Wn.2d 182, 193, 759 P.2d 1188 (1988).

Moreover, even if the court were to find that the licensing statutes give rise to a special relationship duty, the duty is to control reasonably foreseeable conduct that has a tendency to cause injuries to others. *See Taggart*, 118 Wn.2d at 224 (parole officers have a duty to protect others from reasonably foreseeable dangers engendered by parolee's dangerous propensities). Here, there is no evidence in the record to suggest that DSHS could have predicted that Lisa Fish would fail to comply with the requirement to supervise Gabriel on July 13, 2004. VRP at 1110 ll. 5-15; 1324 l. 7-12. Thus, DSHS had neither the ability to control or foresee the conduct of Lisa Fish that resulted in the harm to Gabriel Tobin.

2. The Legislative Intent Exception Does Not Apply Because RCW 74.15 Does Not Show A Clear Intent To Protect A Narrow And Circumscribed Class

The legislative intent exception to the public duty doctrine applies when a plaintiff demonstrates that the “terms of a legislative enactment evidence an intent to identify and protect a particular and circumscribed class of persons.” *Donohoe*, 135 Wn. App. at 844 (quoting *Bailey v. Town of Forks*, 108 Wn.2d 262, 268, 737 P.2d 1257 (1987)).

In the trial court, the Tobins asserted the legislative intent exception applies because RCW 74.15.010 satisfies the three-part test set forth in *Bennett v. Hardy*, 113 Wn.2d 912, 920-21, 784 P.2d 1258 (1990).¹¹ CP at 1972. The trial court agreed. CP at 3221-26.

The Tobins’ reliance on the *Bennett* test in determining whether the legislative intent exception is satisfied is misplaced, because that test has never been applied to a licensing scheme like the one in this case. The *Bennett* test is used to determine if a right of action is implied only where a statutory scheme is enacted to provide individualized services to members of a relatively small and indentified group, such as child abuse investigations. *See M.W. v. Dep’t of Soc. & Health Servs.*, 149 Wn.2d

¹¹ Under the *Bennett* test, plaintiffs would have to establish (1) that they fall within the “class for whose ‘especial’ benefit” the statute was enacted, (2) that the legislative intent underlying the statute “explicitly or implicitly, supports creating or denying a remedy,” and (3) that the damages they seek are “consistent with the underlying purpose of the legislation.” *See Bennett*, 113 Wn.2d at 920-21.

589, 70 P.3d 954 (2003) (RCW 26.44, addressing child abuse); *Tyner v. Dep't of Soc. & Health Servs., Child Protective Servs.*, 141 Wn.2d 68, 1 P.3d 1148 (2000) (same).

The *Bennett* test does not apply where, as here, a comprehensive licensing and regulatory scheme is at issue. In this context, Washington courts require that a cause of action be explicitly provided in legislation, and not merely implied. See *Taylor*, 111 Wn.2d at 166; *Baerlein*, 92 Wn.2d at 231; *Donohoe*, 135 Wn. App. at 833 [or at 844 (citing *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 930, 969 P.2d 75 (1998))]; *Halleran v. Nu West, Inc.*, 123 Wn. App. 701, 712, 98 P.3d 52 (2004) *review denied*, 154 Wn.2d 1005 (2005). Legislative intent cannot be derived from “regulations, manuals and directives purportedly authorized under [a] statute.” *Smith v. State*, 135 Wn. App. 259, 281, 144 P.3d 331 (2006). Rather, “[t]o ascertain legislative intent, courts look to the statute’s declaration of purpose.” *Donohoe*, 135 Wn. App. at 844.

The Tobins arguments here mirror those in *Donohoe*, a case involving the licensing and regulation of nursing homes. In that case, this Court observed that the purpose of the nursing home statutes was to “provide for the development, establishment, and enforcement of standards for the maintenance and operation of nursing homes, which . . . will promote safe and adequate care and treatment of the individuals

therein. . . .” *Donohoe*, 135 Wn. App. at 846 (quoting RCW 18.51.005) (emphasis in original). The court rejected the argument that this language created a cause of action for nursing home residents, finding,

Nothing in this declaration of purpose [that] expresses any legislative intent to create a DSHS duty to protect individual residents from inadequate private nursing home care or to indemnify residents for harm resulting from such care.

Id. at 846. Rather, to fulfill the purpose of the underlying nursing home statutes, the legislature imposed upon DSHS the duty to promulgate rules and regulations for licensing homes to serve the public health, safety, and welfare. *Id.* (citing RCW 18.51.070). “DSHS’s statutory duty under chapter 18.51 RCW is essentially limited to licensing and overseeing nursing homes for compliance with applicable standards.” *Id.* at 847.

DSHS’s duty in this case parallels that found in *Donohoe*. The statute requiring DSHS to regulate day cares, RCW 74.15, is part of a broad licensing and regulatory scheme that applies to several types of facilities that provides care to children and expecting mothers. The purposes underlying this broad scheme are set forth in former RCW 74.15.010¹²:

¹² The fact that this purpose section addresses both RCW 74.15 and RCW 74.13.031 illustrates the broad scope of this regulatory scheme: these statutes address not only children in day care, but also expectant mothers; developmentally disabled persons; foster children; runaway, dependent, or neglected children; and juveniles committed to confinement under supervision of DSHS.

The purpose of RCW 74.15 and RCW 74.13.031 is:

(1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups;

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons.

Like the nursing home statutes at issue in *Donohoe*, RCW 74.15 contains no language that explicitly creates a cause of action in tort against DSHS for recipients of day care services. To the contrary, the multiple purposes found in RCW 74.15.010 show that the intent of the legislature was to make day care facilities safer by requiring DSHS to establish minimum child care standards for licensure and regulation in an effort “to assure the users of such agencies, their parents, *the community at large*,

and the agencies themselves that adequate minimum standards are maintained” by such facilities. RCW 74.15.010(5).¹³ To fulfill this purpose, just as in *Donohoe*, the legislature required DSHS to promulgate rules and regulations governing day cares, to license and periodically monitor day cares for regulatory compliance, and to make licensure and compliance information available to the public. See former RCW 74.15.030, .100, .130, and .310 through .350.¹⁴

Where, as here, the legislative intent references the health, safety, and general welfare of the public, rather than carving out a particular and circumscribed class of persons for express protection, the legislative intent exception is not satisfied. *Burnett v. Tacoma City Light*, 124 Wn. App. 550, 562-63, 104 P.3d 677 (2004). Washington courts consistently find that such broad phrasing does not create a cause of action under the legislative intent exception.¹⁵

In the superior court, the Tobins nevertheless argued that the phrase “paramount importance over the rights of anybody to provide day

¹³ At all times relevant to this case, former RCW 74.15.020 defined “agency” to include child day care facilities and any person operating a day care.

¹⁴ Former RCW 75.15.310 through .350 were recodified in 2006 as RCW 43.215.520 through .540 when child care licensure and regulation were transferred to the Department of Early Learning.

¹⁵ See *Taylor*, 111 Wn.2d at 164-66 (State Building Code regulations); *Baerlein*, 92 Wn.2d at 233 (State Securities Act); *Garibay v. State*, 131 Wn. App. 454, 461, 128 P.3d 617 (2005), *review denied*, 158 Wn.2d 1017 (2006) (workplace safety regulations); *Stiefel v. City of Kent*, 132 Wn. App. 523, 532, 132 P.3d 1111 (2006) (fire protection codes); *Burnett*, 124 Wn. App. at 562-63 (disaster preparedness statutes); *Halleran*, 123 Wn. App. at 712 (State Securities Act).

care” in RCW 74.15.010(1) trumped the “subordinate” purposes of developing day cares found in other portions of RCW 74.15 and effectively carved out a particular and circumscribed class of persons in the statutes governing regulatory oversight of day cares. *See, e.g.*, CP at 3112-16. This interpretation is incorrect.¹⁶

The word “paramount” does not change the underlying multi-purpose regulatory scheme enacted for the betterment of the general condition of the day care industry. Indeed, when the legislature amended RCW 74.15.010(1) to add the phrase relied upon by the Tobins, it enacted a statement of legislative intent, which declared a State interest in “protecting and promoting the health, welfare, and safety of children, including those who receive care away from their own homes,” but specified that the legislature’s intent in amending the statute was “to provide [DSHS] with additional enforcement authority to carry out the purpose and provisions of this act.” Laws of 1995, ch. 302, § 1 (attached to RCW 74.15.010). There was no expressed or implied intent to create a

¹⁶ However, the trial court adopted this interpretation, as demonstrated by Jury Instruction No. 18, attached as Appendix B. CP at 4062 (exception at VRP at 1850). This instruction, based on the statement of the legislature’s intent, provided essentially no guidance as to what specific duty was specifically owed, which allowed the jury to base liability on any number of potential theories. The Instruction is the antithesis of the public duty doctrine because it imposed an actionable tort duty that is breached when the State fails “. . . to ensure that licensed in-home day cares are safe” CP at 40, 62. Judicially imposing a generalized duty of care and allowing juries to make ad-hoc decisions based on hindsight under the guise of the legislative intent exception is contrary to the policy underlying the public duty doctrine and undermines the regulatory scheme.

private cause of action. The word “paramount” was used to give priority to health and safety concerns over any asserted right to licensure.

Taken together, the purposes set forth in RCW 74.15.010 demonstrate the legislature’s intent to create a comprehensive licensing and regulatory scheme governing private and public facilities providing care for children in a variety of circumstances—a scheme intended to benefit children, parents, the facilities themselves, and the “community at large.” The class to which this statute applies is all potential users of day care facilities, which is potentially every family with young children in this state. The statute does not carve out a narrow and circumscribed class for express protection. The legislative intent exception therefore does not apply and the superior court’s ruling to the contrary should be reversed as a matter of law.

3. The Failure To Enforce Exception Is Not Applicable Because There Is No Mandatory Statutory Duty To Revoke Or Deny A Day Care License

The failure to enforce exception applies where a statute creates a mandatory duty to take a specific action to correct a known statutory violation, a government actor with actual knowledge of the violation failed to act in accordance with the statutory duty, and the plaintiff is in the class of persons protected by the statute. *Bailey*, 108 Wn.2d at 268; *Donohoe*, 135 Wn. App. at 666; *Halleran*, 123 Wn. App. at 714; *Smith v. City of*

Kelso, 112 Wn. App. 277, 282, 48 P.3d. 372, 375 (2002). Courts construe the exception narrowly. *Atherton Condo Apartment-Owners Ass'n Bd. of Directors v. Blume Dev. Co.*, 115 Wn.2d 506, 531, 799 P.2d 250 (1990). The existence of a mandatory duty to enforce a statute is a question of law that is reviewed de novo. *Waite v. Whatcom Cy.*, 54 Wn. App. 682, 686, 775 P.2d 967 (1989). Even if the government actor has actual knowledge of a statutory violation, “a duty does not exist if the government agent has broad discretion about whether and how to act.” *Donohoe*, 135 Wn. App. at 849 (quoting *Halleran*, 123 Wn. App. at 714). The statute itself must command a particular action, not merely grant discretion. The Tobins have the burden of proving each element of the exception. *Halleran*, 123 Wn. App. at 714.

The Tobins argued, and the trial court agreed, that DSHS has a duty to revoke or deny a day care license to an applicant whose day care fails to meet or comply with the minimum licensing standards set by DSHS. In particular, the Tobins contend a license should not have been granted to Little Fish’s day care, based on their contention that WAC 388-155-295(5) required a front-yard fence because of the day care’s proximity to Lake Tapps.¹⁷ In denying summary judgment to DSHS, the trial court

¹⁷ At the time Little Fish’s was first licensed, former WAC 388-155-295 (“Water safety”) provided as follows:

stated that “there was a requirement that if something falls below the minimum standards, the license must be denied I know there was a lot of argument about the menu of sanctions that could be imposed, but if you fall below the minimum requirement then the license must be denied.” VRP at 29 ll. 3-8 (April 25, 2008). The trial court’s ruling was in error for several reasons.¹⁸

First, the Tobins cannot identify any statute intended to protect a class of persons in which they are included. *Bailey*, 108 Wn.2d at 269 (statutes requiring the arrest of incapacitated persons intended to protect potential victims). While there are provisions in former RCW 74.15 that relate to health and safety in day care facilities, the Tobins can point to no statute mandating either that a front-yard fence is required where there is a

(1) The licensee must maintain the following water safety precautions when the child uses an on-premises swimming pool or wading pool. The licensee must ensure:

(a) The on-premises pool is inaccessible to the child when not in use; and

(b) An adult with current CPR training supervised the child at all times.

(2) The licensee must ensure a certified lifeguard is present during the child’s use of an off-premises swimming pool.

(3) The licensee must empty and clean a portable wading pool daily, when in use.

(4) An adequate, department-approved cover or barrier, installed at the manufacturer’s specification must be in place to prevent the child access at all times to heated tubs, whirlpools, spas, tanks, or similar equipment.

(5) A five foot high fence with gates, locked when not in use, is required to prevent access to water hazards, such as swimming pools, lakes, streams, or natural or artificial pools.

See Appendix C.

¹⁸ The court did not indicate the basis for its erroneous ruling; since both statutory and regulatory requirements were discussed below, both are discussed here.

lake in the neighborhood or that DSHS must deny or revoke a day care license where there is no such fence.

Second, and more generally, the Tobins can point to no statutory mandate that DSHS revoke or deny a day care license if an applicant fails to meet, or maintain compliance with, the minimum licensing requirements set by DSHS. RCW 74.15.030, which provides general authority to revoke or deny licenses, imposed no such mandate. In fact, the only statutory mandate related to meeting the minimum requirements directed that a “license shall be granted” if minimum licensing requirements are met. RCW 74.15.100. In stark contrast, the statute providing DSHS with enforcement authority directed that DSHS “**may**” deny, suspend, revoke, or modify a license for failure to comply with its requirements. RCW 74.15.130.

It is well-established that duty to a particular individual does not exist where the agency has broad discretion about how and whether to act. *Donohoe*, 135 Wn. App. at 849, (quoting *Halleran*, 123 Wn. App. at 714). Like the nursing home statutes in *Donohoe*, RCW 74.15.130 sets forth a “menu of sanctions” that “may” be applied to a facility that fails or refuses to comply with the applicable regulations. A menu of possible sanctions to be imposed at the discretion of the agency demonstrates that the agency is not mandated to take a particular action and does not have a duty to a

plaintiff to act in a particular manner. *Id.* Here, there is no evidence of a legislative intent to create a mandatory statutory duty to act that is enforceable in tort if the mandate is not followed.

Third, unable to point to any statute creating a mandatory duty to act, the Tobins asserted, and the trial court presumably agreed, that the agency's regulation, WAC 388-155-090(1), imposed a mandatory duty sufficient to invoke this exception.¹⁹ This is error. An agency's own regulations enacted to promote safety are not the equivalent of a mandatory statutory duty imposed by the legislature that subjects the State to tort liability. The cases analyzing the failure to enforce exception uniformly interpret statutes and legislatively-adopted municipal ordinances, not administrative regulations promulgated at the discretion of an agency. *See Bailey*, 108 Wn.2d at 269 (RCW 70.96A.120(2) created duty to take intoxicated person into custody); *Halleran*, 123 Wn. App. at 712 (State Securities Act does not impose mandatory duty to take enforcement action). *See also Halvorson*, 89 Wn.2d at 675-76 (municipal code fire safety standard); *Campbell v. City of Bellevue*, 85 Wn.2d 1, 530 P.2d 234 (1975) (municipal ordinance requiring worker to immediately disconnect power source); *Waite*, 54 Wn. App. at 688 (city ordinance prohibiting installation of propane heater in basement); *Livingston v. City*

¹⁹ The court did not explicitly cite WAC 388-155-090.

of *Everett*, 50 Wn. App. 655, 751 P.2d 1199 (1988) (city ordinance requiring city to hold dangerous animal). Limiting the creation of tort duties to legislative enactments is consistent with the principle that tort liability must be based on either the common law or statutes. *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 48-49, 914 P.2d 278 (1996) (the existence of a duty may be predicated upon statutory provisions or on common law principles).

Moreover, an agency cannot set the parameters of its own tort liability by enacting safety regulations, either to expand liability or to escape liability established by the legislature. Premising liability on an administrative regulation adopted under a statute intended to protect public health and safety is contrary to the purpose of the public duty doctrine itself: that legislation for the public benefit should not be discouraged by subjecting government to unlimited liability. *Taylor*, 111 Wn.2d at 171; *Burnett*, 124 Wn. App. at 561-62. Consequently, the failure to enforce exception should be narrowly construed, so as not to eviscerate the policy considerations behind the doctrine. *Atherton*, 115 Wn.2d at 531. *See also Sandin v. Conner*, 515 U.S. 472, 482, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995) (basing liability on prison policies creates disincentives for the State to codify management procedures and could lead to standardless and unbridled discretion).

Even assuming, arguendo, that DSHS could subject itself to liability by promulgating regulations, the regulations did not mandate revocation or suspension of Little Fish’s day care license for failure to meet minimum licensing requirements. The Tobins relied on WAC 388-155-090(1), which provided that DSHS must deny or revoke a license if the licensee “does not meet the requirements of this chapter.”²⁰ Their narrow reliance on that subsection treats the rest of WAC 388-155-090 as if it did not exist. This Court must interpret WAC 388-155-090 in a reasonable manner that gives effect to all its provisions, including other more specific subsections of the same regulation. *In re Estate of Black*, 153 Wn.2d 152, 102 P.3d 796 (2004); *Dep’t of Licensing v. Cannon*, 147 Wn.2d 41, 50 P.3d 627 (2002).

The regulation specific to minimum licensing requirements is found in former WAC 388-155-090(4).²¹ That subsection imposes no

²⁰ This subsection was not in existence at the time the Little Fish’s business was licensed. It became effective July 29, 2002, after the initial license was issued to Little Fish’s. WSR 02-14-085.

²¹ At the time Little Fish’s license was renewed, former WAC 388-155-090 (“When can my license application be denied and when can my license be suspended or revoked?”) provided as follows, in pertinent part:

- (1) We must deny your license application, or suspend or revoke your license if you do not meet the requirements in this chapter.
- (2) . . .
- (3) We must deny, suspend, or revoke your license if you:
 - (a) Have been found to have abused, neglected, sexually exploited, or abandoned a child as defined in chapter 26.44 RCW and chapter 388-15 WAC or allow a person who has committed any of these acts onto the premises;

mandate; it provides that DSHS *may* deny, suspend, or revoke a license if the licensor fails “to comply with the minimum licensing requirements set forth in this chapter or any provision of chapter 74.15 RCW.” Interpreting former WAC 388-155-090(1) to mandate denial or revocation for *any*

(b) Have a disqualifying criminal history as listed in chapter 388-06 WAC or allow a person with such a disqualifying criminal history on the premises;

(c) Have had a license denied, suspended, or revoked for the care of adults or children in this state or any other state. . . .

(d) Commit or allow an illegal act on the licensed premises;

(e) Allow a child in your care to be abused, neglected, exploited, or treated with cruelty or indifference;

(f) Use illegal drugs, or use alcohol excessively;

(g) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor’s office to inspect the premises;

(h) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor’s office access to records related to the home’s operation or to interview staff or a child in care; or

(i) Refuse to provide us a copy of your:

(A) Picture identification issued by a government entity; and

(B) Social Security card or verification of your employer identification number (EIN).

(4) We may deny, suspend, or revoke your license if you:

(a) Try to get or keep a license by deceitful means, such as making false statements or leaving out important information on your application;

(b) Do not provide enough staff in relation to the numbers, ages, or characteristics of the children in care;

(c) Allow a person who is not qualified by training, experience or temperament to care for or be in contact with a child in care;

(d) Fail to provide adequate supervision to a child in care;

(e) Are not able to exercise fiscal responsibility and accountability while operating the home;

(f) Knowingly allow an employee or volunteer on the premises who has made false statements on an application for employment or volunteer service;

(g) Refuse to supply additional information reasonably requested by the department; or

(h) Fail to comply with the minimum licensing requirements set forth in this chapter or any provision of chapter 74.15 RCW. (Emphasis added.)

See Appendix C.

failure to meet the “requirements in this chapter” would render WAC 388-155-090(4), which addresses “the minimum licensing requirements” in the chapter, superfluous and meaningless. Thus, even if the erection of a five-foot fence was a “minimum licensing requirement” for Little Fish’s day care, which DSHS denies, DSHS had discretion to decide what course of action was appropriate.

The trial court’s ruling was contrary to *Donohoe* and *Halleran*, which held unequivocally that, for purposes of the failure to enforce exception, a duty does not exist if the government agency had discretion how to act. The trial court erred in ruling that former WAC 388-115-090(1) created a duty to enforce.

Furthermore, to require licensing revocation whenever a licensee fell out of compliance with minimum requirements would virtually require licensors to have constant surveillance of each day care during all hours of operation. *See Nerburn v. State*, 8 Wn. App. 370, 375, 506 P.2d. 873 (1973) (Labor and Industries inspectors lack resources to continuously enforce all safe work place regulations).

Finally, assuming without conceding that DSHS could subject itself to liability by promulgating regulations, the failure to enforce exception still is not satisfied because there is no “actual knowledge” of a “known violation” in this case. At most, there is a disputed interpretation

of WAC 388-155-295(5) based on the Tobins' reading; one that DSHS never attributed to the regulation. The Tobins asserted, and the trial court presumably agreed, that because Gabriel made his way to Lake Tapps, he therefore had "access" to the lake, so that a fence in the front yard of Little Fish's day care was required under WAC 388-155-295(5).²² CP at 3107-08.

DSHS provided evidence that regulations governing day care facilities are not read in isolation from each other, and that in family home day care licensing, "access" restrictions are read in light of the requirement in former WAC 388-155 that children must be under constant supervision and are not allowed to roam away from approved areas on the premises. VRP at 466 ll. 16-23; 764 ll. 9-13; 765 ll. 2-6; 1110 ll.13 to 1112 ll. 1; 1208 l. 5 to 1209 ll.8, 1219 l. 5 to 1220 l. 22. The regulatory focus therefore was on ensuring the safety of the premises. The fencing requirement was interpreted to apply to a water hazard on the premises of a day care, or directly adjacent thereto, which children otherwise could access. VRP at 1167 ll. 4-5; 1207 ll.1-20; CP at 2996 (Quinlan Decl.

²² The Tobins' experts Margo Logan and Katherine Kent both testified as to "access." Logan agreed that children who are supervised cannot gain "access" to off-premises hazards and only would be expected to have "access" to areas within the day care. VRP at 1112 l. 6-113 l. 6. Kent, after testifying that a day care provider was not required to cover all the hot tubs in the neighborhood if a child could walk to one, defined "access" to mean "what you can reasonably see from the day care". VRP at 912 l. 23; 914 l. 8; 917 l. 19.

Supp. Mot. Summ. J.); CP at 2999 (Berdecia Decl. Supp. Mot. Summ. J.). *See also* CP at 3015-18 (Collins Decl. Supp. Mot. Summ. J.). It is undisputed that, in light of the entire regulatory scheme, including the supervision requirements, nobody in the agency interpreted WAC 388-155-295(5) to require a five-foot fence in the front yard because of the lake across the street. *See* VRP at 1229 l. 24 to 1230 l. 8. According to the person responsible for drafting the rule, it was never intended to require front yard fencing of a day care, where children were not permitted in the front yard, simply because there may be open water somewhere in the neighborhood. (VRP at 1229 l. 4 to 1230 l. 8). A court should be wary of reading additional restrictions into rules or promulgating additional rules under the guise of interpreting them. *Ingram v. Dep't of Licensing*, 162 Wn.2d 514, 526, 173 P.3d 259 (2007).

The agency's interpretation of its own regulations was entitled to substantial weight. That interpretation should be adopted by the court if not plainly erroneous or inconsistent with the plain language of the regulation. *Ingram*, 162 Wn.2d at 521; *BD Roofing, Inc. v. Wash. Dep't of Labor & Indus.*, 139 Wn. App. 98, 107, 161 P.3d 387 (2007). In this case, the agency's interpretation was logical, reasonable, and consistent with the statute. The trial court erred in disregarding it.

The trial court's ruling that the failure to enforce exception to the public duty doctrine applied in this case was erroneous as a matter of law, and it should be reversed.

4. The Existence Of A 1-800 Referral Line Does Not Create A Duty Under The Volunteer Rescue Doctrine

In their motion for summary judgment on the issue of duty, the Tobins did not argue that the volunteer rescue exception to the public duty doctrine applied. CP at 3221-26. Rather, the trial judge *sua sponte* invited briefing on the subject at the end of the initial summary judgment hearing on April 18, 2008, asking whether DSHS's 1-800 phone line created a duty to rescue under Restatement of Torts § 323 (commonly referred to as the volunteer rescue doctrine). The trial court ultimately ruled that the volunteer rescue exception applied because of the 1-800 line. However, by providing a 1-800 referral line to assist parents in locating day care facilities, the State is neither attempting nor promising to protect the Tobins from a known danger.

Under the volunteer rescue doctrine, the duty to rescue arises only when a rescuer knows a danger is present and takes steps to aid an individual in need. *Folsom v. Burger King*, 135 Wn.2d 658, 667, 958 P.2d 301 (1998). Here, as explained above, there was no known danger, so the exception is inapplicable.

In addition, it is the promise to protect that both creates and limits the duty. *Cummins*, 156 Wn.2d at 867-68. In *Cummins*, the plaintiff placed a call to 911 to seek medical assistance because of an apparent heart attack but hung up the phone before giving the dispatcher his specific location. Because no assurance of response was given, Mrs. Cummins therefore asserted that the very nature of the 911 system amounted to an “inherent” government assurance triggering a special relationship. The court rejected this argument, concluding an “inherent” assurance is not an “express assurance” and holding that “[a] government duty cannot arise from implied assurances.” *Cummins*, 156 Wn.2d at 855-56.²³

In determining whether a promise gives rise to an actionable tort duty, the same analysis applies under the special relationship and volunteer rescue exceptions to the public duty doctrine. *Cummins*, 156 Wn.2d at 867-68. There must be an express assurance. As explained above, no applicable statute provides an express assurance. As also explained above, the fact that the Tobins received information about licensed day cares in their area does not constitute an express assurance, under either the special relationship exception or the volunteer rescue

²³ See also the discussion of the *Donohoe* case, *supra*, at pp. 19-22

exception. The trial court erred in finding that the requirements of the volunteer rescue exception to the public duty doctrine had been met.

As shown in this last several pages of the brief, the trial court erred by ruling that any exception to the public duty doctrine applied in this case. Because of these errors, the trial court erroneously declared the State owed a duty of due care to Gabriel Tobin and his family. As a matter of law, this Court should reverse the trial court as to each exception, declare that this case falls within the public duty doctrine, and dismiss all tort claims raised herein.

C. The Court's Refusal To Exclude Irrelevant And Unduly Prejudicial Evidence And Argument About The Post-Death Investigation Was Error

After Gabriel Tobin's death, DSHS conducted an investigation of Lisa Fish's day care. The investigation did not inquire into whether there were licensing violations or whether employee misconduct played a role in licensing Lisa Fish; rather, the purpose of the investigation was to determine whether Lisa Fish failed to supervise Gabriel. CP at 1523, 2937; VRP at 1481; 1486-87.

The Tobins alleged this investigation was negligent and part of a "cover up" and "conspiracy" to blame Lisa Fish and absolve DSHS of responsibility. CP at 1958-61. The trial court correctly concluded there was no cause of action for negligent investigation here because the only

evidence was clearly irrelevant and its admission constitutes reversible error.

Moreover, admission of the evidence should have been excluded under the alternative ground of ER 403 because it was prejudicial to the State, far outweighing any potential probative value. As anticipated from his argument on motions in limine, the Tobins' counsel used the evidence to inflame the jury and evoke an emotional response by arguing the investigation was part of a cover-up intended to fool the public.²⁵ *See, e.g.* VRP at 1895 l. 14 to 1896 l. 5. Jennifer Tobin testified it was "very upsetting" to learn the investigation did not focus in part on the state employees because the investigation did not "do justice" to her son's name. VRP at 1750-51. In closing argument, counsel for the Tobins asserted there was never a "complete investigation" by DSHS (VRP at 1895-96), that the investigation was "phony" (VRP at 1918), and that the State knew it had made a mistake in licensing Lisa Fish so they tried to "pull the wool over" the eyes of the community and media (VRP at 1924).

The admission of evidence of the post-death investigation was error, and its misuse by the Tobins' counsel to create the appearance of impropriety and government misconduct was completely prejudicial to the

²⁵ DSHS does not concede that the investigation was negligent and vigorously disputes the allegation that there was any sort of "coverup" or "conspiracy." No evidence in the record supports those allegations.

State. If this case is not dismissed, it should be remanded for a new trial with instruction to exclude this evidence and the argument of counsel related thereto.

D. It Was Error For The Court To Allow Evidence And Argument That WAC 388-155-295(5) Was Modified Or Clarified After Gabriel Tobin's Death

A revised version of WAC 388-155-295(5) was adopted in August 2004, as part of a larger project to clarify and simplify all government regulations. VRP at 829. Mary Oakden, the program manager charged with writing the clarifications, spent a year on the project, which began prior to Gabriel Tobin's death. VRP at 865-66. The regulation was not materially altered and, like the former regulation, did not require providers to fence the front yard if their home was located across the street from a lake.²⁶ VRP at 870-71.

DSHS moved in limine to exclude evidence of the rewrite as irrelevant, arguing the rewrite has no probative value as to the meaning of the rule in effect at the time of Gabriel Tobin's death. CP at 3902. The trial court denied the motion. Without factual support, the Tobins' counsel

²⁶ The revised regulation, former WAC 388-296-0750(5), provided:

You must place a five-foot fence designed to discourage climbing, and have a locked gate around a pool of water. This included swimming pools that are above or below ground level and ornamental pools. Bodies of water hazardous to young children must not be accessible to the children when you or a primary staff person is not providing direct supervision during your operating hours.

argued in closing that DSHS changed the rule to avoid responsibility as part of its effort to fool people into thinking the rule did not require fencing in Little Fish's front yard and to cover up culpability by making the rule "incomprehensible." VRP at 1910.

Admitting irrelevant evidence of the rewrite to support the inference that DSHS was trying to avoid responsibility for Gabriel's death was clear error requiring reversal and remand for a new trial.²⁷ ER 403.

E. Jury Instruction No. 19 Was An Improper Comment On The Evidence; The Failure To Give Defendants' Proposed Instruction On Interpretation Compounded The Error

After erroneously denying summary judgment to DSHS on the lack of tort duty to the Tobins, the court instructed the jury in Instruction No. 20 that a violation of a regulation is not necessarily negligence, but may be *evidence* of negligence. CP at 4064. Instruction No. 19 purported to set forth the WAC that could be considered by the jury in determining DSHS's negligence. However, the trial court erred when it instructed the jury only on WAC 388-155-295(5), a single subsection of the water safety regulation. Instruction No. 19, attached as Appendix E. CP at 4063.²⁸

²⁷ Even if the rewrite had been initiated after the incident, evidence concerning it would have been inadmissible under ER 407 as a post-incident remedial measure. CP at 3565-67. *See Baker v. Canadian National/Illinois Central Railroad*, 536 F.3d 357, 368 (5th Cir. 2008) (evidence of change in policy excluded as subsequent remedial measure). *See also Hyjek v. Anthony Indus.*, 133 Wn.2d 414, 417, 944 P.2d 1036 (1997); *Codd v. Stevens Pass, Inc.*, 45 Wn. App. 393, 725 P.2d 1008 (1986).

²⁸ As discussed above, the existence of a duty is a matter of law to be decided by the court. The duty question was not before the jury. If the trial court actually intended

The trial testimony in this case focused on whether a fence was required in the front of Lisa Fish's property. It was error to highlight a single piece of evidence on the issue of negligence by taking one subsection of the regulation out of the context of the entire regulation related to water hazards on or adjacent to the day care property. The error was compounded by the court's failure to give an instruction proposed by DSHS. DSHS's counsel proposed an instruction that read:

A regulation should not be read in isolation, but rather within the context of the regulation and the regulatory scheme as a whole. Where an agency is charged with the administration and enforcement of a statute, the agency's interpretation of the statute, as well as the agency's own regulation, is given great weight in determining the legislative intent.

CP at 3933, Appendix E. Counsel explicitly objected to the failure to give this instruction, especially when combined with the instruction on the truncated version of WAC 388-155-295. VRP at 1847-48. By giving an instruction on only one subsection of the rule and refusing to give a correct instruction on interpretation of rules, the trial court failed to properly put the entire regulation before the jury. *See State v. Ellis*, 48 Wn. App 333, 337, 738 P.2d 1085 (1987) ("argumentative instruction is [a]n instruction which singles out or emphasizes a particular issue,

to put the issue of duty before the jury, its initial legal error was also compounded by its refusal to instruct the jury on the entire rule at issue and on the deference to be afforded the agency's interpretation.

theory, or defense” (quoting Black’s Law Dictionary, 137 (4th rev. ed. 1968))). *See also* Wash. Const. art. IV, § 16 (judges shall not charge juries with respect to matters of fact nor comment thereon).

These errors had significant ramifications. All the competent evidence presented to the jury supported DSHS’s position that WAC 388-155-295 did not require a five-foot-high fence in the front of Little Fish’s day care. VRP at 466 ll. 16-23; 764 ll. 9-13; 765 ll. 2-6; 1110 l. 13 to 1112 l. 1; 1208 l. 5 to 1209 l. 8; 1219 l. 5 to 1220 l. 22. Instruction No. 19 biased the jury’s consideration of that evidence and allowed the Tobins’ counsel to ignore the weight of the evidence and argue that DSHS breached its duty to the Tobins solely by not requiring a fence in the front. In fact, in closing argument, Tobins’ counsel stated, in reference to the trial exhibit notebook, “So . . . you’re instructed on the law, the five-foot-high fence with gates locked is required.” CP at 1917-18.

For reasons previously explained, the trial court erred in allowing this case to proceed to a jury. Even if that were not the case, however, the trial court’s failure to properly instruct the jury resulted in prejudice to DSHS, warranting a reversal and remand with appropriate instructions.

VIII. CONCLUSION

DSHS respectfully requests this Court reverse the denial of summary judgment, reverse the jury's verdict, and remand this case to the trial court with instructions to dismiss.

RESPECTFULLY SUBMITTED this 8 day of July, 2009.

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Appendices

Appendix A



Child Care in Washington State

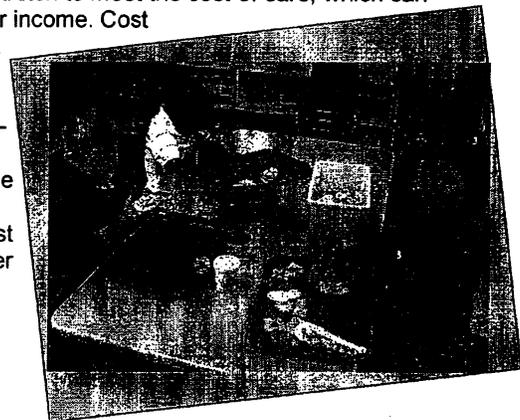
September 2008



Key Child Care Trends in 2007

Since established by state statute in 1989, the Washington State Child Care Resource & Referral Network (Network) has been a key component of the child care infrastructure. The Network is charged with helping parents find child care, educating parents, providers and the community about what quality child care looks like, supporting providers through training and technical assistance, strengthening the child care system at all levels, and collecting data about child care supply and demand in Washington State.

About 175,000 children are in licensed care on any given day. With an estimated 35,000 or more caregivers in Washington State, child care is a key component of the state's economic and social picture. Parents and policymakers alike have a stake in ensuring that care is affordable, accessible and high quality. In terms of affordability (see p. 4), parents still stretch to meet the cost of care, which can amount to a quarter or a third of their income. Cost impacts providers as well, who must operate on the thinnest of margins in order for parents to afford their fees (p. 3). Accessibility is variable— with large declines in the number of family child care facilities (p. 2), some parents are finding fewer choices in their communities. Quality is the most difficult to gauge, but R&Rs and other components of the professional development system continue to provide training opportunities that encourage providers to reach their highest potential.



During 2007, the Network's member agencies:

- Handled 211,627 calls
- Processed 109,247 public referral calls
- Served 25,078 families and 67,289 children, and
- Assisted 21,954 low-income families find child care.

Notable highlights of this report:

- Over the past five years, the total number of licensed facilities has declined by about 13% overall. Family child care closures account for nearly all of the net decline.
- Fully a quarter of licensed facilities report that one or more staff members speak Spanish, continuing a steady increase.
- Infant care continues to be the most difficult care to find and the most expensive; the median annual cost of infant care ranges from \$7,280 to \$9,620.
- For a family with an infant and a preschooler in full-time care, the cost represents a quarter to a third of the state's median household income for 2007.

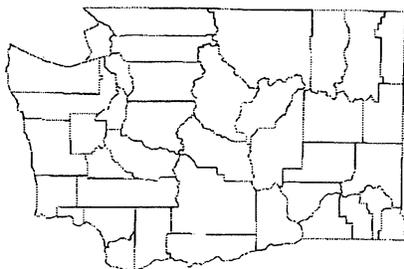
Child Care Resource & Referral Supports Communities by:

- Helping parents find child care and financing options
- Improving the quality of child care, early learning and after-school programs
- Advocating for children, parents, and child care providers
- Increasing the availability of child care
- Bridging child care and K-12 education, and
- Supporting families to raise healthy children

Contact Information:

**Washington State
Child Care Resource & Referral Network**
1551 Broadway, Suite 300
Tacoma, WA 98402
253-383-1735 (800) 446-1114
www.childcarenet.org

The Network's mission is to support families and caregivers, shape policy, and build communities that promote the learning and development of children and youth throughout Washington State through a strong statewide network of local child care resource and referral programs.



People

Est. Population	6,488,000
Est. Change since 2003	389,700
Children under 5 years	420,384
Children under 13 years	1,106,384
% of Children under 13 living in poverty	16%
Ranking among states in percent of poor children	32
K-12 enrollment	1,018,674
Children in Care Zone ¹	705,802
Average number children on child care subsidy	63,967/month
Head Start/ECEAP Slots	17,575

Economics

Living Wage ²	\$41,300
Median Household Income	\$58,462/yr
Unemployment Rate	5.6%

Notes:

¹ Care Zone is defined as the number of children who live in a single-parent or two-parent home where the parent or both parents are working.

² The living wage measure is based on a family of four and represents twice the federal poverty level income. Twice the federal poverty level is the income cut-off for families receiving child care subsidies.

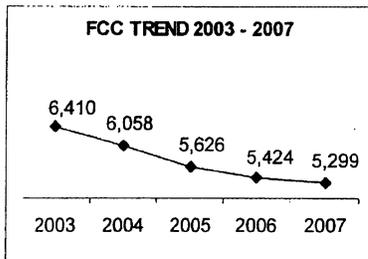
Data Sources for the Report:

American Federation of Teachers, Children's Defense Fund, WA Dept of Early Learning, WA Employment Security Dept, WA Head Start State Collaboration Office, WA Office of Financial Management, WA Office of Superintendent of Public Instruction, US Census Bureau, US Dept of Health & Human Services, US Federal Registry and the Washington State Child Care Resource & Referral Network.

Licensed Child Care in Washington State

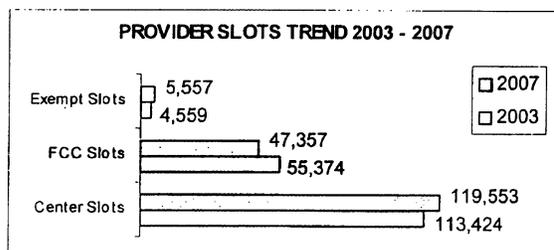
How many licensed child care facilities exist in our state?

Family child care (FCC) businesses account for 71% of the 7,449 licensed and 95 exempt (primarily school age care) facilities in the state. In the past five years, the overall number of licensed facilities has declined by a net 1,082, or 13%.



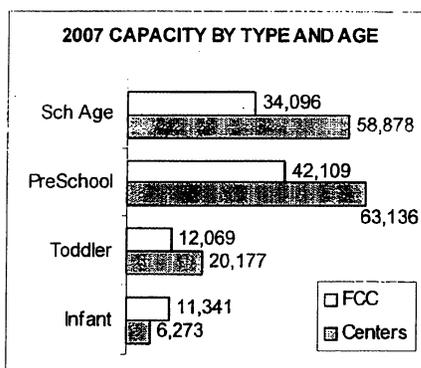
Since 2003, there has been a 17% decline in the number of family child care businesses, with a net loss of 1,111 facilities. Center facilities continue to fluctuate slightly. Over the last five years, there has been a 1% increase or a net gain of 29 facilities.

How has the number of child care slots changed over the last five years?



Over the past five years, the state has experienced a net loss of 1,888 potential slots, with the decrease of 8,017 family child care slots offset by the 6,129 increase in center and exempt slots. Exempt slots have increased due to the expansion of the number of school-age only facilities.

What is the distribution of slots by type of care and by age?



Because of a higher required ratio of adults to children under 2 years old in licensed care, there are fewer slots for infants and toddlers than for other age groups. The ratio is highest (1 adult to 4 infants) and the supply the smallest in centers. Family child care represents roughly two-thirds (64%) of the available infant slots, making it a critical option for working parents.

Note: This chart does not represent actual enrollment of children in care. The number of slots for all children is overstated in this comparison. It shows each age group filled as if there were no other children in the other age group. If a slot is filled for one age group it cancels out the potential slot for the other age group.

What languages are spoken?

More than 90% of providers speak English, and one-quarter speak Spanish. Over 30 additional languages are spoken, including French, Vietnamese, Tagalog, German Japanese, Chinese, Farsi, Korean, Arabic, Ukrainian, and Punjabi, among others.

Note: Percentages include providers who speak more than one language.

Languages Spoken	
English	92%
Spanish	25%
Somali	2%
Russian	2%
Other	12%

How much non-standard care is available in my community?

Most facilities offer full- and part-time care on weekdays only. Fewer than half (44%) report offering regular non-standard hour care. Out of all providers, 19% offer evening care past 6:30 PM, 17% weekend and 9% overnight.

Economics of Child Care Providers

What do child care providers earn compared to kindergarten teachers?

2007 Average Salary Comparisons: Kindergarten Teachers vs. Child Care Providers			
Public School Kindergarten Teacher (2005)	Director Child Care Center	Teacher Child Care Center	Family Child Care Provider Business Gross Income
\$45,722/yr \$3,810/mo	\$29,856/yr \$2,488/mo	\$20,925/yr \$1,744/mo	\$29,124/yr \$2,477/mo

Washington's kindergarten teachers earn 53% more than center directors, more than double what child care teachers earn, and 54% more than family child care providers' gross earnings in the state. The substantial wage differential can be attributed to higher educational requirements for kindergarten teachers and relatively low turnover in public schools. The lack of competitive wages makes it difficult to recruit and retain educated child care workers and can have a negative impact on the quality of care.

How does the child care subsidy reimbursement rate affect provider profitability?

Current state child care subsidy reimbursement rates are one constraint on wages, quality, and financial solvency for providers.

2007 Ranges: Monthly Full-Time Subsidy Reimbursement Rates (rates vary by geographic area)			
	Infant	Toddler	Preschool
Centers	\$600 - \$934	\$505 - \$780	\$469 - \$654
Family Child Care Homes	\$511 - \$716	\$444 - \$732	\$420 - \$617

To support the average salary of a teacher, aide and part of the cost of the director for an infant classroom in a center, a program would need to enroll 4.3 to 6.1 subsidized full-time infants. Licensing permits a maximum of 8 infants in a room at any one time. Income generated from the other 1.9 to 3.3 infants would have to cover all other classroom costs including benefits, training, meals, rent and supplies.

In a typical family child care home, one provider might have two infants and four preschoolers. A provider's gross earnings if all the children are on subsidy would be \$2,758 to \$3,719 per month. Out of these earnings, the provider must pay for all expenses, including salaries, benefits, taxes, rent, meals, training, equipment and supplies.

Professional Development for the Child Care Workforce

Training and Scholarships

Local R&R programs provide state-mandated training for providers. In 2007, R&R programs offered 659 trainings for the child care workforce, with an average of 21 participants in each training.

Washington Scholarships for Child Care Professionals is a scholarship program that provides financial support for center and school-age staff and family child care providers to enroll in community and technical college degree programs. In Washington State, 505 scholarships were awarded in 2007.

National Standards for Quality

Training, education, experience and applied knowledge are important to child care quality. Accreditation recognizes facilities who have achieved national quality standards:

- Center-based Accredited Programs** 114
National Association for the Education of Young Children
- School-Age Accredited Programs** 14
National AfterSchool Association
- Accredited Family Child Care Homes** 21
National Association for Family Child Care
- Accredited Montessori Programs** 12
American Montessori Society

Professional Associations

The Washington Association for the Education of Young Children (WAEYC) has 15 affiliates statewide.

The Washington State Family Child Care Association has 18 chapters and accepts non-chapter members statewide. The Eastern Washington Family Child Care Association also accepts members from select counties across the state.

Providers say R&Rs help:

- 1) Increase parent referrals to fill my openings
- 2) Increase my quality of care
- 3) Increase my ability to operate my child care business

About the Families

Callers to the referral lines are regularly surveyed by the R&R Network in order to enhance our services and inform policymakers. Parents report that R&Rs significantly increase their knowledge of:

- 1) How to choose child care that fits their family's needs; and
- 2) How to identify a quality child care setting.

Families consider a variety of factors when seeking a child care, including practical considerations such as the accessibility of programs to their workplace or home, the cost of care and the hours of operation.

Parents seek child care where:

- 1) The center/home is clean and safe
- 2) The provider really likes children
- 3) Parents feel comfortable with the provider
- 4) Children's individual needs are met

Top three challenges parents identify when seeking child care:

- 1) Affordability
- 2) Inconvenient locations
- 3) Hours that match parents' needs



95% of families surveyed indicate that child care resource and referral staff responded helpfully to their individual questions and concerns.

Affordability for Families

How much does child care cost in Washington State?

Statewide, the annual median household income in 2007 was \$58,462. The tables below indicate the annual median price of full-time care for one child by age group and type of care. The median price indicates that half the providers in the area charge more and half charge less than the prices quoted here.

Centers	2007 Median Annual Cost for 1 Child	% of 2007 Med. Household Inc.
Infant	\$9,620	16%
Toddler	\$8,216	14%
Preschool	\$7,280	12%
School Age	\$4,160	7%

Family Child Care	2007 Median Annual Cost for 1 Child	% of 2007 Med. Household Inc.
Infant	\$7,280	12%
Toddler	\$7,020	12%
Preschool	\$6,240	11%
School Age	\$3,120	5%

While the median cost of family child care can be up to 32% less than the cost of care in a center, child care continues to represent a substantial expense for families. The cost of full-time care for an infant represents 12% to 16% of the median income. Care for an infant and a preschool child would represent 23% to 28% of median income in the state.

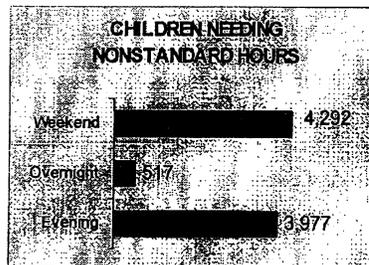
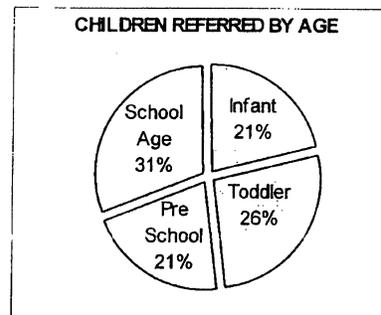
Families Using R&R Services

Who are families that call the R&R Line?

In 2007, 25,078 families received referrals. A majority (58%) of the families served were low-income. Almost half (49%) were headed by single parents.

What ages of children are referred?

There is a relatively even distribution of children served across age groups. However, even though the largest population of children eligible for licensed care is school-age (5-12 years old), over two-thirds of the children referred are birth through four years old.



How many children need non-standard care?

Parents of 8,786 children requested referrals to licensed facilities offering non-standard hour care. Evening and weekend care represent 94% of the non-standard care requests.

Appendix B

INSTRUCTION NO. 18

A statute provides that the State of Washington, DSHS, and its employees have the duty to establish and enforce minimum standards relating to in-home daycares which must address the size and suitability of the daycare and its plan of operation for conducting in-home daycare services; to conduct background checks to determine whether or not persons seeking an in-home daycare license, or persons within the proposed daycare who have unsupervised access to children, have suitable character and competency to care for children outside of the home within the State of Washington; and to ensure that licensed in-home daycares are safe, clean and are within generally adequate premises which provide for the comfort, care and well being of children, who are being cared for away from home.

Appendix C

WASHINGTON ADMINISTRATIVE CODE
TITLE 388. SOCIAL AND HEALTH SERVICES, DEPARTMENT OF
CHAPTER 388-155. MINIMUM LICENSING REQUIREMENTS FOR FAMILY CHILD DAY CARE
HOMES--LICENSING
Current through January 2, 2003

388-155-005. Authority.

The following rules are adopted under chapters 74.12 and 74.15 RCW.

Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), S 388-155-005, filed 6/22/94, effective 7/23/94.
Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), S 388-155-005, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-005
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388-155-010. Definitions.

As used and defined under this chapter:

'**American Indian child**' means any unmarried person under the age of eighteen who is:

- (1) A member of or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut or other Alaska Native and a member of an Alaskan native regional Corporation or Alaska Native Village;
- (2) Determined or eligible to be found to be Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;
- (3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or
- (4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

'**Assistant**' means a child care giver employed by the licensee to supervise a child served at the home.

'**Capacity**' means the maximum number of children the licensee is authorized to have on the premises at a given time.

'**Child**' means a person seventeen years of age and under.

'**Child abuse or neglect**' means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by a person under circumstances indicating the child's health, welfare, and safety is harmed.

'**Department**' means the state department of social and health services.

'**Department of health**' means the state department of health.

'**Family abode**' means 'a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.'

'**Family child care home**' means a facility in the family residence of the licensee providing regularly scheduled care for twelve or fewer children, within a birth through eleven-years-of-age range exclusively, for periods less than twenty-four hours unless care in excess of twenty-four hours is necessary due to the nature of the parent's work.

'**Family child day care home**' means the same as '**family child care home**' and 'a child day care facility, licensed by the state, located in the family abode of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.'

'**Family residence**' means the same as '**family abode**.'

'**Home**' means the same as '**family child care home**.'

'I,' 'you,' and 'your' refer to and mean the licensee or applicant for a child care license.

'**License**' means a permit issued by the department authorizing by law the licensee to operate a family child care home and certifying the licensee meets minimum requirements under licensure.

'**Licensee**' means the person, organization, or legal entity responsible for operating the home.

'**Premises**' means the buildings where the home is located and the adjoining grounds over which the licensee has control.

'**Provider**' means the same as '**licensee**.'

'**The Washington state training and registry system (STARS)**' means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirements.

'**We**' or '**our**' refer to and mean the department of social and health services, including division of child care and early learning licensors.

Statutory Authority: Chapter 74.15 RCW, RCW 74.08.090, 02-16-062, S 388-155- 010, filed 8/2/02, effective 10/1/02. Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-010, filed 2/28/00, effective 3/30/00; 98-24-052, S 388- 155-010, filed 11/25/98, effective 12/26/98; 91-04-048 (Order 3136), S 388-155- 010, filed 2/1/91, effective 3/4/91.

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388-155-020. Scope of licensing.

(1) The person operating a family child care home shall be subject to licensing by authority under chapter 74.15 RCW, unless exempted by RCW 74.15.020(4).

(2) The person operating a family child care home and qualifying for exemption from requirements of this chapter under RCW 74.15.020(4) shall not be subject to licensure. The person claiming an exemption must provide the department proof of entitlement to the exemption on the department's request.

(3)(a) RCW 74.15.020 (4)(c)(i) exempts from licensing persons who care for a neighbor's or friend's child or children, with or without compensation, where:

(i) Care is provided for less than twenty-four hours; and

(ii) Such activity is not conducted on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to advertising such care.

(b) For purposes of this section:

(i) **'Advertising'** means attempting to solicit child care clients, either directly or indirectly, through written, or electronic means;

(ii) **'Engaging in business'** shall exclude those persons providing child care for only one family of children or who can demonstrate that their gross earnings from child care will not exceed one thousand dollars in any one calendar year;

(iii) **'Friend'** means someone with whom the care provider had a personal relationship prior to the time care was sought, offered, or provided;

(iv) **'Neighbor'** means a person with whom the care provider has relationship by virtue to living in close proximity to the person;

(v) **'Ongoing'** means that care is provided for a number of consecutive weeks or months or there is no specific time frame for ending child care;

(vi) **'Regularly scheduled'** means that the child comes at usually planned times and/or days and/or the provider makes her/himself available to provide care at fixed or planned intervals.

(4) The department shall not license the home legally exempt from licensing. However, at the applicant's request, the department shall investigate and may certify the home as meeting licensing and other pertinent requirements. In such cases, the department's requirements and procedures for licensure shall apply equally to certification.

(5) The department may certify a family day care home for payment without further investigation if the home is:

(a) Licensed by an Indian tribe; or

(b) Certified by the Federal Department of Defense.

The home must be licensed or certified in accordance with national or state standards or standards approved by the department and be operated on the premises over which the entity licensing or certifying the home has jurisdiction.

(6) The person or organization desiring to serve state-paid children must:

(a) Be licensed or certified;

(b) Follow billing policies and procedures in Child Care Subsidies, A Booklet for Providers, DSHS 22-877(X); and

(c) Bill the department at the person's or organization's customary rate or the DSHS rate, whichever is less.

Statutory Authority: RCW 74.15.030. 00-06-040, S 388-155-020, filed 2/28/00, effective 3/30/00; 96-20-095, S 388-155-020, filed 10/1/96, effective 11/1/96. Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), S 388-155-020, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030. 91-15-084 (Order 3205), S 388-155-020, filed 7/23/91, effective 8/23/91; 91-04-048 (Order 3136), S 388-155-020, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-040. Local ordinances and codes.

The department must issue or deny a license on the basis of the applicant's compliance with minimum licensing and procedural requirements. Local officials must be responsible for enforcing city ordinances and county codes, such as zoning and building regulations.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-040, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-040, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-050. Waivers.

(1) In an individual case, the department, for good cause, may waive a specific requirement and may approve an alternate method of achieving the specific requirement's intent if the:

(a) Licensee or applicant submits to the department a written waiver request fully explaining the circumstances necessitating the waiver; and

(b) Department determines waiver approval will not jeopardize the safety or welfare of the child in care or detract from the quality of services the licensee delivers.

(2) The department may approve a waiver request only for a specific purpose or child and for a specific period of time not exceeding the expiration date of the license.

(3) The department may limit or restrict a license issued in conjunction with a waiver.

(4) The licensee must maintain on the premises a copy of the written waiver approval.

(5) The department's denial of a waiver request must not be subject to appeal under chapter 34.05 RCW.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-050, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-050, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-060. Dual licensure.

The department must not issue a family child care home license to the applicant having a foster family home license or other license involving full-time care or permit simultaneous care for the child and adult on the same premises. An exception may be granted if the applicant or licensee:

- (1) Demonstrates evidence that care of one client category will not interfere with the quality of care provided to another category of clients;
- (2) Requests and obtains a waiver permitting dual licensure;
- (3) Maintains the most stringent maximum capacity limitation for the client categories concerned; and
- (4) Where the licensee desires to exceed the most stringent maximum capacity limitation, requests an additional waiver to subsection (3) above. This additional waiver request may be written on one form with the request for dual licensing.

Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-060, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), S 388-155-060, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), S 388-155-060, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-060
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388-155-070. Application and reapplication for licensure--Orientation, training and investigation.

(1) The person, organization, or legal entity applying for a license or relicensure under this chapter and responsible for operating the home must:

(a) Attend orientation and training programs provided, arranged, or approved by the department;

(b) Comply with application procedures the department prescribes; and

(c) Submit to the department:

(i) A completed department-supplied application for family child care home license, including required attachments, ninety or more days before the:

(A) Beginning of licensed care;

(B) Expiration of a current license;

(C) Relocation of a home; or

(D) Change of licensed capacity category.

(ii) A completed criminal history and background inquiry form for each applicant, assistant, volunteer, or member of the household sixteen years of age or older having unsupervised or regular access to the child in care;

(iii) Fingerprint cards if residing in Washington state for less than three years; and

(iv) The annual licensing fee.

(2) In addition to the required application materials specified under subsection (1) of this section, the applicant for initial licensure must submit to the department:

(a) A department-supplied employment and education resume of the applicant and assistant including a transcript or its equivalent documenting early childhood education class completion, where appropriate; and

(b) Three references for the applicant.

- (3) The applicant for a license under this chapter shall be eighteen years of age or older.
- (4) The department may, at any time, require additional information from the applicant, licensee, assistant, volunteer, member of their household and other person having access to the child in care as the department deems necessary, including, but not limited to:
- (a) Sexual deviancy evaluations;
 - (b) Substance and alcohol abuse evaluations;
 - (c) Psychiatric evaluations;
 - (d) Psychological evaluations; and
 - (e) Medical evaluations.
- (5) The department may perform investigations of the applicant, licensee, assistant, volunteer, member of their household, and other person having access to the child in care as the department deems necessary, including accessing criminal histories and law enforcement files.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-070, filed 2/28/00, effective 3/30/00. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-070, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.15.030, 91-04-048 (Order 3136), S 388-155-070, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-080. Issuance of license.

- (1) The department issues the applicant or licensee a license for a specific number of children dependent on the:
 - (a) Department's evaluation of the home's premises and physical accommodations;
 - (b) Number and skills of the licensee, assistant, and volunteers; and
 - (c) Ages and characteristics of the children served.
- (2) The department:
 - (a) May issue the applicant or licensee a license to care for fewer children than the home's maximum capacity; and
 - (b) Must not issue the applicant or licensee a license for the care of more children than permitted under this chapter.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-080, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-080, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-083. Fees.

The licensee must pay a fee of twenty-four dollars per year. The fee is payable to DSHS and may be paid either annually or once every three years.

Statutory Authority: RCW 43.20B.110. 01-02-032, S 388-155-083, filed 12/22/00, effective 1/22/01.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-085. Initial license.

(1) The department may issue an initial license to an applicant not currently licensed to provide child day care when the applicant:

(a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but

(b) Cannot demonstrate compliance with the rules pertaining to:

(i) Provider-child interactions,

(ii) Capacity,

(iii) Behavior management,

(iv) Activity and routines,

(v) Child records and information, and

(vi) Other rules requiring department observation of the applicant's ability to comply with rules.

(c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.

(2) The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(3) The department must evaluate the applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a full license.

(4) The department may issue a full license to the applicant demonstrating compliance with all rules contained in this chapter at any time during the period of initial licensure.

(5) The department must not issue a full license to the applicant who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-085, filed 8/16/01, effective 9/16/01; 96-20-095, S

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388-155-085, filed 10/1/96, effective 11/1/96.

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388-155-090. When can my license application be denied and when can my license be suspended or revoked?

(1) We must deny your license application, or suspend or revoke your license if you do not meet the requirements outlined this chapter.

(2) If more than one person applies for a license or is licensed under this chapter to provide child care at the same facility, we will consider qualifications separately and together. We may deny your license application, or suspend or revoke your license if one person fails to meet the minimum licensing requirements.

(3) We must deny, suspend, or revoke your license if you:

(a) Have been found to have abused, neglected, or sexually exploited a child as defined in chapter 26.44 RCW and WAC 388-15-130;

(b) Have a disqualifying criminal history as listed in chapter 388-06 WAC;

(c) Have had a license denied, suspended, or revoked for the care of adults or children in this state or any other state. The exception: If you can demonstrate by clear and convincing evidence that you have taken enough correction action or rehabilitation to justify the public trust and to operate the home according to the rules of this chapter, we may issue you a license;

(d) Commit or allow an illegal act on the licensed premises;

(e) Allow a child in your care to be abused, neglected, exploited, or treated with cruelty or indifference;

(f) Use illegal drugs, or use alcohol excessively;

(g) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office to inspect the premises; or

(h) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office access to records related to the home's operation or to interview staff or a child in care.

(4) We may deny, suspend, or revoke your license if you:

(a) Try to get a license by deceitful means, such as making false statements or leaving out important information on your application;

- (b) Do not provide enough staff in relation to the numbers, ages, or characteristics of children in care;
- (c) Allow a person who is not qualified by training, experience or temperament to care for or be in contact with a child in care;
- (d) Fail to provide adequate supervision to a child in care;
- (e) Are not able to exercise fiscal responsibility and accountability while operating the home;
- (f) Knowingly allow an employee or volunteer on the premises who has made false statements on an application for employment or volunteer service;
- (g) Refuse to supply additional information reasonably requested by the department; or
- (h) Fail to comply with the minimum licensing requirements set forth in this chapter or any provision of chapter 74.15 RCW.

Statutory Authority: RCW 74.15.030. 02-24-022, S 388-155-090, filed 11/26/02, effective 12/27/02. Statutory Authority: Chapter 74.120 RCW, RCW 74.12.340, and 74.15.030. 02-14-085, S 388-155-090, filed 6/28/02, effective 7/29/02. Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-090, filed 8/16/01, effective 9/16/01; 96-10-043 (Order 3974), S 388-155-090, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), S 388-155-090, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), S 388-155-090, filed 2/1/91, effective 3/4/91.

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388-155-092. Civil penalties.

(1) Before imposing a civil penalty, the department must provide written notification by personal service, including by the licensor, or certified mail which must include:

- (a) A description of the violation and citation of the applicable requirement or law;
- (b) A statement of what is required to achieve compliance;
- (c) The date by which the department requires compliance;
- (d) The maximum allowable penalty if timely compliance is not achieved;
- (e) The means to contact any technical assistance services provided by the department or others; and
- (f) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(2) The length of time in which to comply must depend on:

- (a) The seriousness of the violation;
- (b) The potential threat to the health, safety and welfare of children in care; or
- (c) Previous opportunities to correct the deficiency.

(3) The department may impose a civil penalty based on but not limited to these reasons:

- (a) The child care home has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or
- (b) The child care home has previously been given notice of the same or similar type of violation of the same statute or rule; or
- (c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) The department may impose a civil penalty in addition to or in conjunction with other disciplinary actions against

a child care license including probation, suspension, or other action.

(5) The civil fine must be payable twenty-eight days after receipt of the notice or later as specified by the department.

(6) The fine may be forgiven if the agency comes into compliance during the notification period.

(7) The center or person against whom the department assesses a civil fine has a right to an adjudicative proceeding as governed by RCW 43.20A.215.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-092, filed 8/16/01, effective 9/16/01; 96-20-095, S 388-155-092, filed 10/1/96, effective 11/1/96.

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388-155-093. Civil penalties--Amount of penalty.

Whenever the department imposes a civil monetary penalty per WAC 388-155-092(3), the department must impose a penalty of seventy-five dollars per violation per day. The department may assess and collect the penalty with interest for each day of noncompliance.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-093, filed 8/16/01, effective 9/16/01; 96-20-095, S 388-155-093, filed 10/1/96, effective 11/1/96.

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388-155-094. Civil penalty--Posting of notice of penalty.

(1) The licensee must post the final notice of a civil penalty in a conspicuous place in the facility.

(2) The notice must remain posted until payment is received by the department.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-094, filed 8/16/01, effective 9/16/01; 96-20-095, S 388-155-094, filed 10/1/96, effective 11/1/96.

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388-155-095. Civil penalties--Unlicensed programs.

Where the department has determined that an agency is operating without a license, the department must send written notification by certified mail or other means showing proof of service. This notification must contain the following:

- (1) Advising the agency of the basis of determination of providing child care without a license and the need to be licensed by the department;
- (2) The citation of the applicable law;
- (3) The assessment of seventy-five dollars per day penalty for each day unlicensed care is provided. The fine would be effective and payable within thirty days of receipt of the notification;
- (4) How to contact the division of child care and early learning;
- (5) The need to submit an application to the division of child care and early learning within thirty days of receipt of the notification;
- (6) That the penalty may be forgiven if the agency submits an application within thirty days of the notification; and
- (7) The right of an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding.

Statutory Authority: RCW 74.15.030, 02-24-022, S 388-155-095, filed 11/26/02, effective 12/27/02; 01-17-084, S 388-155-095, filed 8/16/01, effective 9/16/01; 96-20-095, S 388-155-095, filed 10/1/96, effective 11/1/96.

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388-155-096. Civil penalties--Separate violations.

Each violation of a law or rule constitutes a separate violation and may be penalized as such.

Statutory Authority: RCW 74.15.030, 96-20-095, S 388-155-096, filed 10/1/96, effective 11/1/96.

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388-155-097. Civil penalties--Penalty for nonpayment.

The department may suspend, revoke or not renew a license for failure to pay a civil monetary penalty it has assessed within ten days after such assessment becomes final.

Statutory Authority: RCW 74.15.030. 96-20-095, S 388-155-097, filed 10/1/96, effective 11/1/96.

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388-155-098. Probationary license.

(1) The department must base the decision as to whether a probationary license will be issued upon the following factors:

- (a) Willful or negligent noncompliance by the licensee,
- (b) History of noncompliance,
- (c) Extent of deviation from the requirements,
- (d) Evidence of a good faith effort to comply,
- (e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing requirements does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, a probationary license may be issued as well as civil penalties or other sanctions. Such situations may include:

- (a) Substantiation that a child (or children) was abused or neglected while in the care of the home,
- (b) Disapproved fire safety or sanitation report,
- (c) Use of unauthorized space for child care,
- (d) Inadequate supervision of children,
- (e) Understaffing for the number of children in care,
- (f) Noncompliance with requirements addressing:
 - (i) Children's health,
 - (ii) Proper nutrition,
 - (iii) Discipline,

- (iv) Emergency medical plan,
 - (v) Sanitation and personal hygiene practices.
- (3) Licensee must notify parents when a probationary license is issued:
- (a) The licensee must notify the parents or guardians of all children in care that it is in probationary status within five working days of receiving notification he or she has been issued a probationary license;
 - (b) The notification must be in writing and must be approved by the department prior to being sent;
 - (c) The licensee must provide documentation to the department that parents or guardians of all children in care have been notified within ten working days of receiving notification that he or she has been issued a probationary license;
 - (d) The department may issue a probationary license for up to six months, and at the discretion of the department it may be extended for an additional six months.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-098, filed 2/28/00, effective 3/30/00; 96-20-095, S 388-155-098, filed 10/1/96, effective 11/1/96.

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388-155-100. Activities and routines.

(1) The provider must offer activities and routines designed to meet the developmental, cultural, and individual needs of the child served. The provider must ensure that the activities and routines allow the child to:

- (a) Gain self-esteem, self-awareness, self-control, and decision-making abilities;
- (b) Develop socially, emotionally, intellectually, and physically;
- (c) Learn about nutrition, health, and personal safety; and
- (d) Experiment, explore, and play.

(2) The provider must establish familiar routines for meals, rest, and play, with allowances for a variety of special events.

(3) The provider must ensure the home's activities offer variety and options, including a balance between:

- (a) Child-initiated and provider-initiated activities;
- (b) Free play and organized events;
- (c) Individual and group activities;
- (d) Quiet and active experiences; and
- (e) Interactive and passive activities.

(4) The provider must ensure the home's daily routine affords the child opportunities for small and large muscle activities and outdoor play.

(5) The child may remain in care no more than ten hours per day except as necessitated by the parent's working hours and commute time.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-100, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-100, filed 2/1/91, effective 3/4/91.

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388-155-110. Learning and play materials.

The provider must ensure the child access to a variety of easily accessible, developmentally appropriate learning and play materials of sufficient quantity to implement the home's daily activities. The provider must ensure material is culturally relevant and promotes:

- (1) Social development;
- (2) Intellectual ability;
- (3) Language development and communication;
- (4) Self-help skills;
- (5) Sensory stimulation;
- (6) Large and small muscle development; and
- (7) Creative expression.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-110, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-110, filed 2/1/91, effective 3/4/91.

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388-155-120. Provider-child interactions.

(1) The provider/assistant must furnish the child a nurturing, respectful, supportive, and responsive environment through frequent interactions with the child:

(a) Supporting the child in developing an understanding of self and others by assisting the child to share ideas, experiences, and feelings;

(b) Providing age-appropriate opportunities for intellectual growth and development of the child's social and language skills, including encouraging the child to ask questions;

(c) Helping the child solve problems;

(d) Fostering creativity and independence in routine activities, including showing tolerance for mistakes; and

(e) Treating children in care equally regardless of race, religion, abilities, and family structure.

(2) The provider must:

(a) Furnish the child a pleasant and educational environment at meal and snack times; and

(b) Provide good models for nutrition habits and social behavior by:

(i) Eating with children, when feasible; and

(ii) Encouraging conversation among children.

(3) The provider must ensure the child is supervised by continuous visual or auditory contact.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-120, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-120, filed 2/1/91, effective 3/4/91.

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388-155-130. Behavior management and discipline.

(1) The licensee must guide the child's behavior based on an understanding of the individual child's needs and stage of development. The licensee must promote the child's developmentally appropriate social behavior, self-control, and respect for the rights of others.

(2) The licensee must ensure behavior management and discipline practices are fair, reasonable, consistent, and related to the child's behavior. The licensee must not administer cruel, unusual, hazardous, frightening, or humiliating discipline.

(3) The licensee must be responsible for implementing the behavior management and discipline practices of the home. The child in care must not determine or administer behavior management or discipline.

(4) The licensee must prohibit and prevent:

(a) Corporal punishment by any person on the premises, including hitting, biting, jerking, shaking, spanking, slapping, striking, or kicking the child, or other means of inflicting physical pain or causing bodily harm;

(b) The use of a physical restraint method injurious to the child;

(c) The use of a mechanical restraint, locked time-out room, closet, highchair, carseat, or infant seat for disciplinary purposes;

(d) The withholding of food as a punishment.

(5) In emergency situations, the licensee competent to use de-escalation and restraint methods may use limited physical restraint when:

(a) Protecting a person on the premises from physical injury;

(b) Obtaining possession of a weapon or other dangerous object; or

(c) Protecting property from serious damage.

(6) The licensee must document any incident involving the use of physical restraint.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-130, filed 2/28/00, effective 3/30/00; 91-04-048 (Order

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3136), S 388-155-130, filed 2/1/91, effective 3/4/91.

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388-155-140. Rest periods.

(1) The provider must offer a supervised rest period to the child:

- (a) Five years of age and under remaining in care more than six hours; or
- (b) Showing a need for rest.

(2) The provider must plan quiet activities for the child not needing rest.

(3) The provider must allow the child twenty-four months of age and under to follow an individual sleep schedule.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-140, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-140, filed 2/1/91, effective 3/4/91.

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388-155-150. Evening and nighttime care.

(1) For the home regularly offering child care during evening and nighttime hours, the licensee must:

(a) Adapt the activities, routines, and equipment to meet the physical and emotional needs of the child away from home at night. These must include:

(i) Arrangements made for bathing as needed;

(ii) Individual bedding appropriate for overnight sleeping;

(iii) Appropriate night wear and individual toiletry items for each child;

(iv) Separate dressing and sleeping areas for boys and girls ages six years and older and demonstrating a need for privacy.

(b) The licensee must maintain staff-child ratios during sleeping hours.

(c) The licensee must have a plan approved by the licensor to ensure the physical safety and emotional well-being of children during sleeping hours.

(2) The licensee must arrange child grouping so the sleeping child remains asleep during the arrival or departure of another child.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-150, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-150, filed 2/1/91, effective 3/4/91.

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388-155-160. Off-site trips.

(1) The licensee may transport or permit the off-site travel of the child to attend school, participate in field trips, or engage in other off-site activities only with written parental consent.

(2) The parent's consent may be:

(a) For a specific date and trip; or

(b) A blanket authorization describing the full range of trips the child may take. In such case, the licensee must notify the parent in advance about the trip.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-160, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-160, filed 2/1/91, effective 3/4/91.

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388-155-165. Transportation.

When the licensee provides transportation for the child in care:

- (1) The licensee must ensure the motor vehicle is maintained in a safe operating condition;
- (2) The licensee must ensure the motor vehicle is equipped with appropriate safety devices and individual seat belts or safety seats for each child to use when the vehicle is in motion according to Washington state patrol recommendations;
- (3) The licensee must ensure the number of passengers does not exceed the seating capacity of the motor vehicle;
- (4) The licensee or driver must carry motor vehicle liability and medical insurance. The driver must have a current Washington driver's license, valid for the classification of motor vehicle operated;
- (5) The licensee or assistant supervising the child in the motor vehicle must have current first aid and cardiopulmonary resuscitation training;
- (6) The licensee, assistant, or driver must not leave the child unattended in the motor vehicle;
- (7) The licensee must ensure the assistant is present in the motor vehicle when capacity guidelines require an assistant; and
- (8) The licensee must keep a first aid kit, health history, and emergency medical consent for each child in the vehicle while transporting children.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-165, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-165, filed 2/1/91, effective 3/4/91.

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388-155-170. Parent communication.

(1) The licensee must:

- (a) Explain to the parent and to any assistants the provider's policies, procedures, and health care practices;
- (b) Orient the parent and assistants to the home and activities, and to location of items required to be posted;
- (c) Advise the parent of the child's progress and issues relating to the child's care and individual practices concerning a child's special needs; and
- (d) Encourage parent participation in the home's activities.

(2) The licensee must give the parent the following written policy and procedure information:

- (a) Enrollment and admission requirements;
- (b) The fee and payment plan;
- (c) A typical activity schedule, including hours of operation;
- (d) Typical meals and snacks served, including guidelines on food brought from the child's home;
- (e) Permission for free access by the child's parent to all home areas used by the child;
- (f) Child abuse reporting requirements;
- (g) Behavior management and discipline;
- (h) Nondiscrimination statement;
- (i) Religious activities, if any;
- (j) Transportation and field trip arrangements;
- (k) Typical staffing plan when provider is absent;

(l) Health care practices, including but not limited to information about the home's general health practices concerning:

(i) Injury prevention;

(ii) Medication management:

(iii) First aid, including medical emergencies;

(iv) Practices concerning an ill child;

(v) Communicable disease prevention, management, and reporting;

(vi) Handwashing practices.

(m) If licensed for the care of the young child:

(i) Proper infant sleep position and bedding to prevent Sudden Infant Death Syndrome (SIDS);

(ii) Diapering

(iii) Toilet training; and

(iv) Feeding.

(n) Disaster response plan; and

(o) Practices regarding nighttime care including staffing, if applicable.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-170, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-170, filed 2/1/91, effective 3/4/91.

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388-155-180. Staffing--Qualifications.

(1) General qualifications. The licensee, assistant, volunteer, and other person associated with the operation of the home who has access to the child in care must:

(a) Be of good character;

(b) Have the understanding, ability, personality, emotional stability, and physical health suited to meet the cultural emotional, mental, physical, and social needs of the child in care; and

(c) Not have committed or been convicted of child abuse or any crime involving physical harm to another person.

(2) The licensee must:

(a) Be eighteen years of age or older;

(b) Be the primary child care provider during the majority of child care business hours;

(c) Ensure compliance with minimum licensing requirements under this chapter; and

(d) Have completed one of the following prior to or within the first six months of initial licensure except as provided in (e) of this subsection:

(i) Twenty clock hours or two college quarter credits of basic training approved by the Washington state training and registry system (STARS); or

(ii) Current child development associate (CDA) or equivalent credential or twelve or more college quarter credits in early childhood education or child development; or

(iii) Associate of arts or AAS or higher college degree in early childhood education, child development, school age care, elementary education or special education.

(e) Licensees already licensed on the effective date of this rule must complete the training required in WAC 388-150-180 (2)(d) prior to or within twelve months after the effective date of this rule.

(3) The assistant must be:

- (a) Fourteen years of age or older; or
- (b) Eighteen years of age or older if assigned sole responsibility for the child in care; and
- (c) Competent to exercise appropriate judgements.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-180, filed 2/28/00, effective 3/30/00; 98-24-052, S 388-155-180, filed 11/25/98, effective 12/26/98; 91-04-048 (Order 3136), S 388-155-180, filed 2/1/91, effective 3/4/91.

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388-155-190. Capacity.

- (1) The department must determine the maximum capacity of the family child care home based on the:
 - (a) Licensee's experience and training;
 - (b) Assistant's qualifications;
 - (c) Number, ages, and characteristics of the children cared for;
 - (d) Number and ages of the licensee's own children and other children residing in the home eleven years of age and under;
 - (e) Usable indoor and outdoor space; and
 - (f) Supply of toys and equipment.
- (2) The department may license the family child care home according to the following table:

So that the:

- (a) Unassisted licensee may provide care for a maximum of six children, birth through eleven years of age, with two or fewer children under two years of age; or
- (b) Unassisted licensee with one year of experience operating a licensed family child care home or the equivalent experience may provide care for a maximum of eight children, two years through eleven years of age; or
- (c) Unassisted licensee with one year of experience operating a licensed family child care home or the equivalent experience may provide care for a maximum of ten children, five years through eleven years of age; or
- (d) Licensee with one year of experience as a licensed family child care home provider or the equivalent experience and an assistant may provide care for seven through nine children, birth through eleven years of age, with four or fewer children under two years of age; or
- (e) Unassisted licensee with two years of experience operating a licensed family child care home or the equivalent experience and one class in ECE, or the equivalent education, may provide care for a maximum of ten children, three years through eleven years of age; or

(f) Licensee with two years of experience operating a licensed family child care home or the equivalent experience, one class in ECE or the equivalent education, and a qualified assistant may provide care for a maximum of twelve children, birth through eleven years of age, with four or fewer children under two years of age.

(3) The licensee must ensure an assistant is on the premises when:

(a) Three or more children under two years of age are in care;

(b) Seven or more children are in care and any child in care is under two years of age; or

(c) More than ten children are in care.

(4) The department's determination of capacity shall include all children eleven years of age or under on the premises.

(5) The licensee must ensure the assistant is eighteen years of age or older when the assistant is solely responsible for the child in care.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-190, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-190, filed 2/1/91, effective 3/4/91.

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388-155-200. Development and training.

(1) The licensee must have an orientation system making the new employee and volunteer aware of policies and practices. The licensee must provide the new employee or volunteer an orientation including, but not limited to:

- (a) Minimum licensing rules required under this chapter;
- (b) Goals and philosophy of the home;
- (c) Daily activities and routines;
- (d) Child guidance and behavior management methods;
- (e) Child abuse and neglect prevention, detection, and reporting policies and procedures;
- (f) Special health and developmental needs of the individual child;
- (g) The health care practices;
- (h) Fire prevention and safety procedures;
- (i) Duties of assistants and/or volunteer; and
- (j) Location of items required to be posted.

(2) The licensee must:

(a) Obtain basic, standard first aid, and cardiopulmonary resuscitation (CPR) training, approved by the department of health. CPR training must include methods appropriate for child age groups in care;

(b) Ensure that first aid and CPR training is current; and

(c) Annually, beginning one year after licensure, complete ten clock hours or one college quarter credit of training. Training must be approved by the Washington state training and registry system (STARS). For those already licensed on the effective date of this rule, this requirement for annual training shall begin one year after the effective date of this rule.

(3) The licensee must ensure the assistant eighteen years of age or older obtains basic, standard first aid, and CPR training approved by the department of health if the assistant will be solely responsible for the child in care.

(4) The licensee and assistant must obtain appropriate education and training on the prevention and transmission of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS).

(5) The licensee must encourage the assistant to participate in training opportunities to promote ongoing education and enhance practice skills.

(6) The licensee must conduct periodic meetings for planning and coordination purposes when applicable.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-200, filed 2/28/00, effective 3/30/00; 98-24-052, S 388-155-200, filed 11/25/98, effective 12/26/98; 91-04-048 (Order 3136), S 388-155-200, filed 2/1/91, effective 3/4/91.

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388-155-220. Health supervision and infectious disease prevention.

(1) The licensee must encourage the parent to arrange a physical examination for the child who has not had regular health care or a physical examination within one year before enrollment.

(2) The licensee must encourage the parent to obtain health care for the child when necessary. The licensee must not be responsible for providing or paying for the child's health care.

(3) Before or on the child's first day of attendance, the parent must present a certificate of immunization status form prescribed by the department of health proving the child's full immunization for:

(a) Diphtheria;

(b) Tetanus;

(c) Pertussis (whooping cough);

(d) Poliomyelitis;

(e) Measles (rubeola);

(f) Rubella (German measles);

(g) Mumps;

(h) Haemophilus Influenzae Type B (HIB);

(i) Hepatitis B; and

(j) Other diseases prescribed by the department of health.

(4) The licensee may accept the child without all required immunizations on a conditional basis if immunizations are:

(a) Initiated before or on enrollment; and

(b) Completed as rapidly as medically possible.

- (5) The licensee may exempt the immunization requirement for the child if the parent or guardian:
- (a) Signs a statement expressing a religious, philosophical, or personal objection; or
 - (b) Furnishes a physician's statement of a valid medical reason for the exemption.
- (6) The licensee must observe the child daily for signs of illness. The licensee must care for or discharge home the ill child based on the home's policies concerning an ill child.
- (a) When the child has a severe illness or is injured, tired, or upset, the licensee must separate the child from other children and attend the child continuously until:
 - (i) The licensee secures appropriate health care for the child; or
 - (ii) The licensee makes an arrangement to return the child to the parent; or
 - (iii) The child is able to rejoin the group.
 - (b) The licensee must provide a quiet, separate care room or area allowing the child requiring separate care an opportunity to rest.
 - (c) The licensee must sanitize equipment used by the child, if the licensee suspects the child has a communicable disease.
 - (d) The licensee may use the separate care room or area for other purposes when not needed for separation of the child.
- (7) The licensee must wash, or assist the child to wash hands according to the home's handwashing procedures.
- (8) The licensee must clean and disinfect toys, equipment, furnishings, and facilities according to the home's cleaning and disinfecting policies.
- (9) The licensee must have appropriate extra clothing available for the child who wets or soils clothes.
- (10) The licensee must ensure the child does not share personal hygiene or grooming items.
- (11) Each licensee, assistant, volunteer, and adult member of the household having regular contact with the child in care must have a tuberculin (TB) skin test, by the Mantoux method, upon employment or initial licensure, unless against medical advice.
- (a) The person whose TB skin test is positive (ten millimeters or more size) must have a chest x-ray with results indicating the person does not have active TB, within thirty days following the skin test.
 - (b) The licensee must not require the person to obtain routine periodic TB retesting or x-ray (biennial or otherwise) after entry testing unless directed to obtain retesting by the person's health care provider or the local health department.
- (12) The licensee must not permit the person with a reportable communicable disease to be on duty in the home or

have contact with the child in care unless approved by a health care provider.

(13) The licensee and assistant must wash hands according to the home's handwashing practices.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-220, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-220, filed 2/1/91, effective 3/4/91.

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388-155-230. Medication management.

(1) The home may have a policy of not giving medication to the child in care, unless a child has a medically recognized special need requiring medication.

(2) If the home's health care practices include giving medication to the child in care, the licensee:

(a) Must give medications, prescription and nonprescription, only on the written approval of a parent, or of a person or agency having authority by court order to approve medical care;

(b) Must give prescription medications:

(i) Only as specified on the prescription label; or

(ii) As authorized by a physician or other person legally authorized to prescribe medication.

(c) Must give the following classifications of nonprescription medications, with written parent authorization, including a start date and ending date, not to exceed one month, only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication:

(i) Antihistamines;

(ii) Nonaspirin fever reducers/pain relievers;

(iii) Nonnarcotic cough suppressants;

(iv) Decongestants;

(v) Anti-itching ointments or lotions, intended specifically to relieve itching;

(vi) Diaper ointments and powders, intended specifically for use in the diaper area of the child; and

(vii) Sun screen.

(d) Must have written instructions from a physician for nonprescription medications if:

(A) A specific dosage is not given on the label for the age and weight of the child in care;

- (B) It is not listed in subsection (2)(c);
- (C) It lacks labeled instructions; or
- (D) It is taken differently than indicated on the manufacturer's label.

The written instructions must include dosage and description of the child's symptoms warranting the medication.

(e) Must accept from the child's parent, guardian, or responsible relative only medicine in the original container, labeled with:

- (i) The child's first and last names;
- (ii) The date the prescription was filled; or
- (iii) The medication's expiration date; and
- (iv) Legible instructions for administration, such as manufacturer's instructions or prescription label.
- (f) Must keep medication, refrigerated or nonrefrigerated, in an orderly fashion, inaccessible to the child;
- (g) Must keep class II narcotics in locked storage.
- (h) Must store external medication in a compartment separate from internal medication;
- (i) Must keep a record of medication disbursed;
- (j) Must return medications no longer being taken to the parent or other responsible party, or must dispose of them;
- (k) May at the licensee's option, permit self-administration of medication by a child in care if the:
 - (i) Child is physically and mentally capable of properly taking medication without assistance;
 - (ii) Licensee includes in the child's file a parental or physician's written statement of the child's capacity to take medication without assistance; and
 - (iii) Licensee ensures the child's medications and other medical supplies are stored so the medications and medical supplies are inaccessible to another child in care.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-230, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-230, filed 2/1/91, effective 3/4/91.

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388-155-240. Nutrition.

- (1) The licensee must provide food meeting the nutritional needs of the child in care, taking into consideration the:
 - (a) Number of children in care;
 - (b) Child's age and developmental level;
 - (c) Child's cultural background;
 - (d) Child's special need; and
 - (e) Hours of care on the premises.
- (2) The licensee must provide only pasteurized milk or a pasteurized milk product.
- (3) The licensee must provide only whole milk to the child twenty-three months of age or under except with the written permission of the child's parent.
- (4) The licensee may serve the child twenty-four months of age or older powdered Grade A milk mixed in the home provided the licensee completes the dry milk mixture, service, and storage in a safe and sanitary manner, using water from an approved source.
- (5) The licensee may provide the child nutrient concentrates, nutrient supplements, a modified diet, or an allergy diet only with written permission of the child's health care provider. The licensee must obtain from the parent or child's health care provider a written list of foods the child cannot consume.
- (6) The licensee must use the following meal pattern to provide food to the child in care in age-appropriate servings:
 - (a) Providing the child in care for ten or less hours:
 - (i) Two or more snacks and one meal; or
 - (ii) Two meals and one snack.
 - (b) Providing the child in care for ten or more hours, two or more meals and two snacks;

- (c) Providing the child arriving after school a snack;
 - (d) Providing the child with food at not less than two-hour intervals, and not more than three and one-half hours apart; and
 - (e) Allowing the occasional serving of party foods not meeting nutritional requirements.
- (7) The licensee shall provide the child in care food which complies with the meal pattern of the United States Department of Agriculture Child and Adult Care Food Program, with the addition of:
- (a) A minimum of one serving of Vitamin C fruit, vegetable, or juice, provided daily; and
 - (b) Servings of food high in Vitamin A, provided three or more times weekly.
- (8) The licensee must provide:
- (a) Dinner to the child in evening care when the child did not receive dinner at home before arriving;
 - (b) A bedtime snack to the child in nighttime care; and
 - (c) Breakfast to the child in nighttime care if the child remains at the home after the child's usual breakfast time.
- (9) The licensee must monitor foods brought from the child's home for consumption by the child, all children, or a group of children in care ensuring safe storage and nutritional adequacy.
- (10) For the home permitting sack lunches, the licensee must have food supplies available to supplement food deficient in meeting nutrition requirements brought from the child's home and to nourish the child arriving without food.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-240, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-240, filed 2/1/91, effective 3/4/91.

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388-155-250. Kitchen and food service.

- (1) The licensee must provide and maintain equipment for the proper storage, preparation, and service of food.
- (2) The licensee must make potentially hazardous appliances and sharp or pointed utensils inaccessible to the child when the child is not under direct supervision.
- (3) The child may participate in food preparation as an educational activity.
- (4) The licensee must install and maintain kitchen equipment and clean reusable utensils in a safe and sanitary manner by:
 - (a) Washing and sanitizing reusable utensils in a dishwasher or through use of a manual dishwashing procedure;
 - (b) Using only single-use or clean cloths, used solely for wiping food service, preparation, and eating surfaces; and
 - (c) Using an approved sanitizer, such as bleach and water, in the kitchen.
- (5) The licensee must provide the child individual drinking cups, glasses, or disposable single-use cups.
- (6) The licensee must provide the child durable eating utensils appropriate in size and shape for the child in care.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-250, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-250, filed 2/1/91, effective 3/4/91.

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388-155-270. Care of young children.

(1) Diapering and toileting. The licensee must ensure:

(a) The diaper-changing area is:

(i) Separate from food preparation areas; and

(ii) Easily accessible to a handwashing sink other than a sink used for food preparation;

(iii) Sanitized between use for different children; or

(iv) Protected by a disposable covering discarded after each use.

(b) The diaper-changing area is impervious to moisture and washable.

(2) The licensee must:

(a) Use a nonabsorbent pad large enough for the child's upper body and buttocks;

(b) Use reusable diapers, a commercial diaper service, or disposable diapers;

(c) Place soiled diapers without rinsing into a separate, cleanable, covered container provided with a waterproof liner before transporting to a laundry, parent, or acceptable disposal;

(d) Remove soiled diapers from the home daily or more often unless the licensee uses a commercial diaper service;

(e) Use disposable towels or clean, reusable towels laundered between use for different children for cleaning the child; and

(f) Wash hands after diapering the child or helping the child with toileting.

(3) The licensee must:

(a) Consult with the child's parent regarding initiating toilet training;

- (b) Locate potty chairs on washable, nonabsorbent surfaces in appropriate toileting area when in use; and
- (c) Sanitize toilet training equipment after each use.
- (4) Feeding. The licensee and the infant's parent must agree on a schedule for feedings:
 - (a) The licensee or parent may provide the child's bottle feeding in the following manner:
 - (i) A filled bottle brought from home;
 - (ii) Whole milk or formula in ready-to-feed strength; or
 - (iii) Formula requiring no preparation other than dilution with water, mixed on the premises, following manufacturer's directions.
 - (b) The licensee must prepare the child's bottle and nipple in a sanitary manner in an area separate from the diapering area.
 - (c) The licensee must sanitize the child's bottle and nipple between uses.
 - (d) The licensee must label the bottle with the child's name and date prepared, if more than one bottle-fed child is in care.
 - (e) The licensee must refrigerate a filled bottle if the child does not consume the contents immediately and discard the bottle's contents if the child does not consume the contents within twelve hours.
 - (f) To ensure safety and promote nurturing, the licensee and assistant must:
 - (i) Hold the child in a semi-sitting position for feeding, if the child is unable to sit in a high chair, unless such is against medical advice;
 - (ii) Interact with the child;
 - (iii) Not prop a bottle;
 - (iv) Not give a bottle to the reclining child; and
 - (v) Take the bottle from the child when the child finishes feeding.
 - (g) The licensee must provide semi-solid food for the child, upon consultation with the parent, as recommended by the child's health care provider.
- (5) Sleeping equipment. The licensee must furnish the child a single-level crib, infant bed, bassinet, or play pen for napping until such time the parent and licensee agree the child can safely use a mat, cot, or other approved sleep equipment.
- (6) The licensee must ensure the young child has a sturdy crib, infant bed, bassinet, or play pen:

- (a) Made of wood, metal, or plastic with secure latching devices; and
- (b) Constructed with two and three-eighths inches or less space between vertical slats when the crib is used for a child six months of age or younger; and
- (c) The licensee must follow the recommendations of the American Academy of Pediatrics (1-800-505-CRIB), placing infants on their backs each time for sleep. The provider may use a different sleep position if the parent requests it in writing.
- (7) The licensee must ensure the child's crib mattress, infant bed, bassinet, or play pen mattress is:
 - (a) Snug fitting, preventing the infant from being caught between the mattress and crib side rails; and
 - (b) Waterproof, easily sanitized, and in good repair.
- (8) Activities and equipment. The licensee must provide the young child a daily opportunity for:
 - (a) Large and small muscle development;
 - (b) Crawling and exploring;
 - (c) Sensory stimulation;
 - (d) Social interaction;
 - (e) Development of communication; and
 - (f) Learning self-help skills.
- (9) The licensee must provide safe, noningestible, suitable toys and equipment for the young child's mental and physical development.

Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-270, filed 8/16/01, effective 9/16/01; 00-06-040, S 388-155-270, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-270, filed 2/1/91, effective 3/4/91.

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388-155-280. General safety, maintenance, and site.

- (1) The licensee must operate the home on an environmentally safe site.
- (2) The licensee must maintain the indoor and outdoor premises in a safe and sanitary condition, free of hazards, and in good repair. The licensee must ensure furniture and equipment are safe, stable, durable, and free of sharp, loose, or pointed parts.
- (3) The licensee must:
 - (a) Install handrails or safety devices at child height adjacent to steps, stairways, and ramps;
 - (b) Maintain a flashlight or other emergency lighting device in working condition;
 - (c) Ensure there is no flaking or deteriorating lead-based paint on interior and exterior surfaces, equipment, and toys accessible to the child;
 - (d) Finish rough or untreated wood surfaces; and
 - (e) Maintain one or more telephones in working order.
- (4) The licensee must supply bathrooms and other rooms subject to moisture with washable, moisture-impervious flooring or routinely cleaned floor covering.
- (5) The licensee must equip child-accessible electrical outlets with nonremovable safety devices or covers preventing electrical injury.
- (6) The licensee must ensure staff can gain rapid access in an emergency to a bathroom or other room occupied by the child.
- (7) The licensee must keep the premises free from rodents, fleas, cockroaches, and other insects and pests, using the least toxic method available, and notifying children's parents in advance of chemical usage.
- (8) The licensee must use an appropriate method for drawing clean mop water and disposing waste water.
- (9) Firearms, ammunition, and other weapons must be kept in secure, locked storage, at all times when not in use. They must be accessible only to authorized persons. Secure locked storage means a locked storage container, gun

cabinet, gun safe, or other storage area made of strong, unbreakable material. If the cabinet has a glass or other breakable front, then the guns need to be secured with a cable or chain placed through the trigger guards securing the guns in the storage unit.

(10) The licensee must ensure a person with current first aid and infant-child CPR training is on the premises at all times.

(11) The licensee must store separate from food products and make inaccessible to children cleaning supplies, toxic substances, paint, poisons, aerosol containers, and items bearing warning labels indicating a product is hazardous, if a person is exposed to, or consumes the product.

(12) The licensee must label a container filled from a stock supply to identify contents.

(13) The licensee must ensure that any animal or pet on the premises has not demonstrated aggressive behavior. If a pet or animal has demonstrated aggressive behavior, it must be inaccessible to children in care at all times.

(14) The use of wheeled baby walkers is prohibited.

(15) The use of trampolines, including rebounders, is prohibited.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-280, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-280, filed 2/1/91, effective 3/4/91.

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388-155-290. Water supply, sewage, and liquid wastes.

(1) The licensee must obtain water from:

(a) A public water supply that is regulated by Washington state department of health drinking water operations or the local health authority, as appropriate;

(b) An individual water supply operated and maintained in a manner acceptable to the local health authority; or

(c) Commercially bottled water in cases where (a) or (b) of this subsection are unsatisfactory.

(2) The licensee must ensure sewage and liquid wastes are discharged into:

(a) A public sewer system; or

(b) An independent sewage system maintained so as not to create a public health nuisance as determined by the local health authority.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-290, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-290, filed 2/1/91, effective 3/4/91.

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388-155-295. Water safety.

(1) The licensee must maintain the following water safety precautions when the child uses an on-premises swimming pool or wading pool. The licensee must ensure:

(a) The on-premises pool is inaccessible to the child when not in use; and

(b) An adult with current CPR training supervises the child at all times.

(2) The licensee must ensure a certified lifeguard is present during the child's use of an off-premises swimming pool.

(3) The licensee must empty and clean a portable wading pool daily, when in use.

(4) An adequate, department-approved cover or barrier, installed at the manufacturer's specification must be in place to prevent the child access at all times to heated tubs, whirlpools, spas, tanks, or similar equipment.

(5) A five foot high fence with gates, locked when not in use, is required to prevent access to water hazards, such as swimming pools, lakes, streams, or natural or artificial pools.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-295, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-295, filed 2/1/91, effective 3/4/91.

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388-155-310. First-aid supplies.

- (1) The licensee must maintain first-aid supplies on the premises conforming with the home's first-aid policies and procedures.
- (2) The home's first-aid supplies must include unexpired syrup of ipecac which may be administered only on the advice of a poison control center.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-310, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-310, filed 2/1/91, effective 3/4/91.

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388-155-320. Outdoor play area.

- (1) The licensee must provide a safe and securely-fenced or department-approved, enclosed outdoor play area:
 - (a) Adjoining directly the indoor premises; or
 - (b) Reachable by a safe route and method; and
 - (c) Promoting the child's active play, physical development, and coordination; and
 - (d) Protecting the child from unsupervised exit with an enclosure at least forty-eight inches high; and
 - (e) Preventing child access to roadways and other dangers.
- (2) The licensee must ensure the home's activity schedule affords the child sufficient daily time to participate actively in outdoor play.
- (3) The licensee must provide a variety of age appropriate play equipment for climbing, pulling, pushing, riding, and balancing activities. The licensee must arrange, design, construct, and maintain equipment and ground cover to prevent the child's injury. The licensee's quantity of outdoor play equipment must offer the child a range of outdoor play options.
- (4) Preschool children and younger must be in visual and auditory range when outside.
- (5) School-age children must be in auditory range when outside.

Statutory Authority: Chapter 74.15 RCW and RCW 34.05.395, 02-13-073, S 388- 155-320, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-320, filed 2/28/00, effective 3/30/00; 91-04- 048 (Order 3136), S 388-155-320, filed 2/1/91, effective 3/4/91.

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388-155-330. Indoor play area.

(1) The home's indoor premises must contain adequate space for child play and sufficient space to house developmentally appropriate activities for the number and age range of children served. The licensee must provide a minimum of thirty-five square feet of usable floor space per child, exclusive of a bathroom, hallway, and closet.

(2) The licensee may use and consider the napping area as child care space if mats and cots are removed when not in use. The licensee may consider the kitchen usable space if:

- (a) Appliances and utensils do not create a safety hazard;
- (b) Toxic or harmful substances are not accessible to the child;
- (c) Food preparation and storage sanitation is maintained; and
- (d) The space is used safely and appropriately as a child care activity area.

(3) The licensee may use a room for multiple purposes such as playing, dining, napping, and learning activities, provided:

- (a) The room is of sufficient size; and
- (b) The room's use for one purpose does not interfere with use of the room for another purpose.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-330, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-330, filed 2/1/91, effective 3/4/91.

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388-155-340. Toilets, handwashing sinks, and bathing facilities.

- (1) The licensee must provide a minimum of one indoor flush-type toilet and one adjacent handwash sink.
- (2) The licensee must supply the child warm running water for handwashing at a temperature range no less than eighty-five degrees Fahrenheit and no more than one hundred and twenty degrees Fahrenheit.
- (3) The licensee must provide toileting privacy for the child of opposite sex six years of age and older and for other children demonstrating a need for privacy.
- (4) The licensee must provide toilets and handwashing sinks of appropriate height and size for the child in care or furnish safe, easily cleanable platforms impervious to moisture so the child can reach the toilet and handwashing sink.
- (5) The licensee must ensure a room used for toileting is ventilated.
- (6) When a home serves the child not toilet-trained, the licensee must provide developmentally appropriate equipment for the toileting and toilet training of the young child. The licensee must sanitize the equipment after each child's use.
- (7) The licensee must provide the child with soap and individual cloth or paper towels for washing and drying the child's hand and face.
- (8) If the home is equipped with a bathing facility, the licensee must:
 - (a) Ensure the young child is supervised while using the bathing facility; and
 - (b) Equip the bathing facility with a conveniently located grab bar or other safety device such as a nonskid pad.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-340, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-340, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-340
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388-155-350. Laundry.

- (1) The licensee must use an effective method through temperature or chemical measures for adequately sanitizing the child's laundry contaminated with urine, feces, lice, scabies, or other infectious material.
- (2) The licensee must store the child's soiled laundry separately from clean laundry.
- (3) Hazardous laundry supplies and soiled items must be inaccessible to children.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-350, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-350, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-350
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388-155-360. Nap and sleep equipment.

(1) The licensee must provide a clean, separate, firm mat, cot, bed, mattress, play pen, or crib for each child five years of age and under remaining in care for six or more hours and for the child requiring a nap or rest period.

(2) The licensee must ensure the child's mat or cot is of sufficient length, width, and thickness to provide adequate comfort for the child to nap. The licensee must ensure the cot surface is of a material which can be cleaned with a detergent solution, disinfected, and allowed to air dry. The licensee may use a washable sleeping bag meeting the mat requirements for the toilet-trained child.

(3) The licensee must clean the child's nap equipment as needed and between use by different children.

(4) The licensee must separate the child's nap equipment when in use to facilitate child comfort and health and staff access.

(5) The licensee must ensure the child's bedding:

(a) Consists of a clean sheet or blanket to cover the sleeping surface and a clean, suitable cover for the child;

(b) Is laundered weekly or more often and between use by different children; and

(c) Is stored separately from bedding used by another child.

(6) The licensee must not use the upper bunk of a double deck bed for a preschool age or younger child.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-360, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-360, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-360
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388-155-370. Storage.

- (1) The licensee must provide accessible individual space for the child to store clothes and personal possessions.
- (2) The licensee must provide sufficient space to store equipment, supplies, records, files, cots, mats, and bedding.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-370, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-370, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-370
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388-155-380. Home atmosphere.

(1) The licensee must provide a cheerful learning environment for the child consistent with a family home environment by placing visually stimulating decorations, pictures, or other attractive materials at appropriate heights for the child.

(2) The licensee must maintain a safe and developmentally appropriate noise level, without inhibiting normal ranges of expression by the child, so provider and child can be clearly heard and understood in normal conversation.

(3) The licensee must locate light fixtures and provide lighting intensities promoting good visibility and comfort for the child in care.

(4) The licensee must maintain the temperature within the home at:

(a) Sixty-eight degrees Fahrenheit or more during the child's waking hours; and

(b) Sixty degrees Fahrenheit or more during the child's napping or sleeping hours.

(5) The licensee must ventilate the home for the health and comfort of the child in care.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-380, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-380, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-390. Discrimination prohibited.

The licensee must comply with federal and state regulatory and statutory requirements, defined under chapter 49.60 RCW, regarding nondiscrimination in employment practices and client services, to prohibit discrimination because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical disability or use of a trained guide dog or service animal by a disabled person.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-390, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-390, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-400. Religious activities.

(1) Consistent with state and federal laws, the licensee must respect and facilitate the rights of the child in care to observe the tenets of the child's faith.

(2) The licensee must not punish or discourage the child for exercising these rights.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-400, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-400, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-410. Additional requirements regarding American Indian children.

When one or more American Indian child receives care at the home, the licensee must in consultation with the parent, establish a plan to provide social service resources and training designed to meet the social and cultural needs of such children. The licensee may coordinate with tribal, Indian Health Service, Bureau of Indian Affairs social service staff, and appropriate urban Indian and Alaskan native consultants.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-410, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-410, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-420. Child abuse, neglect, and exploitation.

The licensee and assistant must protect the child in care from child abuse, neglect, or exploitation as required under chapter 26.44 RCW.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-420, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-420, filed 2/1/91, effective 3/4/91.

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388-155-430. Prohibited substances.

(1) During operating hours or when the child is in care, the licensee, assistant, and volunteers on the premises in child care areas, or caring for the child off-site must not be under the influence of or consume an:

(a) Alcoholic beverage; or

(b) Illegal drug.

(2) The licensee must prohibit smoking in:

(a) All areas of the home used by the child during hours of operation when the child is in care; and

(b) A motor vehicle when the licensee or assistant transports a child.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-430, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-430, filed 2/1/91, effective 3/4/91.

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388-155-440. Limitations to persons on premises.

(1) During home operating hours or while the child is in care, the only persons having regular or unsupervised access to the child in care are:

- (a) The child's parent,
- (b) The licensee,
- (c) An employee,
- (d) The licensee's family member,
- (e) A volunteer, or
- (f) A governmental agency representative having specific, verifiable authority for the access.

(2) The licensee must allow the parent of the child in care unsupervised access only to his or her own child.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-440, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-440, filed 2/1/91, effective 3/4/91.

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388-155-450. Child records and information.

The licensee must maintain organized confidential records and information on the premises concerning each child in care. The licensee must ensure the child's record contains, at a minimum:

(1) Registration data:

(a) Name, birthdate, dates of enrollment and termination; and

(b) Name, address, and home and business telephone number of the parent and other person to be contacted in case of emergency.

(2) Authorizations:

(a) Name, address, and telephone number of the person authorized to remove from the home the child under care;

(b) Written parental consent for transportation provided by the home, including field trips and swimming, when the child participates in these activities. A parent-signed blanket consent form may authorize the child's off-site travel; and

(c) Written parental consent, or court order, for providing medical care and emergency surgery, except for such care authorized by law.

(3) Medical and health data:

(a) A health history, obtained when the licensee enrolls the child for care. The history includes:

(i) The date of the child's last physical examination;

(ii) Allergies;

(iii) Special health problems and other pertinent health information;

(iv) Immunization history as required under WAC 388-155-220;

(v) Name, address, and telephone number of the child's health care provider or facility; and

(vi) Special developmental problems.

- (b) Date and kind of illness and injury occurring on the premises, including the treatment given by the licensee; and
- (c) Medication given indicating dosage, date, time, and name of the dispensing person.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-450, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-450, filed 2/1/91, effective 3/4/91.

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388-155-460. Home records.

The licensee must maintain the following documentation on the premises:

- (1) The attendance records, completed daily, including arrival and departure times;
- (2) A copy of the report sent to the licensor about the illness or injury to the child in care requiring medical treatment or hospitalization;
- (3) The twelve-month record indicating the date and time the licensee conducted the required monthly fire evacuation drills;
- (4) The twelve-month record indicating the date the licensee tested the battery-powered smoke detector monthly; and
- (5) Attendance records and invoices for state-paid children for at least five years.

Statutory Authority: RCW 74.15.030. 00-06-040, S 388-155-460, filed 2/28/00, effective 3/30/00. Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), S 388-155-460, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), S 388-155-460, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-470. Personnel records.

(1) Each assistant and volunteer having unsupervised or regular access to the child in care must complete and submit to the licensee by the date of hire:

(a) An application for employment on a department-prescribed form, or its equivalent; and

(b) A criminal history and background inquiry form.

(i) The licensee must submit this form to the department for the employee and volunteer, within seven calendar days of the assistant's or volunteer's first day of employment, permitting a criminal and background history check.

(ii) The department must discuss the result of the criminal history and background inquiry information with the licensee, when applicable.

(2) The licensee, assistant, and volunteer must have on file at the home:

(a) An employment application, including work and education history;

(b) Documentation of criminal history and background inquiry form submission;

(c) A record of the tuberculin skin test results, x-ray, or an exemption to the skin test or x-ray;

(d) Documentation of HIV/AIDS education and training;

(e) Documentation of current first aid and CPR training, when applicable; and

(f) Documentation of basic and annual training required under WAC 388-155-180 (2)(d) and 388-155-200 (2)(c), when applicable.

Statutory Authority: RCW 74.15.030. 00-06-040, S 388-155-470, filed 2/28/00, effective 3/30/00; 98-24-052, S 388-155-470, filed 11/25/98, effective 12/26/98; 91-04-048 (Order 3136), S 388-155-470, filed 2/1/91, effective 3/4/91.

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388-155-480. Reporting of death, injury, illness, epidemic, or child abuse.

The licensee must report immediately:

(1) A death, serious injury requiring medical treatment, or illness requiring hospitalization of a child in care, by telephone and in writing, to the parent, licensor, and child's social worker, if any;

(2) An instance when the licensee or assistant has reason to suspect the occurrence of physical, sexual, or emotional child abuse, child neglect, or child exploitation, as required under chapter 26.44 RCW, by telephone, to child protective services or local law enforcement; or

(3) An occurrence of food poisoning or communicable disease, as required by the state board of health, by telephone, to the local public health department.

Statutory Authority: RCW 74.15.030 01-17-084, S 388-155-480, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-480, filed 2/1/91, effective 3/4/91.

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388-155-490. Reporting of circumstantial changes.

A family child care home license is valid only for the person and address named on the license. The licensee must promptly report to the licensor major changes in premises, activities and routines, the assistant, or members of the household affecting the home's capacity classification, delivery of safe, developmentally appropriate services, or continued eligibility for licensure. A major change includes the:

- (1) Home's address, location, or phone number;
- (2) Maximum number and age ranges of children the licensee wishes to serve as compared to current license specifications;
- (3) Number and qualifications of the home's staff that may affect competencies to implement the specified activities and routines, including the death, retirement, or incapacity of a licensee;
- (4) Name by which the home is commonly known;
- (5) Occurrence of a fire, major structural change, or damage to the premises from any cause;
- (6) Plans for major remodeling of the home, including planned use of space not previously department-approved; and
- (7) Report of a person moving in or out of the household.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-490, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-490, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-500. Posting requirements.

The licensee must post the following items, clearly visible to the parents and the assistant:

- (1) The home's child care license issued under this chapter;
- (2) Evacuation plans and procedures;
- (3) Emergency telephone numbers; and
- (4) A department-issued final notice of penalty.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-500, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-500, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-600. Occupancy restrictions.

(1) Any home used for child day care purposes for fewer than thirteen children is considered to be a Group R, Division 3 occupancy per the state building code. Family child day care homes must meet the minimum construction and fire and safety requirements for one and two family dwellings.

If a portion of the home is used for purposes other than a dwelling, such as a garage, automotive repair shop, cabinet and/or furniture making or refinishing or similar use, a fire wall is required between the dwelling and the other use.

(2) Only one exit door from a family child day care home need be of the pivoted or side hinged swinging type. Approved sliding doors may be used for other exits.

(3) In family child day care home, each floor level used for family child day care purposes must be provided with two exits, usually located at opposite ends of the building or floor.

(4) Basements located more than four feet below grade level must not be used for family child day care purposes unless one of the following conditions exists:

(a) Two exit stairways from the basement open directly to the exterior of the building without entering the first floor; or

(b) One of the two required exits discharges directly to the exterior from the basement level and the other exit is an interior stairway with a self-closing door installed at the top or bottom leading to the floor above; or

(c) One of the two required exits is an operable window or door, approved for emergency escape or rescue, that opens directly to a public street, public alley, yard or exit court and the other may be an approved interior or exterior stairway; or

(d) A residential sprinkler system is provided throughout the entire home in accordance with standards of the National Fire Protection Association.

(5) The family child care home licensee must ensure that any floor located more than four feet above grade level is not occupied by children for family child day care purposes except for the use of toilet facilities while under supervision of a staff person.

Family child day care may be allowed on the second story if one of the following conditions exists:

(a) There are two exit stairways from the second story which open directly to the exterior of the building without entering the first floor; or

(b) There is an exit which discharges directly to the exterior from the second story level, and a second interior stairway with a self-closing door installed at the top or bottom of the interior stair leading to the floor below; or

(c) A residential sprinkler system is provided throughout the entire building in accordance with standards of the National Fire Protection Association.

(6) The maximum travel distance from any point in the home to an exterior exit door must not exceed one hundred fifty feet.

(7) Every room used for child care (except bathrooms) must have:

(a) At least one operable window or door approved for emergency escape or rescue which must open directly into a public street, public alley, yard or exit court. The units must be operable from the inside to provide a full clear opening without the use of separate tools.

The net clear openable area of an escape or rescue window must be a minimum of 5.7 square feet. The net clear openable height dimension must be a minimum of twenty-four inches. The net clear openable width dimension must be a minimum of twenty inches. An escape or rescue window must have a finished sill height of not more than forty-four inches above the floor; or

(b) Doors leading to two separate exit ways; or

(c) A door leading directly to the exterior of the building.

(8) A stationary platform may be used under a window to attain the forty-four inches above the floor.

(9) Exit doors must be easy to open to the full open position.

(10) Exit doors and windows must be able to be opened from the inside without having to use a key. Use of night latches, dead bolts, security chains, manually operated edge or surface mounted flush bolts and surface bolts is prohibited during child care hours.

The locking arrangement on outside exit doors must be such that they will automatically unlock when the doorknob is turned from the inside.

(11) The licensee must ensure that obstructions are not placed in corridors, aisles, doorways, doors, stairways or ramps.

(12) Space which is accessible only by ladder, folding stairs or trap doors, must not be used for family child day care purposes.

(13) Every bathroom door lock must be designed to permit the opening of the locked door from the outside in an emergency. The opening device must be readily accessible to the staff.

(14) Every closet door latch must be such that children can open the door from inside the closet.

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Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-600, filed 2/28/00, effective 3/30/00. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-600, filed 4/26/96, effective 5/27/96.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-605. Hazardous areas.

Rooms or spaces containing a commercial-type kitchen, boiler, maintenance shop, janitor closet, laundry, wood-working shop, flammable or combustible storage, painting operation, or parking garage must be separated from the family child day care home or any exits by a fire wall.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-605, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-605, filed 4/26/96, effective 5/27/96.

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388-155-610. Single station smoke detectors.

- (1) Smoke detectors must be located in all sleeping and napping rooms in family child day care homes.
- (2) In family child day care homes with more than one story, and in family child day care homes with basements, a smoke detector must be installed on each story and in the basement.
- (3) In family child day care homes where a story or basement is split into two or more levels, the smoke detector must be installed in the upper level, except that when the lower level contains a sleeping or napping area, a smoke detector must be located on each level.
- (4) When sleeping or napping rooms are on an upper level, the smoke detector must be placed on the ceiling of the upper level in close proximity to the stairway and in each sleeping/napping room.
- (5) In a family child day care home where the ceiling height of a room open to the hallway serving sleeping or napping rooms exceeds that of the hallway by twenty-four inches or more, smoke detectors must be installed in both the hallway and the sleeping/napping room.
- (6) Smoke detectors must sound an alarm audible in all areas of the building.
- (7) In new construction, required smoke detectors must receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring must be permanent and without a disconnecting switch other than those required for overcurrent protection.
- (8) Smoke detectors may be battery operated when installed in existing buildings or buildings without commercial power.
- (9) Where battery operated smoke detectors are installed, at least one extra battery of the type and size specified for the battery operated smoke detector must be maintained upon the premises.
- (10) Single station smoke detectors must be tested at monthly intervals or in a manner specified by the manufacturer. Records of such testing shall be maintained upon the premises.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-610, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-610, filed 4/26/96, effective 5/27/96.

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388-155-620. Alternate means of sounding a fire alarm.

In addition to single station smoke detectors, family child day care homes must provide an alternate means for sounding a fire alarm. A police type whistle or similar device is adequate for meeting this requirement, provided that whatever method is selected is limited to an evacuation emergency only.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-620, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-620, filed 4/26/96, effective 5/27/96.

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388-155-630. Fire extinguisher.

(1) At least one approved 2A, 10B:C rated fire extinguisher must be provided on each floor level occupied for day care use. Such extinguisher must be located in the area of the normal path of egress. The maximum travel distance to an extinguisher shall not exceed seventy-five feet.

(2) Fire extinguishers must be operationally ready for use at all times.

(3) Fire extinguisher must be kept on a shelf or mounted in the bracket provided for this purpose so that the top of the extinguisher is not more than five feet above the floor.

(4) The licensee must ensure that fire extinguishers receive annual maintenance certification by a firm specializing in and licensed to do such work. Maintenance means a thorough check of the extinguisher to include examination of:

(a) Mechanical parts;

(b) Extinguishing agent; and

(c) Expelling means.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-630, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-630, filed 4/26/96, effective 5/27/96.

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388-155-640. Fire prevention.

- (1) The licensee must ensure that the local fire department is requested to visit the family child day care home to become familiar with the facility and to assist in planning evacuation or emergency procedures. Where a fire department does not provide this service, the licensee must document this contact.
- (2) Furnace rooms must be maintained free of lint, grease and rubbish accumulations and other combustibles and suitably isolated, enclosed or protected.
- (3) Flammable or combustible materials must be stored away from exits and in areas which are not accessible to children. Combustible rubbish shall not be allowed to accumulate and must be removed from the building or stored in closed, metal containers.
- (4) The licensee must keep all areas used for child care clean and neat, making sure that all waste generated daily is removed from the building and disposed of in a safe manner outside the building. All containers used for the disposal of waste material must be of noncombustible materials with tops. Electrical motors shall be kept dust-free.
- (5) Open-flame devices capable of igniting clothing must not be left on, unattended or used in a manner which could result in an accidental ignition of children's clothing. Candles must not be used.
- (6) A flashlight must be available for use as an emergency power source.
- (7) All electrical circuits, devices and appliances must be properly maintained. Circuits must not be overloaded. Extension cords and multi-plug adapters must not be used in lieu of permanent wiring and proper receptacles.
- (8) The use of portable space heaters of any kind is prohibited.
- (9) Approved numbers or addresses must be placed on all new and existing homes and in the driveway to the house when the house is not visible from the road. The numbers or address must be in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers must contrast with their background.
- (10) Fireplaces, woodstoves, similar devices and their connections must be approved by the local building official. If the woodstove is used as a sole source of heat or is used during hours of operation, such devices must be cleaned, maintained and inspected on at least an annual basis by a person or firm specializing in such work and licensed.

Where open flames and/or hot surfaces are accessible, approved barriers must be erected to prevent children from coming in contact with the open flames and/or hot surfaces.

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Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-640, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-640, filed 4/26/96, effective 5/27/96.

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388-155-650. Sprinkler system maintenance.

Sprinkler systems, if installed, must be tested on an annual basis by a person or agency qualified by licensing. The results of the system test must be documented on forms provided by the licensor and maintained at the home for inspection by the licensor.

Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-650, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), S 388-155-650, filed 4/26/96, effective 5/27/96.

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388-155-660. Fire evacuation plan.

Each home must develop written fire evacuation plans. The evacuation plan must include an evacuation floor plan, identifying exit doors and windows, that must be posted at a point clearly visible to the assistant and parents. Plans must include the following:

- (1) Action to be taken by the person discovering a fire;
- (2) Method to be used for sounding an alarm on the premises;
- (3) Action to be taken for evacuation of the building and assuring accountability of the children; and
- (4) Action to be taken pending arrival of the fire department.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-660, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-660, filed 4/26/96, effective 5/27/96.

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388-155-670. Fire evacuation drill.

A fire evacuation drill must be conducted at least once each month. A written record, the fire safety record and evacuation plan, must be maintained and posted on the premises indicating the date, time and other required entries on the form. Such forms are available from the division of child care and early learning.

Statutory Authority: RCW 74.15.030, 02-24-022, S 388-155-670, filed 11/26/02, effective 12/27/02; 01-17-084, S 388-155-670, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), S 388-155-670, filed 4/26/96, effective 5/27/96.

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388-155-680. Staff training.

The licensee and each employee or assistant must be familiar with all elements of the fire evacuation plan and must be capable of accomplishing the following:

- (1) Operation of fire extinguisher installed on the premises.
- (2) Testing smoke detectors (single station types).
- (3) Conducting frequent inspections of the home to identify fire hazards and take action to correct any hazards noted during the inspection. Such inspections should be conducted on a monthly basis and records kept on the premises for review by the licensor.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-680, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-680, filed 4/26/96, effective 5/27/96.

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388-155-991. Waiver of fees.

Any person or agency subject to license fees under chapter 440-44 WAC, and organizations in the person's or agency's behalf, may submit a sworn, notarized petition seeking waiver of fees for a licensee or distinguishable class of licensee.

The petition shall be mailed or delivered to the office of the secretary. Following receipt of the petition, the secretary may require submission of additional information considered relevant.

00-23-088, recodified as S 388-155-991, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), S 440-44-002, filed 6/4/82.

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388-155-992. Fee payment and refunds.

(1) Fees are due with applications for initial license or renewal. The department will not proceed on applications until required fees are paid.

Except as otherwise provided in these rules, fees shall be paid for a minimum of one year.

(2) Fees for licenses issued for other than yearly periods shall be prorated based on the stated annual fee.

(3) When the department issues a license for more than one year:

(a) Fees may be paid for the entire licensing period by paying at the rate established at the time the application was submitted, or

(b) If the licensee does not pay the fee for the entire license period, annual fees shall be due thirty days prior to each annual anniversary date of the license, at the annual fee rate established by these rules at the time such fee is paid.

(4) Except as otherwise provided in these rules, if an application is withdrawn prior to issuance or denial, one-half of the fee shall be refunded.

(5) If there is a change of or by the licensee requiring a new license, the fee paid for a period beyond the next license anniversary date shall be refunded. Changes requiring a new license shall require a new application and payment of fee as provided herein.

(6) If there is a change by the applicant or licensee that requires an amendment placing the licensee in a higher fee category, the additional fee shall be prorated for the remainder of the license period.

(7) Fees becoming due on or after the effective date of this chapter shall be at the rates provided herein.

(8) To the extent fees are reduced through regular rule adoption of this chapter on or before December 31, 1982, fees shall be refunded.

(9) Fee payments shall be by mail. Payment shall be by check, draft, or money order made payable to the department of social and health services.

00-23-088, recodified as S 388-155-992, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), S 440-44-010, filed 6/4/82.

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388-155-993. Denial, revocation, suspension, and reinstatement.

- (1) If a license is denied, revoked, or suspended, fees shall not be refunded.
- (2) Application for license after denial or revocation must include fees as provided for in these rules.
- (3) Failure to pay fees when due will result in suspension or denial of license.

00-23-088, recodified as S 388-155-993, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201.
82-13-011 (Order 1825), S 440-44-015, filed 6/4/82.

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388-155-005. Authority.

The following rules are adopted under chapters 74.12 and 74.15 RCW.

Statutory Authority: RCW 74.12.340, 94-13-201 (Order 3745), S 388-155-005, filed 6/22/94, effective 7/23/94.
Statutory Authority: RCW 74.15.030, 91-04-048 (Order 3136), S 388-155-005, filed 2/1/91, effective 3/4/91.

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388-155-010. Definitions.

As used and defined under this chapter:

'American Indian child' means any unmarried person under the age of eighteen who is:

- (1) A member of or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut or other Alaska Native and a member of an Alaskan native regional Corporation or Alaska Native Village;
- (2) Determined or eligible to be found to be Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;
- (3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or
- (4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

'Assistant' means a child care giver employed by the licensee to supervise a child served at the home.

'Capacity' means the maximum number of children the licensee is authorized to have on the premises at a given time.

'Child' means a person seventeen years of age and under.

'Child abuse or neglect' means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child by a person under circumstances indicating the child's health, welfare, and safety is harmed.

'Department' means the state department of social and health services.

'Department of health' means the state department of health.

'Family abode' means 'a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.'

'Family child care home' means a facility in the family residence of the licensee providing regularly scheduled care for twelve or fewer children, within a birth through eleven-years-of-age range exclusively, for periods less than twenty-four hours unless care in excess of twenty-four hours is necessary due to the nature of the parent's work.

'Family child day care home' means the same as **'family child care home'** and **'a child day care facility, licensed by the state, located in the family abode of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.'**

'Family residence' means the same as **'family abode.'**

'Home' means the same as **'family child care home.'**

'I,' 'you,' and 'your' refer to and mean the licensee or applicant for a child care license.

'License' means a permit issued by the department authorizing by law the licensee to operate a family child care home and certifying the licensee meets minimum requirements under licensure.

'Licensee' means the person, organization, or legal entity responsible for operating the home.

'Premises' means the buildings where the home is located and the adjoining grounds over which the licensee has control.

'Provider' means the same as **'licensee.'**

'The Washington state training and registry system (STARS)' means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirements.

'We' or 'our' refer to and mean the department of social and health services, including division of child care and early learning licensors.

Statutory Authority: Chapter 74.15 RCW, RCW 74.08.090, 02-16-062, S 388-155-010, filed 8/2/02, effective 10/1/02. Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-010, filed 2/28/00, effective 3/30/00; 98-24-052, S 388-155-010, filed 11/25/98, effective 12/26/98; 91-04-048 (Order 3136), S 388-155-010, filed 2/1/91, effective 3/4/91.

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388-155-020. Scope of licensing.

(1) The person operating a family child care home shall be subject to licensing by authority under chapter 74.15 RCW, unless exempted by RCW 74.15.020(4).

(2) The person operating a family child care home and qualifying for exemption from requirements of this chapter under RCW 74.15.020(4) shall not be subject to licensure. The person claiming an exemption must provide the department proof of entitlement to the exemption on the department's request.

(3)(a) RCW 74.15.020 (4)(c)(i) exempts from licensing persons who care for a neighbor's or friend's child or children, with or without compensation, where:

(i) Care is provided for less than twenty-four hours; and

(ii) Such activity is not conducted on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to advertising such care.

(b) For purposes of this section:

(i) **'Advertising'** means attempting to solicit child care clients, either directly or indirectly, through written, or electronic means;

(ii) **'Engaging in business'** shall exclude those persons providing child care for only one family of children or who can demonstrate that their gross earnings from child care will not exceed one thousand dollars in any one calendar year;

(iii) **'Friend'** means someone with whom the care provider had a personal relationship prior to the time care was sought, offered, or provided;

(iv) **'Neighbor'** means a person with whom the care provider has relationship by virtue to living in close proximity to the person;

(v) **'Ongoing'** means that care is provided for a number of consecutive weeks or months or there is no specific time frame for ending child care;

(vi) **'Regularly scheduled'** means that the child comes at usually planned times and/or days and/or the provider makes her/himself available to provide care at fixed or planned intervals.

(4) The department shall not license the home legally exempt from licensing. However, at the applicant's request, the department shall investigate and may certify the home as meeting licensing and other pertinent requirements. In such cases, the department's requirements and procedures for licensure shall apply equally to certification.

(5) The department may certify a family day care home for payment without further investigation if the home is:

(a) Licensed by an Indian tribe; or

(b) Certified by the Federal Department of Defense.

The home must be licensed or certified in accordance with national or state standards or standards approved by the department and be operated on the premises over which the entity licensing or certifying the home has jurisdiction.

(6) The person or organization desiring to serve state-paid children must:

(a) Be licensed or certified;

(b) Follow billing policies and procedures in Child Care Subsidies, A Booklet for Providers, DSHS 22-877(X); and

(c) Bill the department at the person's or organization's customary rate or the DSHS rate, whichever is less.

Statutory Authority: RCW 74.15.030. 00-06-040, S 388-155-020, filed 2/28/00, effective 3/30/00; 96-20-095, S 388-155-020, filed 10/1/96, effective 11/1/96. Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), S 388-155-020, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030. 91-15-084 (Order 3205), S 388-155-020, filed 7/23/91, effective 8/23/91; 91-04-048 (Order 3136), S 388-155-020, filed 2/1/91, effective 3/4/91.

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388-155-040. Local ordinances and codes.

The department must issue or deny a license on the basis of the applicant's compliance with minimum licensing and procedural requirements. Local officials must be responsible for enforcing city ordinances and county codes, such as zoning and building regulations.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-040, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-040, filed 2/1/91, effective 3/4/91.

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388-155-050. Waivers.

(1) In an individual case, the department, for good cause, may waive a specific requirement and may approve an alternate method of achieving the specific requirement's intent if the:

(a) Licensee or applicant submits to the department a written waiver request fully explaining the circumstances necessitating the waiver; and

(b) Department determines waiver approval will not jeopardize the safety or welfare of the child in care or detract from the quality of services the licensee delivers.

(2) The department may approve a waiver request only for a specific purpose or child and for a specific period of time not exceeding the expiration date of the license.

(3) The department may limit or restrict a license issued in conjunction with a waiver.

(4) The licensee must maintain on the premises a copy of the written waiver approval.

(5) The department's denial of a waiver request must not be subject to appeal under chapter 34.05 RCW.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-050, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-050, filed 2/1/91, effective 3/4/91.

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388-155-060. Dual licensure.

The department must not issue a family child care home license to the applicant having a foster family home license or other license involving full-time care or permit simultaneous care for the child and adult on the same premises. An exception may be granted if the applicant or licensee:

- (1) Demonstrates evidence that care of one client category will not interfere with the quality of care provided to another category of clients;
- (2) Requests and obtains a waiver permitting dual licensure;
- (3) Maintains the most stringent maximum capacity limitation for the client categories concerned; and
- (4) Where the licensee desires to exceed the most stringent maximum capacity limitation, requests an additional waiver to subsection (3) above. This additional waiver request may be written on one form with the request for dual licensing.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-060, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-060, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.15.030, 91-04-048 (Order 3136), S 388-155-060, filed 2/1/91, effective 3/4/91.

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388-155-070. How do I apply for a license and what is required?

(1) To apply for a license to provide family home child care you must:

(a) Be eighteen years of age or older;

(b) Attend an orientation provided by the department;

(c) Submit to the department a completed and signed family child care home license application form, including the following attachments:

(i) The twenty-four dollars per year license fee. The license fee may be paid for one, two or three years;

(ii) A completed criminal history and background inquiry form for each person sixteen years of age or older who will have unsupervised or regular access to the children in care. This includes you, any other applicants, assistants, volunteers and members of your household;

(iii) A copy of your picture identification issued by a government entity (could include but is not limited to: Driver's license, passport, state identification); and

(iv) A copy of your social security card or verification of your employer identification number (EIN).

(d) Submit to the department these additional documents either with your application or within the ninety-day licensing period:

(i) An employment and education resume for you and any assistants along with your school transcript, if you request:

(A) A waiver of the STARS training requirement; or

(B) A capacity higher than six children.

(ii) Three references for you;

(iii) Documentation of current TB exam by the Mantoux method for you, any assistants, volunteers and adult members of the household;

(iv) Documentation of current, standard first aid and infant/child CPR training for you and any assistant who will be

left alone to care for the children;

(v) Documentation of your HIV/AIDS training;

(vi) Documentation of the local health jurisdiction approval of your private water supply and independent sewage system, if applicable;

(vii) A copy of your policies and procedures that you give to parents.

(e) Provide to the department any additional reports or information regarding you, any assistants, volunteers, members of your household or any other person having access to the child in care if any of those individuals may be unable to meet the requirements in chapter 388-155 WAC. This could include:

(i) Sexual deviancy evaluations;

(ii) Substance abuse evaluations;

(iii) Psychiatric evaluations; and

(iv) Medical evaluations.

(2) If we decide it is necessary, we will investigate you, other applicants, assistants, volunteers, members of your household, and other persons having access to the children in care. This investigation could include, but is not limited to, accessing criminal histories and law enforcement files and records.

Statutory Authority: RCW 74.12.340, 74.15.030, and 26 U.S.C. 6109. 03-09-074, S 388-155-070, filed 4/15/03, effective 5/16/03. Statutory Authority: RCW 74.15.030. 00-06-040, S 388-155-070, filed 2/28/00, effective 3/30/00. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), S 388-155-070, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), S 388-155-070, filed 2/1/91, effective 3/4/91.

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388-155-080. Issuance of license.

- (1) The department issues the applicant or licensee a license for a specific number of children dependent on the:
 - (a) Department's evaluation of the home's premises and physical accommodations;
 - (b) Number and skills of the licensee, assistant, and volunteers; and
 - (c) Ages and characteristics of the children served.
- (2) The department:
 - (a) May issue the applicant or licensee a license to care for fewer children than the home's maximum capacity; and
 - (b) Must not issue the applicant or licensee a license for the care of more children than permitted under this chapter.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-080, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-080, filed 2/1/91, effective 3/4/91.

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388-155-083. Fees.

The licensee must pay a fee of twenty-four dollars per year. The fee is payable to DSHS and may be paid either annually or once every three years.

Statutory Authority: RCW 43.20B.110. 01-02-032, S 388-155-083, filed 12/22/00, effective 1/22/01.

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388-155-085. Initial license.

(1) The department may issue an initial license to an applicant not currently licensed to provide child day care when the applicant:

(a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but

(b) Cannot demonstrate compliance with the rules pertaining to:

(i) Provider-child interactions,

(ii) Capacity,

(iii) Behavior management,

(iv) Activity and routines,

(v) Child records and information, and

(vi) Other rules requiring department observation of the applicant's ability to comply with rules.

(c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.

(2) The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(3) The department must evaluate the applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a full license.

(4) The department may issue a full license to the applicant demonstrating compliance with all rules contained in this chapter at any time during the period of initial licensure.

(5) The department must not issue a full license to the applicant who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-085, filed 8/16/01, effective 9/16/01; 96-20-095, S

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388-155-085, filed 10/1/96, effective 11/1/96.

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388-155-090. When can my license application be denied and when can my license be suspended or revoked?

(1) We must deny your license application, or suspend or revoke your license if you do not meet the requirements in this chapter.

(2) If more than one person applies for a license or is licensed under this chapter to provide child care at the same facility, we consider qualifications separately and together. We may deny your license application, or suspend or revoke your license if one person fails to meet the minimum licensing requirements.

(3) We must deny, suspend, or revoke your license if you:

(a) Have been found to have abused, neglected, sexually exploited, or abandoned a child as defined in chapter 26.44 RCW and chapter 388-15 WAC or allow a person who has committed any of these acts onto the premises;

(b) Have a disqualifying criminal history as listed in chapter 388-06 WAC or allow a person with such a disqualifying criminal history on the premises;

(c) Have had a license denied, suspended, or revoked for the care of adults or children in this state or any other state. The exception: If you can demonstrate by clear and convincing evidence that you have taken enough correction action or rehabilitation to justify the public trust and to operate the home according to the rules of this chapter, we may issue you a license;

(d) Commit or allow an illegal act on the licensed premises;

(e) Allow a child in your care to be abused, neglected, exploited, or treated with cruelty or indifference;

(f) Use illegal drugs, or use alcohol excessively;

(g) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office to inspect the premises;

(h) Refuse to permit an authorized representative of the department, state fire marshal, or state auditor's office access to records related to the home's operation or to interview staff or a child in care; or

(i) Refuse to provide to us a copy of your:

(A) Picture identification issued by a government entity; and

(B) Social Security card or verification of your employer identification number (EIN).

(4) We may deny, suspend, or revoke your license if you:

(a) Try to get or keep a license by deceitful means, such as making false statements or leaving out important information on your application;

(b) Do not provide enough staff in relation to the numbers, ages, or characteristics of children in care;

(c) Allow a person who is not qualified by training, experience or temperament to care for or be in contact with a child in care;

(d) Fail to provide adequate supervision to a child in care;

(e) Are not able to exercise fiscal responsibility and accountability while operating the home;

(f) Knowingly allow an employee or volunteer on the premises who has made false statements on an application for employment or volunteer service;

(g) Refuse to supply additional information reasonably requested by the department; or

(h) Fail to comply with the minimum licensing requirements set forth in this chapter or any provision of chapter 74.15 RCW.

Statutory Authority: RCW 74.12.340, 74.15.030, and 26 U.S.C. 6109. 03-09-074, S 388-155-090, filed 4/15/03, effective 5/16/03. Statutory Authority: RCW 74.15.030. 02-24-022, S 388-155-090, filed 11/26/02, effective 12/27/02. Statutory Authority: Chapter 74.120 RCW, RCW 74.12.340, and 74.15.030. 02-14-085, S 388-155-090, filed 6/28/02, effective 7/29/02. Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-090, filed 8/16/01, effective 9/16/01; 96-10-043 (Order 3974), S 388-155-090, filed 4/26/96, effective 5/27/96. Statutory Authority: RCW 74.12.340. 94-13-201 (Order 3745), S 388-155-090, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030. 91-04-048 (Order 3136), S 388-155-090, filed 2/1/91, effective 3/4/91.

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388-155-092. Civil penalties.

(1) Before imposing a civil penalty, the department must provide written notification by personal service, including by the licensor, or certified mail which must include:

- (a) A description of the violation and citation of the applicable requirement or law;
- (b) A statement of what is required to achieve compliance;
- (c) The date by which the department requires compliance;
- (d) The maximum allowable penalty if timely compliance is not achieved;
- (e) The means to contact any technical assistance services provided by the department or others; and
- (f) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(2) The length of time in which to comply must depend on:

- (a) The seriousness of the violation;
- (b) The potential threat to the health, safety and welfare of children in care; or
- (c) Previous opportunities to correct the deficiency.

(3) The department may impose a civil penalty based on but not limited to these reasons:

- (a) The child care home has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or
- (b) The child care home has previously been given notice of the same or similar type of violation of the same statute or rule; or
- (c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) The department may impose a civil penalty in addition to or in conjunction with other disciplinary actions against

a child care license including probation, suspension, or other action.

(5) The civil fine must be payable twenty-eight days after receipt of the notice or later as specified by the department.

(6) The fine may be forgiven if the agency comes into compliance during the notification period.

(7) The center or person against whom the department assesses a civil fine has a right to an adjudicative proceeding as governed by RCW 43.20A.215.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-092, filed 8/16/01, effective 9/16/01; 96-20-095, S 388-155-092, filed 10/1/96, effective 11/1/96.

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388-155-093. Civil penalties--Amount of penalty.

Whenever the department imposes a civil monetary penalty per WAC 388-155-092(3), the department must impose a penalty of seventy-five dollars per violation per day. The department may assess and collect the penalty with interest for each day of noncompliance.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-093, filed 8/16/01, effective 9/16/01; 96-20-095, S 388-155-093, filed 10/1/96, effective 11/1/96.

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388-155-094. Civil penalty--Posting of notice of penalty.

- (1) The licensee must post the final notice of a civil penalty in a conspicuous place in the facility.
- (2) The notice must remain posted until payment is received by the department.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-094, filed 8/16/01, effective 9/16/01; 96-20-095, S 388-155-094, filed 10/1/96, effective 11/1/96.

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388-155-095. Civil penalties--Unlicensed programs.

Where the department has determined that an agency is operating without a license, the department must send written notification by certified mail or other means showing proof of service. This notification must contain the following:

- (1) Advising the agency of the basis of determination of providing child care without a license and the need to be licensed by the department;
- (2) The citation of the applicable law;
- (3) The assessment of seventy-five dollars per day penalty for each day unlicensed care is provided. The fine would be effective and payable within thirty days of receipt of the notification;
- (4) How to contact the division of child care and early learning;
- (5) The need to submit an application to the division of child care and early learning within thirty days of receipt of the notification;
- (6) That the penalty may be forgiven if the agency submits an application within thirty days of the notification; and
- (7) The right of an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding.

Statutory Authority: RCW 74.15.030. 02-24-022, S 388-155-095, filed 11/26/02, effective 12/27/02; 01-17-084, S 388-155-095, filed 8/16/01, effective 9/16/01; 96-20-095, S 388-155-095, filed 10/1/96, effective 11/1/96.

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388-155-096. Civil penalties--Separate violations.

Each violation of a law or rule constitutes a separate violation and may be penalized as such.

Statutory Authority: RCW 74.15.030, 96-20-095, S 388-155-096, filed 10/1/96, effective 11/1/96.

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388-155-097. Civil penalties--Penalty for nonpayment.

The department may suspend, revoke or not renew a license for failure to pay a civil monetary penalty it has assessed within ten days after such assessment becomes final.

Statutory Authority: RCW 74.15.030. 96-20-095, S 388-155-097, filed 10/1/96, effective 11/1/96.

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388-155-098. Probationary license.

(1) The department must base the decision as to whether a probationary license will be issued upon the following factors:

- (a) Willful or negligent noncompliance by the licensee,
- (b) History of noncompliance,
- (c) Extent of deviation from the requirements,
- (d) Evidence of a good faith effort to comply,
- (e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing requirements does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, a probationary license may be issued as well as civil penalties or other sanctions. Such situations may include:

- (a) Substantiation that a child (or children) was abused or neglected while in the care of the home,
- (b) Disapproved fire safety or sanitation report,
- (c) Use of unauthorized space for child care,
- (d) Inadequate supervision of children,
- (e) Understaffing for the number of children in care,
- (f) Noncompliance with requirements addressing:
 - (i) Children's health,
 - (ii) Proper nutrition,
 - (iii) Discipline,

- (iv) Emergency medical plan.
 - (v) Sanitation and personal hygiene practices.
- (3) Licensee must notify parents when a probationary license is issued:
- (a) The licensee must notify the parents or guardians of all children in care that it is in probationary status within five working days of receiving notification he or she has been issued a probationary license;
 - (b) The notification must be in writing and must be approved by the department prior to being sent;
 - (c) The licensee must provide documentation to the department that parents or guardians of all children in care have been notified within ten working days of receiving notification that he or she has been issued a probationary license;
 - (d) The department may issue a probationary license for up to six months, and at the discretion of the department it may be extended for an additional six months.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-098, filed 2/28/00, effective 3/30/00; 96-20-095, S 388-155-098, filed 10/1/96, effective 11/1/96.

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388-155-100. Activities and routines.

(1) The provider must offer activities and routines designed to meet the developmental, cultural, and individual needs of the child served. The provider must ensure that the activities and routines allow the child to:

- (a) Gain self-esteem, self-awareness, self-control, and decision-making abilities;
- (b) Develop socially, emotionally, intellectually, and physically;
- (c) Learn about nutrition, health, and personal safety; and
- (d) Experiment, explore, and play.

(2) The provider must establish familiar routines for meals, rest, and play, with allowances for a variety of special events.

(3) The provider must ensure the home's activities offer variety and options, including a balance between:

- (a) Child-initiated and provider-initiated activities;
- (b) Free play and organized events;
- (c) Individual and group activities;
- (d) Quiet and active experiences; and
- (e) Interactive and passive activities.

(4) The provider must ensure the home's daily routine affords the child opportunities for small and large muscle activities and outdoor play.

(5) The child may remain in care no more than ten hours per day except as necessitated by the parent's working hours and commute time.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-100, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-100, filed 2/1/91, effective 3/4/91.

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388-155-110. Learning and play materials.

The provider must ensure the child access to a variety of easily accessible, developmentally appropriate learning and play materials of sufficient quantity to implement the home's daily activities. The provider must ensure material is culturally relevant and promotes:

- (1) Social development;
- (2) Intellectual ability;
- (3) Language development and communication;
- (4) **Self-help skills**;
- (5) Sensory stimulation;
- (6) Large and small muscle development; and
- (7) Creative expression.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-110, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-110, filed 2/1/91, effective 3/4/91.

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388-155-120. Provider-child interactions.

(1) The provider/assistant must furnish the child a nurturing, respectful, supportive, and responsive environment through frequent interactions with the child:

(a) Supporting the child in developing an understanding of self and others by assisting the child to share ideas, experiences, and feelings;

(b) Providing age-appropriate opportunities for intellectual growth and development of the child's social and language skills, including encouraging the child to ask questions;

(c) Helping the child solve problems;

(d) Fostering creativity and independence in routine activities, including showing tolerance for mistakes; and

(e) Treating children in care equally regardless of race, religion, abilities, and family structure.

(2) The provider must:

(a) Furnish the child a pleasant and educational environment at meal and snack times; and

(b) Provide good models for nutrition habits and social behavior by:

(i) Eating with children, when feasible; and

(ii) Encouraging conversation among children.

(3) The provider must ensure the child is supervised by continuous visual or auditory contact.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-120, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-120, filed 2/1/91, effective 3/4/91.

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388-155-130. Behavior management and discipline.

(1) The licensee must guide the child's behavior based on an understanding of the individual child's needs and stage of development. The licensee must promote the child's developmentally appropriate social behavior, self-control, and respect for the rights of others.

(2) The licensee must ensure behavior management and discipline practices are fair, reasonable, consistent, and related to the child's behavior. The licensee must not administer cruel, unusual, hazardous, frightening, or humiliating discipline.

(3) The licensee must be responsible for implementing the behavior management and discipline practices of the home. The child in care must not determine or administer behavior management or discipline.

(4) The licensee must prohibit and prevent:

(a) Corporal punishment by any person on the premises, including hitting, biting, jerking, shaking, spanking, slapping, striking, or kicking the child, or other means of inflicting physical pain or causing bodily harm;

(b) The use of a physical restraint method injurious to the child;

(c) The use of a mechanical restraint, locked time-out room, closet, highchair, carseat, or infant seat for disciplinary purposes;

(d) The withholding of food as a punishment.

(5) In emergency situations, the licensee competent to use de-escalation and restraint methods may use limited physical restraint when:

(a) Protecting a person on the premises from physical injury;

(b) Obtaining possession of a weapon or other dangerous object; or

(c) Protecting property from serious damage.

(6) The licensee must document any incident involving the use of physical restraint.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-130, filed 2/28/00, effective 3/30/00; 91-04-048 (Order

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388-155-140. Rest periods.

- (1) The provider must offer a supervised rest period to the child:
 - (a) Five years of age and under remaining in care more than six hours; or
 - (b) Showing a need for rest.
- (2) The provider must plan quiet activities for the child not needing rest.
- (3) The provider must allow the child twenty-four months of age and under to follow an individual sleep schedule.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-140, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-140, filed 2/1/91, effective 3/4/91.

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388-155-150. Evening and nighttime care.

(1) For the home regularly offering child care during evening and nighttime hours, the licensee must:

(a) Adapt the activities, routines, and equipment to meet the physical and emotional needs of the child away from home at night. These must include:

(i) Arrangements made for bathing as needed;

(ii) Individual bedding appropriate for overnight sleeping;

(iii) Appropriate night wear and individual toiletry items for each child;

(iv) Separate dressing and sleeping areas for boys and girls ages six years and older and demonstrating a need for privacy.

(b) The licensee must maintain staff-child ratios during sleeping hours.

(c) The licensee must have a plan approved by the licensor to ensure the physical safety and emotional well-being of children during sleeping hours.

(2) The licensee must arrange child grouping so the sleeping child remains asleep during the arrival or departure of another child.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-150, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-150, filed 2/1/91, effective 3/4/91.

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388-155-160. Off-site trips.

(1) The licensee may transport or permit the off-site travel of the child to attend school, participate in field trips, or engage in other off-site activities only with written parental consent.

(2) The parent's consent may be:

(a) For a specific date and trip; or

(b) A blanket authorization describing the full range of trips the child may take. In such case, the licensee must notify the parent in advance about the trip.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-160, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-160, filed 2/1/91, effective 3/4/91.

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388-155-165. Transportation.

When the licensee provides transportation for the child in care:

- (1) The licensee must ensure the motor vehicle is maintained in a safe operating condition;
- (2) The licensee must ensure the motor vehicle is equipped with appropriate safety devices and individual seat belts or safety seats for each child to use when the vehicle is in motion according to Washington state patrol recommendations;
- (3) The licensee must ensure the number of passengers does not exceed the seating capacity of the motor vehicle;
- (4) The licensee or driver must carry motor vehicle liability and medical insurance. The driver must have a current Washington driver's license, valid for the classification of motor vehicle operated;
- (5) The licensee or assistant supervising the child in the motor vehicle must have current first-aid and cardiopulmonary resuscitation training;
- (6) The licensee, assistant, or driver must not leave the child unattended in the motor vehicle;
- (7) The licensee must ensure the assistant is present in the motor vehicle when capacity guidelines require an assistant; and
- (8) The licensee must keep a first-aid kit, health history, and emergency medical consent for each child in the vehicle while transporting children.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-165, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-165, filed 2/1/91, effective 3/4/91.

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388-155-170. Parent communication.

- (1) The licensee must:
 - (a) Explain to the parent and to any assistants the provider's policies, procedures, and health care practices;
 - (b) Orient the parent and assistants to the home and activities, and to location of items required to be posted;
 - (c) Advise the parent of the child's progress and issues relating to the child's care and individual practices concerning a child's special needs; and
 - (d) Encourage parent participation in the home's activities.
- (2) The licensee must give the parent the following written policy and procedure information:
 - (a) Enrollment and admission requirements;
 - (b) The fee and payment plan;
 - (c) A typical activity schedule, including hours of operation;
 - (d) Typical meals and snacks served, including guidelines on food brought from the child's home;
 - (e) Permission for free access by the child's parent to all home areas used by the child;
 - (f) Child abuse reporting requirements;
 - (g) Behavior management and discipline;
 - (h) Nondiscrimination statement;
 - (i) Religious activities, if any;
 - (j) Transportation and field trip arrangements;
 - (k) Typical staffing plan when provider is absent;

(l) Health care practices, including but not limited to information about the home's general health practices concerning:

- (i) Injury prevention;
 - (ii) Medication management;
 - (iii) First aid, including medical emergencies;
 - (iv) Practices concerning an ill child;
 - (v) Communicable disease prevention, management, and reporting;
 - (vi) Handwashing practices.
- (m) If licensed for the care of the young child:
- (i) Proper infant sleep position and bedding to prevent Sudden Infant Death Syndrome (SIDS);
 - (ii) Diapering
 - (iii) Toilet training; and
 - (iv) Feeding.
- (n) Disaster response plan; and
- (o) Practices regarding nighttime care including staffing, if applicable.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-170, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-170, filed 2/1/91, effective 3/4/91.

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388-155-180. Staffing--Qualifications.

(1) General qualifications. The licensee, assistant, volunteer, and other person associated with the operation of the home who has access to the child in care must:

(a) Be of good character;

(b) Have the understanding, ability, personality, emotional stability, and physical health suited to meet the cultural, emotional, mental, physical, and social needs of the child in care; and

(c) Not have committed or been convicted of child abuse or any crime involving physical harm to another person.

(2) The licensee must:

(a) Be eighteen years of age or older;

(b) Be the primary child care provider during the majority of child care business hours;

(c) Ensure compliance with minimum licensing requirements under this chapter; and

(d) Have completed one of the following prior to or within the first six months of initial licensure except as provided in (e) of this subsection:

(i) Twenty clock hours or two college quarter credits of basic training approved by the Washington state training and registry system (STARS); or

(ii) Current child development associate (CDA) or equivalent credential or twelve or more college quarter credits in early childhood education or child development; or

(iii) Associate of arts or AAS or higher college degree in early childhood education, child development, school age care, elementary education or special education.

(e) Licensees already licensed on the effective date of this rule must complete the training required in WAC 388-150-180 (2)(d) prior to or within twelve months after the effective date of this rule.

(3) The assistant must be:

- (a) Fourteen years of age or older; or
- (b) Eighteen years of age or older if assigned sole responsibility for the child in care; and
- (c) Competent to exercise appropriate judgements.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-180, filed 2/28/00, effective 3/30/00; 98-24-052, S 388-155-180, filed 11/25/98, effective 12/26/98; 91-04-048 (Order 3136), S 388-155-180, filed 2/1/91, effective 3/4/91.

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388-155-190. Capacity.

- (1) The department must determine the maximum capacity of the family child care home based on the:
- (a) Licensee's experience and training;
 - (b) Assistant's qualifications;
 - (c) Number, ages, and characteristics of the children cared for;
 - (d) Number and ages of the licensee's own children and other children residing in the home eleven years of age and under;
 - (e) Usable indoor and outdoor space; and
 - (f) Supply of toys and equipment.
- (2) The department may license the family child care home according to the following table:

number of providers required	age range in years	maximum number of children under two years of age	maximum number of children
(a) Licensee	Birth - 11	2	6
(b) Licensee with one year experience	2 - 11	None	8
(c) Licensee with one year experience	5 - 11	None	10
(d) Licensee with one year experience plus assistant	Birth - 11	4	9
(e) Licensee with two years' experience and one early childhood education (ECE) class	3 - 11	None	10
(f) Licensee with two years' experience and one ECE class plus assistant	Birth - 11	4	12

So that the:

(a) Unassisted licensee may provide care for a maximum of six children, birth through eleven years of age, with two or fewer children under two years of age; or

(b) Unassisted licensee with one year of experience operating a licensed family child care home or the equivalent experience may provide care for a maximum of eight children, two years through eleven years of age; or

(c) Unassisted licensee with one year of experience operating a licensed family child care home or the equivalent experience may provide care for a maximum of ten children, five years through eleven years of age; or

(d) Licensee with one year of experience as a licensed family child care home provider or the equivalent experience and an assistant may provide care for seven through nine children, birth through eleven years of age, with four or fewer children under two years of age; or

(e) Unassisted licensee with two years of experience operating a licensed family child care home or the equivalent experience and one class in ECE, or the equivalent education, may provide care for a maximum of ten children, three years through eleven years of age; or

(f) Licensee with two years of experience operating a licensed family child care home or the equivalent experience, one class in ECE or the equivalent education, and a qualified assistant may provide care for a maximum of twelve children, birth through eleven years of age, with four or fewer children under two years of age.

(3) The licensee must ensure an assistant is on the premises when:

(a) Three or more children under two years of age are in care;

(b) Seven or more children are in care and any child in care is under two years of age; or

(c) More than ten children are in care.

(4) The department's determination of capacity shall include all children eleven years of age or under on the premises.

(5) The licensee must ensure the assistant is eighteen years of age or older when the assistant is solely responsible for the child in care.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-190, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-190, filed 2/1/91, effective 3/4/91.

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388-155-200. Development and training.

(1) The licensee must have an orientation system making the new employee and volunteer aware of policies and practices. The licensee must provide the new employee or volunteer an orientation including, but not limited to:

- (a) Minimum licensing rules required under this chapter;
- (b) Goals and philosophy of the home;
- (c) Daily activities and routines;
- (d) Child guidance and behavior management methods;
- (e) Child abuse and neglect prevention, detection, and reporting policies and procedures;
- (f) Special health and developmental needs of the individual child;
- (g) The health care practices;
- (h) Fire prevention and safety procedures;
- (i) Duties of assistants and/or volunteer; and
- (j) Location of items required to be posted.

(2) The licensee must:

(a) Obtain basic, standard first-aid, and cardiopulmonary resuscitation (CPR) training, approved by the department of health. CPR training must include methods appropriate for child age groups in care;

(b) Ensure that first-aid and CPR training is current; and

(c) Annually, beginning one year after licensure, complete ten clock hours or one college quarter credit of training. Training must be approved by the Washington state training and registry system (STARS). For those already licensed on the effective date of this rule, this requirement for annual training shall begin one year after the effective date of this rule.

- (3) The licensee must ensure the assistant eighteen years of age or older obtains basic, standard first-aid, and CPR training approved by the department of health if the assistant will be solely responsible for the child in care.
- (4) The licensee and assistant must obtain appropriate education and training on the prevention and transmission of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS).
- (5) The licensee must encourage the assistant to participate in training opportunities to promote ongoing education and enhance practice skills.
- (6) The licensee must conduct periodic meetings for planning and coordination purposes when applicable.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-200, filed 2/28/00, effective 3/30/00; 98-24-052, S 388-155-200, filed 11/25/98, effective 12/26/98; 91-04-048 (Order 3136), S 388-155-200, filed 2/1/91, effective 3/4/91.

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388-155-220. Health supervision and infectious disease prevention.

(1) The licensee must encourage the parent to arrange a physical examination for the child who has not had regular health care or a physical examination within one year before enrollment.

(2) The licensee must encourage the parent to obtain health care for the child when necessary. The licensee must not be responsible for providing or paying for the child's health care.

(3) Before or on the child's first day of attendance, the parent must present a certificate of immunization status form prescribed by the department of health proving the child's full immunization for:

- (a) Diphtheria;
- (b) Tetanus;
- (c) Pertussis (whooping cough);
- (d) Poliomyelitis;
- (e) Measles (rubeola);
- (f) Rubella (German measles);
- (g) Mumps;
- (h) Haemophilus Influenzae Type B (HIB);
- (i) Hepatitis B; and
- (j) Other diseases prescribed by the department of health.

(4) The licensee may accept the child without all required immunizations on a conditional basis if immunizations are:

- (a) Initiated before or on enrollment; and
- (b) Completed as rapidly as medically possible.

- (5) The licensee may exempt the immunization requirement for the child if the parent or guardian:
- (a) Signs a statement expressing a religious, philosophical, or personal objection; or
 - (b) Furnishes a physician's statement of a valid medical reason for the exemption.
- (6) The licensee must observe the child daily for signs of illness. The licensee must care for or discharge home the ill child based on the home's policies concerning an ill child.
- (a) When the child has a severe illness or is injured, tired, or upset, the licensee must separate the child from other children and attend the child continuously until:
- (i) The licensee secures appropriate health care for the child; or
 - (ii) The licensee makes an arrangement to return the child to the parent; or
 - (iii) The child is able to rejoin the group.
- (b) The licensee must provide a quiet, separate care room or area allowing the child requiring separate care an opportunity to rest.
- (c) The licensee must sanitize equipment used by the child, if the licensee suspects the child has a communicable disease.
- (d) The licensee may use the separate care room or area for other purposes when not needed for separation of the child.
- (7) The licensee must wash, or assist the child to wash hands according to the home's handwashing procedures.
- (8) The licensee must clean and disinfect toys, equipment, furnishings, and facilities according to the home's cleaning and disinfecting policies.
- (9) The licensee must have appropriate extra clothing available for the child who wets or soils clothes.
- (10) The licensee must ensure the child does not share personal hygiene or grooming items.
- (11) Each licensee, assistant, volunteer, and adult member of the household having regular contact with the child in care must have a tuberculin (TB) skin test, by the Mantoux method, upon employment or initial licensure, unless against medical advice.
- (a) The person whose TB skin test is positive (ten millimeters or more size) must have a chest X ray with results indicating the person does not have active TB, within thirty days following the skin test.
- (b) The licensee must not require the person to obtain routine periodic TB retesting or X ray (biennial or otherwise) after entry testing unless directed to obtain retesting by the person's health care provider or the local health department.
- (12) The licensee must not permit the person with a reportable communicable disease to be on duty in the home or

have contact with the child in care unless approved by a health care provider.

(13) The licensee and assistant must wash hands according to the home's handwashing practices.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-220, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-220, filed 2/1/91, effective 3/4/91.

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388-155-230. Medication management.

(1) The home may have a policy of not giving medication to the child in care, unless a child has a medically recognized special need requiring medication.

(2) If the home's health care practices include giving medication to the child in care, the licensee:

(a) Must give medications, prescription and nonprescription, only on the written approval of a parent, or of a person or agency having authority by court order to approve medical care;

(b) Must give prescription medications:

(i) Only as specified on the prescription label; or

(ii) As authorized by a physician or other person legally authorized to prescribe medication.

(c) Must give the following classifications of nonprescription medications, with written parent authorization, including a start date and ending date, not to exceed one month, only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication:

(i) Antihistamines;

(ii) Nonaspirin fever reducers/pain relievers;

(iii) Nonnarcotic cough suppressants;

(iv) Decongestants;

(v) Anti-itching ointments or lotions, intended specifically to relieve itching;

(vi) Diaper ointments and powders, intended specifically for use in the diaper area of the child; and

(vii) Sun screen.

(d) Must have written instructions from a physician for nonprescription medications if:

(A) A specific dosage is not given on the label for the age and weight of the child in care;

- (B) It is not listed in subsection (2)(c);
- (C) It lacks labeled instructions; or
- (D) It is taken differently than indicated on the manufacturer's label.

The written instructions must include dosage and description of the child's symptoms warranting the medication.

(e) Must accept from the child's parent, guardian, or responsible relative only medicine in the original container, labeled with:

- (i) The child's first and last names;
 - (ii) The date the prescription was filled; or
 - (iii) The medication's expiration date; and
 - (iv) Legible instructions for administration, such as manufacturer's instructions or prescription label.
- (f) Must keep medication, refrigerated or nonrefrigerated, in an orderly fashion, inaccessible to the child;
 - (g) Must keep class II narcotics in locked storage.
 - (h) Must store external medication in a compartment separate from internal medication;
 - (i) Must keep a record of medication disbursed;
 - (j) Must return medications no longer being taken to the parent or other responsible party, or must dispose of them;
 - (k) May at the licensee's option, permit self-administration of medication by a child in care if the:
 - (i) Child is physically and mentally capable of properly taking medication without assistance;
 - (ii) Licensee includes in the child's file a parental or physician's written statement of the child's capacity to take medication without assistance; and
 - (iii) Licensee ensures the child's medications and other medical supplies are stored so the medications and medical supplies are inaccessible to another child in care.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-230, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-230, filed 2/1/91, effective 3/4/91.

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388-155-240. Nutrition.

- (1) The licensee must provide food meeting the nutritional needs of the child in care, taking into consideration the:
 - (a) Number of children in care;
 - (b) Child's age and developmental level;
 - (c) Child's cultural background;
 - (d) Child's special need; and
 - (e) Hours of care on the premises.
- (2) The licensee must provide only pasteurized milk or a pasteurized milk product.
- (3) The licensee must provide only whole milk to the child twenty-three months of age or under except with the written permission of the child's parent.
- (4) The licensee may serve the child twenty-four months of age or older powdered Grade A milk mixed in the home provided the licensee completes the dry milk mixture, service, and storage in a safe and sanitary manner, using water from an approved source.
- (5) The licensee may provide the child nutrient concentrates, nutrient supplements, a modified diet, or an allergy diet only with written permission of the child's health care provider. The licensee must obtain from the parent or child's health care provider a written list of foods the child cannot consume.
- (6) The licensee must use the following meal pattern to provide food to the child in care in age-appropriate servings:
 - (a) Providing the child in care for ten or less hours:
 - (i) Two or more snacks and one meal; or
 - (ii) Two meals and one snack.
 - (b) Providing the child in care for ten or more hours, two or more meals and two snacks;

- (c) Providing the child arriving after school a snack;
 - (d) Providing the child with food at not less than two-hour intervals, and not more than three and one-half hours apart; and
 - (e) Allowing the occasional serving of party foods not meeting nutritional requirements.
- (7) The licensee shall provide the child in care food which complies with the meal pattern of the United States Department of Agriculture Child and Adult Care Food Program, with the addition of:
- (a) A minimum of one serving of Vitamin C fruit, vegetable, or juice, provided daily; and
 - (b) Servings of food high in Vitamin A, provided three or more times weekly.
- (8) The licensee must provide:
- (a) Dinner to the child in evening care when the child did not receive dinner at home before arriving;
 - (b) A bedtime snack to the child in nighttime care; and
 - (c) Breakfast to the child in nighttime care if the child remains at the home after the child's usual breakfast time.
- (9) The licensee must monitor foods brought from the child's home for consumption by the child, all children, or a group of children in care ensuring safe storage and nutritional adequacy.
- (10) For the home permitting sack lunches, the licensee must have food supplies available to supplement food deficient in meeting nutrition requirements brought from the child's home and to nourish the child arriving without food.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-240, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-240, filed 2/1/91, effective 3/4/91.

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388-155-250. Kitchen and food service.

- (1) The licensee must provide and maintain equipment for the proper storage, preparation, and service of food.
- (2) The licensee must make potentially hazardous appliances and sharp or pointed utensils inaccessible to the child when the child is not under direct supervision.
- (3) The child may participate in food preparation as an educational activity.
- (4) The licensee must install and maintain kitchen equipment and clean reusable utensils in a safe and sanitary manner by:
 - (a) Washing and sanitizing reusable utensils in a dishwasher or through use of a manual dishwashing procedure;
 - (b) Using only single-use or clean cloths, used solely for wiping food service, preparation, and eating surfaces; and
 - (c) Using an approved sanitizer, such as bleach and water, in the kitchen.
- (5) The licensee must provide the child individual drinking cups, glasses, or disposable single-use cups.
- (6) The licensee must provide the child durable eating utensils appropriate in size and shape for the child in care.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-250, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-250, filed 2/1/91, effective 3/4/91.

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Current through January 7, 2004

388-155-270. Care of young children.

(1) Diapering and toileting. The licensee must ensure:

(a) The diaper-changing area is:

(i) Separate from food preparation areas; and

(ii) Easily accessible to a handwashing sink other than a sink used for food preparation;

(iii) Sanitized between use for different children; or

(iv) Protected by a disposable covering discarded after each use.

(b) The diaper-changing area is impervious to moisture and washable.

(2) The licensee must:

(a) Use a nonabsorbent pad large enough for the child's upper body and buttocks;

(b) Use reusable diapers, a commercial diaper service, or disposable diapers;

(c) Place soiled diapers without rinsing into a separate, cleanable, covered container provided with a waterproof liner before transporting to a laundry, parent, or acceptable disposal;

(d) Remove soiled diapers from the home daily or more often unless the licensee uses a commercial diaper service;

(e) Use disposable towels or clean, reusable towels laundered between use for different children for cleaning the child; and

(f) Wash hands after diapering the child or helping the child with toileting.

(3) The licensee must:

(a) Consult with the child's parent regarding initiating toilet training;

- (b) Locate potty chairs on washable, nonabsorbent surfaces in appropriate toileting area when in use; and
- (c) Sanitize toilet training equipment after each use.
- (4) Feeding. The licensee and the infant's parent must agree on a schedule for feedings:
 - (a) The licensee or parent may provide the child's bottle feeding in the following manner:
 - (i) A filled bottle brought from home;
 - (ii) Whole milk or formula in ready-to-feed strength; or
 - (iii) Formula requiring no preparation other than dilution with water, mixed on the premises, following manufacturer's directions.
 - (b) The licensee must prepare the child's bottle and nipple in a sanitary manner in an area separate from the diapering area.
 - (c) The licensee must sanitize the child's bottle and nipple between uses.
 - (d) The licensee must label the bottle with the child's name and date prepared, if more than one bottle-fed child is in care.
 - (e) The licensee must refrigerate a filled bottle if the child does not consume the contents immediately and discard the bottle's contents if the child does not consume the contents within twelve hours.
 - (f) To ensure safety and promote nurturing, the licensee and assistant must:
 - (i) Hold the child in a semisitting position for feeding, if the child is unable to sit in a high chair, unless such is against medical advice;
 - (ii) Interact with the child;
 - (iii) Not prop a bottle;
 - (iv) Not give a bottle to the reclining child; and
 - (v) Take the bottle from the child when the child finishes feeding.
 - (g) The licensee must provide semisolid food for the child, upon consultation with the parent, as recommended by the child's health care provider.
- (5) Sleeping equipment. The licensee must furnish the child a single-level crib, infant bed, bassinet, or play pen for napping until such time the parent and licenscc agree the child can safely use a mat, cot, or other approved sleep equipment.
- (6) The licensee must ensure the young child has a sturdy crib, infant bed, bassinet, or play pen:

- (a) Made of wood, metal, or plastic with secure latching devices; and
- (b) Constructed with two and three-eighths inches or less space between vertical slats when the crib is used for a child six months of age or younger; and
- (c) The licensee must follow the recommendations of the American Academy of Pediatrics (1-800-505-CRIB), placing infants on their backs each time for sleep. The provider may use a different sleep position if the parent requests it in writing.
- (7) The licensee must ensure the child's crib mattress, infant bed, bassinet, or play pen mattress is:
 - (a) Snug fitting, preventing the infant from being caught between the mattress and crib side rails; and
 - (b) Waterproof, easily sanitized, and in good repair.
- (8) Activities and equipment. The licensee must provide the young child a daily opportunity for:
 - (a) Large and small muscle development;
 - (b) Crawling and exploring;
 - (c) Sensory stimulation;
 - (d) Social interaction;
 - (e) Development of communication; and
 - (f) Learning self-help skills.
- (9) The licensee must provide safe, noningestible, suitable toys and equipment for the young child's mental and physical development.

Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-270, filed 8/16/01, effective 9/16/01; 00-06-040, S 388-155-270, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-270, filed 2/1/91, effective 3/4/91.

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388-155-280. General safety, maintenance, and site.

- (1) The licensee must operate the home on an environmentally safe site.
- (2) The licensee must maintain the indoor and outdoor premises in a safe and sanitary condition, free of hazards, and in good repair. The licensee must ensure furniture and equipment are safe, stable, durable, and free of sharp, loose, or pointed parts.
- (3) The licensee must:
 - (a) Install handrails or safety devices at child height adjacent to steps, stairways, and ramps;
 - (b) Maintain a flashlight or other emergency lighting device in working condition;
 - (c) Ensure there is no flaking or deteriorating lead-based paint on interior and exterior surfaces, equipment, and toys accessible to the child;
 - (d) Finish rough or untreated wood surfaces; and
 - (e) Maintain one or more telephones in working order.
- (4) The licensee must supply bathrooms and other rooms subject to moisture with washable, moisture-impervious flooring or routinely cleaned floor covering.
- (5) The licensee must equip child-accessible electrical outlets with nonremovable safety devices or covers preventing electrical injury.
- (6) The licensee must ensure staff can gain rapid access in an emergency to a bathroom or other room occupied by the child.
- (7) The licensee must keep the premises free from rodents, fleas, cockroaches, and other insects and pests, using the least toxic method available, and notifying children's parents in advance of chemical usage.
- (8) The licensee must use an appropriate method for drawing clean mop water and disposing waste water.
- (9) Firearms, ammunition, and other weapons must be kept in secure, locked storage, at all times when not in use. They must be accessible only to authorized persons. Secure locked storage means a locked storage container, gun

cabinet, gun safe, or other storage area made of strong, unbreakable material. If the cabinet has a glass or other breakable front, then the guns need to be secured with a cable or chain placed through the trigger guards securing the guns in the storage unit.

(10) The licensee must ensure a person with current first-aid and infant-child CPR training is on the premises at all times.

(11) The licensee must store separate from food products and make inaccessible to children cleaning supplies, toxic substances, paint, poisons, aerosol containers, and items bearing warning labels indicating a product is hazardous, if a person is exposed to, or consumes the product.

(12) The licensee must label a container filled from a stock supply to identify contents.

(13) The licensee must ensure that any animal or pet on the premises has not demonstrated aggressive behavior. If a pet or animal has demonstrated aggressive behavior, it must be inaccessible to children in care at all times.

(14) The use of wheeled baby walkers is prohibited.

(15) The use of trampolines, including rebounders, is prohibited.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-280, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-280, filed 2/1/91, effective 3/4/91.

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Current through January 7, 2004

388-155-290. Water supply, sewage, and liquid wastes.

(1) The licensee must obtain water from:

- (a) A public water supply that is regulated by Washington state department of health drinking water operations or the local health authority, as appropriate;
- (b) An individual water supply operated and maintained in a manner acceptable to the local health authority; or
- (c) Commercially bottled water in cases where (a) or (b) of this subsection are unsatisfactory.

(2) The licensee must ensure sewage and liquid wastes are discharged into:

- (a) A public sewer system; or
- (b) An independent sewage system maintained so as not to create a public health nuisance as determined by the local health authority.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-290, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-290, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-290
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388-155-295. Water safety.

(1) The licensee must maintain the following water safety precautions when the child uses an on-premises swimming pool or wading pool. The licensee must ensure:

(a) The on-premises pool is inaccessible to the child when not in use; and

(b) An adult with current CPR training supervises the child at all times.

(2) The licensee must ensure a certified lifeguard is present during the child's use of an off-premises swimming pool.

(3) The licensee must empty and clean a portable wading pool daily, when in use.

(4) An adequate, department-approved cover or barrier, installed at the manufacturer's specification must be in place to prevent the child access at all times to heated tubs, whirlpools, spas, tanks, or similar equipment.

(5) A five foot high fence with gates, locked when not in use, is required to prevent access to water hazards, such as swimming pools, lakes, streams, or natural or artificial pools.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-295, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-295, filed 2/1/91, effective 3/4/91.

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388-155-310. First-aid supplies.

(1) The licensee must maintain first-aid supplies on the premises conforming with the home's first-aid policies and procedures.

(2) The home's first-aid supplies must include unexpired syrup of ipecac which may be administered only on the advice of a poison control center.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-310, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-310, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-310
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388-155-320. Outdoor play area.

(1) The licensee must provide a safe and securely-fenced or department-approved, enclosed outdoor play area:

(a) Adjoining directly the indoor premises; or

(b) Reachable by a safe route and method; and

(c) Promoting the child's active play, physical development, and coordination; and

(d) Protecting the child from unsupervised exit with an enclosure at least forty-eight inches high; and

(e) Preventing child access to roadways and other dangers.

(2) The licensee must ensure the home's activity schedule affords the child sufficient daily time to participate actively in outdoor play.

(3) The licensee must provide a variety of age appropriate play equipment for climbing, pulling, pushing, riding, and balancing activities. The licensee must arrange, design, construct, and maintain equipment and ground cover to prevent the child's injury. The licensee's quantity of outdoor play equipment must offer the child a range of outdoor play options.

(4) Preschool children and younger must be in visual and auditory range when outside.

(5) School-age children must be in auditory range when outside.

Statutory Authority: Chapter 74.15 RCW and RCW 34.05.395, 02-13-073, S 388-155-320, filed 6/14/02, effective 7/15/02. Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-320, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-320, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-320
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388-155-330. Indoor play area.

(1) The home's indoor premises must contain adequate space for child play and sufficient space to house developmentally appropriate activities for the number and age range of children served. The licensee must provide a minimum of thirty-five square feet of usable floor space per child, exclusive of a bathroom, hallway, and closet.

(2) The licensee may use and consider the napping area as child care space if mats and cots are removed when not in use. The licensee may consider the kitchen usable space if:

(a) Appliances and utensils do not create a safety hazard;

(b) Toxic or harmful substances are not accessible to the child;

(c) Food preparation and storage sanitation is maintained; and

(d) The space is used safely and appropriately as a child care activity area.

(3) The licensee may use a room for multiple purposes such as playing, dining, napping, and learning activities, provided:

(a) The room is of sufficient size; and

(b) The room's use for one purpose does not interfere with use of the room for another purpose.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-330, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-330, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-340. Toilets, handwashing sinks, and bathing facilities.

- (1) The licensee must provide a minimum of one indoor flush-type toilet and one adjacent handwash sink.
- (2) The licensee must supply the child warm running water for handwashing at a temperature range no less than eighty-five degrees Fahrenheit and no more than one hundred and twenty degrees Fahrenheit.
- (3) The licensee must provide toileting privacy for the child of opposite sex six years of age and older and for other children demonstrating a need for privacy.
- (4) The licensee must provide toilets and handwashing sinks of appropriate height and size for the child in care or furnish safe, easily cleanable platforms impervious to moisture so the child can reach the toilet and handwashing sink.
- (5) The licensee must ensure a room used for toileting is ventilated.
- (6) When a home serves the child not toilet-trained, the licensee must provide developmentally appropriate equipment for the toileting and toilet training of the young child. The licensee must sanitize the equipment after each child's use.
- (7) The licensee must provide the child with soap and individual cloth or paper towels for washing and drying the child's hand and face.
- (8) If the home is equipped with a bathing facility, the licensee must:
 - (a) Ensure the young child is supervised while using the bathing facility; and
 - (b) Equip the bathing facility with a conveniently located grab bar or other safety device such as a nonskid pad.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-340, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-340, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-340
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388-155-350. Laundry.

- (1) The licensee must use an effective method through temperature or chemical measures for adequately sanitizing the child's laundry contaminated with urine, feces, lice, scabies, or other infectious material.
- (2) The licensee must store the child's soiled laundry separately from clean laundry.
- (3) Hazardous laundry supplies and soiled items must be inaccessible to children.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-350, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-350, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-360. Nap and sleep equipment.

(1) The licensee must provide a clean, separate, firm mat, cot, bed, mattress, play pen, or crib for each child five years of age and under remaining in care for six or more hours and for the child requiring a nap or rest period.

(2) The licensee must ensure the child's mat or cot is of sufficient length, width, and thickness to provide adequate comfort for the child to nap. The licensee must ensure the cot surface is of a material which can be cleaned with a detergent solution, disinfected, and allowed to air dry. The licensee may use a washable sleeping bag meeting the mat requirements for the toilet-trained child.

(3) The licensee must clean the child's nap equipment as needed and between use by different children.

(4) The licensee must separate the child's nap equipment when in use to facilitate child comfort and health and staff access.

(5) The licensee must ensure the child's bedding:

(a) Consists of a clean sheet or blanket to cover the sleeping surface and a clean, suitable cover for the child;

(b) Is laundered weekly or more often and between use by different children; and

(c) Is stored separately from bedding used by another child.

(6) The licensee must not use the upper bunk of a double deck bed for a preschool age or younger child.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-360, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-360, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-360
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388-155-370. Storage.

- (1) The licensee must provide accessible individual space for the child to store clothes and personal possessions.
- (2) The licensee must provide sufficient space to store equipment, supplies, records, files, cots, mats, and bedding.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-370, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-370, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-370
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388-155-380. Home atmosphere.

(1) The licensee must provide a cheerful learning environment for the child consistent with a family home environment by placing visually stimulating decorations, pictures, or other attractive materials at appropriate heights for the child.

(2) The licensee must maintain a safe and developmentally appropriate noise level, without inhibiting normal ranges of expression by the child, so provider and child can be clearly heard and understood in normal conversation.

(3) The licensee must locate light fixtures and provide lighting intensities promoting good visibility and comfort for the child in care.

(4) The licensee must maintain the temperature within the home at:

(a) Sixty-eight degrees Fahrenheit or more during the child's waking hours; and

(b) Sixty degrees Fahrenheit or more during the child's napping or sleeping hours.

(5) The licensee must ventilate the home for the health and comfort of the child in care.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-380, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-380, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-380
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388-155-390. Discrimination prohibited.

The licensee must comply with federal and state regulatory and statutory requirements, defined under chapter 49.60 RCW, regarding nondiscrimination in employment practices and client services, to prohibit discrimination because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical disability or use of a trained guide dog or service animal by a disabled person.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-390, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-390, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-390
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388-155-400. Religious activities.

(1) Consistent with state and federal laws, the licensee must respect and facilitate the rights of the child in care to observe the tenets of the child's faith.

(2) The licensee must not punish or discourage the child for exercising these rights.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-400, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-400, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-410. Additional requirements regarding American Indian children.

When one or more American Indian child receives care at the home, the licensee must in consultation with the parent, establish a plan to provide social service resources and training designed to meet the social and cultural needs of such children. The licensee may coordinate with tribal, Indian Health Service, Bureau of Indian Affairs social service staff, and appropriate urban Indian and Alaskan native consultants.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-410, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-410, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-420. Child abuse, neglect, and exploitation.

The licensee and assistant must protect the child in care from child abuse, neglect, or exploitation as required under chapter 26.44 RCW.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-420, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-420, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-420
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388-155-430. Prohibited substances.

(1) During operating hours or when the child is in care, the licensee, assistant, and volunteers on the premises in child care areas, or caring for the child off-site must not be under the influence of or consume an:

(a) Alcoholic beverage; or

(b) Illegal drug.

(2) The licensee must prohibit smoking in:

(a) All areas of the home used by the child during hours of operation when the child is in care; and

(b) A motor vehicle when the licensee or assistant transports a child.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-430, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-430, filed 2/1/91, effective 3/4/91.

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388-155-440. Limitations to persons on premises.

(1) During home operating hours or while the child is in care, the only persons having regular or unsupervised access to the child in care are:

- (a) The child's parent,
- (b) The licensee,
- (c) An employee,
- (d) The licensee's family member,
- (e) A volunteer, or
- (f) A governmental agency representative having specific, verifiable authority for the access.

(2) The licensee must allow the parent of the child in care unsupervised access only to his or her own child.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-440, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-440, filed 2/1/91, effective 3/4/91.

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388-155-450. Child records and information.

The licensee must maintain organized confidential records and information on the premises concerning each child in care. The licensee must ensure the child's record contains, at a minimum:

(1) Registration data:

(a) Name, birthdate, dates of enrollment and termination; and

(b) Name, address, and home and business telephone number of the parent and other person to be contacted in case of emergency.

(2) Authorizations:

(a) Name, address, and telephone number of the person authorized to remove from the home the child under care;

(b) Written parental consent for transportation provided by the home, including field trips and swimming, when the child participates in these activities. A parent-signed blanket consent form may authorize the child's off-site travel; and

(c) Written parental consent, or court order, for providing medical care and emergency surgery, except for such care authorized by law.

(3) Medical and health data:

(a) A health history, obtained when the licensee enrolls the child for care. The history includes:

(i) The date of the child's last physical examination;

(ii) Allergies;

(iii) Special health problems and other pertinent health information;

(iv) Immunization history as required under WAC 388-155-220;

(v) Name, address, and telephone number of the child's health care provider or facility; and

(vi) Special developmental problems.

- (b) Date and kind of illness and injury occurring on the premises, including the treatment given by the licensee; and
- (c) Medication given indicating dosage, date, time, and name of the dispensing person.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-450, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-450, filed 2/1/91, effective 3/4/91.

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388-155-460. Home records.

The licensee must maintain the following documentation on the premises:

- (1) The attendance records, completed daily, including arrival and departure times;
- (2) A copy of the report sent to the licensor about the illness or injury to the child in care requiring medical treatment or hospitalization;
- (3) The twelve-month record indicating the date and time the licensee conducted the required monthly fire evacuation drills;
- (4) The twelve-month record indicating the date the licensee tested the battery-powered smoke detector monthly; and
- (5) Attendance records and invoices for state-paid children for at least five years.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-460, filed 2/28/00, effective 3/30/00. Statutory Authority: RCW 74.12.340, 94-13-201 (Order 3745), S 388-155-460, filed 6/22/94, effective 7/23/94. Statutory Authority: RCW 74.15.030, 91-04-048 (Order 3136), S 388-155-460, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-470. Personnel records.

(1) Each assistant and volunteer having unsupervised or regular access to the child in care must complete and submit to the licensee by the date of hire:

(a) An application for employment on a department-prescribed form, or its equivalent; and

(b) A criminal history and background inquiry form.

(i) The licensee must submit this form to the department for the employee and volunteer, within seven calendar days of the assistant's or volunteer's first day of employment, permitting a criminal and background history check.

(ii) The department must discuss the result of the criminal history and background inquiry information with the licensee, when applicable.

(2) The licensee, assistant, and volunteer must have on file at the home:

(a) An employment application, including work and education history;

(b) Documentation of criminal history and background inquiry form submission;

(c) A record of the tuberculin skin test results, X ray, or an exemption to the skin test or X ray;

(d) Documentation of HIV/AIDS education and training;

(e) Documentation of current first-aid and CPR training, when applicable; and

(f) Documentation of basic and annual training required under WAC 388-155- 180 (2)(d) and 388-155-200 (2)(c), when applicable.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-470, filed 2/28/00, effective 3/30/00; 98-24-052, S 388-155-470, filed 11/25/98, effective 12/26/98; 91-04-048 (Order 3136), S 388-155-470, filed 2/1/91, effective 3/4/91.

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388-155-480. Reporting of death, injury, illness, epidemic, or child abuse.

The licensee must report immediately:

- (1) A death, serious injury requiring medical treatment, or illness requiring hospitalization of a child in care, by telephone and in writing, to the parent, licensor, and child's social worker, if any;
- (2) An instance when the licensee or assistant has reason to suspect the occurrence of physical, sexual, or emotional child abuse, child neglect, or child exploitation, as required under chapter 26.44 RCW, by telephone, to child protective services or local law enforcement; or
- (3) An occurrence of food poisoning or communicable disease, as required by the state board of health, by telephone, to the local public health department.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-480, filed 8/16/01, effective 9/16/01; 91-04-048 (Order 3136), S 388-155-480, filed 2/1/91, effective 3/4/91.

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388-155-490. Reporting of circumstantial changes.

A family child care home license is valid only for the person and address named on the license. The licensee must promptly report to the licensor major changes in premises, activities and routines, the assistant, or members of the household affecting the home's capacity classification, delivery of safe, developmentally appropriate services, or continued eligibility for licensure. A major change includes the:

- (1) Home's address, location, or phone number;
- (2) Maximum number and age ranges of children the licensee wishes to serve as compared to current license specifications;
- (3) Number and qualifications of the home's staff that may affect competencies to implement the specified activities and routines, including the death, retirement, or incapacity of a licensee;
- (4) Name by which the home is commonly known;
- (5) Occurrence of a fire, major structural change, or damage to the premises from any cause;
- (6) Plans for major remodeling of the home, including planned use of space not previously department-approved; and
- (7) Report of a person moving in or out of the household.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-490, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-490, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-500. Posting requirements.

The licensee must post the following items, clearly visible to the parents and the assistant:

- (1) The home's child care license issued under this chapter;
- (2) Evacuation plans and procedures;
- (3) Emergency telephone numbers; and
- (4) A department-issued final notice of penalty.

Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-500, filed 2/28/00, effective 3/30/00; 91-04-048 (Order 3136), S 388-155-500, filed 2/1/91, effective 3/4/91.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-500
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388-155-600. Occupancy restrictions.

(1) Any home used for child day care purposes for fewer than thirteen children is considered to be a Group R, Division 3 occupancy per the state building code. Family child day care homes must meet the minimum construction and fire and safety requirements for one and two family dwellings.

If a portion of the home is used for purposes other than a dwelling, such as a garage, automotive repair shop, cabinet and/or furniture making or refinishing or similar use, a fire wall is required between the dwelling and the other use.

(2) Only one exit door from a family child day care home need be of the pivoted or side hinged swinging type. Approved sliding doors may be used for other exits.

(3) In family child day care home, each floor level used for family child day care purposes must be provided with two exits, usually located at opposite ends of the building or floor.

(4) Basements located more than four feet below grade level must not be used for family child day care purposes unless one of the following conditions exists:

(a) Two exit stairways from the basement open directly to the exterior of the building without entering the first floor; or

(b) One of the two required exits discharges directly to the exterior from the basement level and the other exit is an interior stairway with a self-closing door installed at the top or bottom leading to the floor above; or

(c) One of the two required exits is an operable window or door, approved for emergency escape or rescue, that opens directly to a public street, public alley, yard or exit court and the other may be an approved interior or exterior stairway; or

(d) A residential sprinkler system is provided throughout the entire home in accordance with standards of the National Fire Protection Association.

(5) The family child care home licensee must ensure that any floor located more than four feet above grade level is not occupied by children for family child day care purposes except for the use of toilet facilities while under supervision of a staff person.

Family child day care may be allowed on the second story if one of the following conditions exists:

(a) There are two exit stairways from the second story which open directly to the exterior of the building without entering the first floor; or

(b) There is an exit which discharges directly to the exterior from the second story level, and a second interior stairway with a self-closing door installed at the top or bottom of the interior stair leading to the floor below; or

(c) A residential sprinkler system is provided throughout the entire building in accordance with standards of the National Fire Protection Association.

(6) The maximum travel distance from any point in the home to an exterior exit door must not exceed one hundred fifty feet.

(7) Every room used for child care (except bathrooms) must have:

(a) At least one operable window or door approved for emergency escape or rescue which must open directly into a public street, public alley, yard or exit court. The units must be operable from the inside to provide a full clear opening without the use of separate tools.

The net clear openable area of an escape or rescue window must be a minimum of 5.7 square feet. The net clear openable height dimension must be a minimum of twenty-four inches. The net clear openable width dimension must be a minimum of twenty inches. An escape or rescue window must have a finished sill height of not more than forty-four inches above the floor; or

(b) Doors leading to two separate exit ways; or

(c) A door leading directly to the exterior of the building.

(8) A stationary platform may be used under a window to attain the forty-four inches above the floor.

(9) Exit doors must be easy to open to the full open position.

(10) Exit doors and windows must be able to be opened from the inside without having to use a key. Use of night latches, dead bolts, security chains, manually operated edge or surface mounted flush bolts and surface bolts is prohibited during child care hours.

The locking arrangement on outside exit doors must be such that they will automatically unlock when the doorknob is turned from the inside.

(11) The licensee must ensure that obstructions are not placed in corridors, aisles, doorways, doors, stairways or ramps.

(12) Space which is accessible only by ladder, folding stairs or trap doors, must not be used for family child day care purposes.

(13) Every bathroom door lock must be designed to permit the opening of the locked door from the outside in an emergency. The opening device must be readily accessible to the staff.

(14) Every closet door latch must be such that children can open the door from inside the closet.

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WAC 388-155-600
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Statutory Authority: RCW 74.15.030, 00-06-040, S 388-155-600, filed 2/28/00, effective 3/30/00. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-600, filed 4/26/96, effective 5/27/96.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-600
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388-155-605. Hazardous areas.

Rooms or spaces containing a commercial-type kitchen, boiler, maintenance shop, janitor closet, laundry, wood-working shop, flammable or combustible storage, painting operation, or parking garage must be separated from the family child day care home or any exits by a fire wall.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-605, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-605, filed 4/26/96, effective 5/27/96.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-605
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388-155-610. Single station smoke detectors.

- (1) Smoke detectors must be located in all sleeping and napping rooms in family child day care homes.
- (2) In family child day care homes with more than one story, and in family child day care homes with basements, a smoke detector must be installed on each story and in the basement.
- (3) In family child day care homes where a story or basement is split into two or more levels, the smoke detector must be installed in the upper level, except that when the lower level contains a sleeping or napping area, a smoke detector must be located on each level.
- (4) When sleeping or napping rooms are on an upper level, the smoke detector must be placed on the ceiling of the upper level in close proximity to the stairway and in each sleeping/napping room.
- (5) In a family child day care home where the ceiling height of a room open to the hallway serving sleeping or napping rooms exceeds that of the hallway by twenty-four inches or more, smoke detectors must be installed in both the hallway and the sleeping/napping room.
- (6) Smoke detectors must sound an alarm audible in all areas of the building.
- (7) In new construction, required smoke detectors must receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring must be permanent and without a disconnecting switch other than those required for overcurrent protection.
- (8) Smoke detectors may be battery operated when installed in existing buildings or buildings without commercial power.
- (9) Where battery operated smoke detectors are installed, at least one extra battery of the type and size specified for the battery operated smoke detector must be maintained upon the premises.
- (10) Single station smoke detectors must be tested at monthly intervals or in a manner specified by the manufacturer. Records of such testing shall be maintained upon the premises.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-610, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), S 388-155-610, filed 4/26/96, effective 5/27/96.

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388-155-620. Alternate means of sounding a fire alarm.

In addition to single station smoke detectors, family child day care homes must provide an alternate means for sounding a fire alarm. A police type whistle or similar device is adequate for meeting this requirement, provided that whatever method is selected is limited to an evacuation emergency only.

Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-620, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), S 388-155-620, filed 4/26/96, effective 5/27/96.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-630. Fire extinguisher.

(1) At least one approved 2A, 10B:C rated fire extinguisher must be provided on each floor level occupied for day care use. Such extinguisher must be located in the area of the normal path of egress. The maximum travel distance to an extinguisher shall not exceed seventy-five feet.

(2) Fire extinguishers must be operationally ready for use at all times.

(3) Fire extinguisher must be kept on a shelf or mounted in the bracket provided for this purpose so that the top of the extinguisher is not more than five feet above the floor.

(4) The licensee must ensure that fire extinguishers receive annual maintenance certification by a firm specializing in and licensed to do such work. Maintenance means a thorough check of the extinguisher to include examination of:

(a) Mechanical parts;

(b) Extinguishing agent; and

(c) Expelling means.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-630, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-630, filed 4/26/96, effective 5/27/96.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-630
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388-155-640. Fire prevention.

(1) The licensee must ensure that the local fire department is requested to visit the family child day care home to become familiar with the facility and to assist in planning evacuation or emergency procedures. Where a fire department does not provide this service, the licensee must document this contact.

(2) Furnace rooms must be maintained free of lint, grease and rubbish accumulations and other combustibles and suitably isolated, enclosed or protected.

(3) Flammable or combustible materials must be stored away from exits and in areas which are not accessible to children. Combustible rubbish shall not be allowed to accumulate and must be removed from the building or stored in closed, metal containers.

(4) The licensee must keep all areas used for child care clean and neat, making sure that all waste generated daily is removed from the building and disposed of in a safe manner outside the building. All containers used for the disposal of waste material must be of noncombustible materials with tops. Electrical motors shall be kept dust-free.

(5) Open-flame devices capable of igniting clothing must not be left on, unattended or used in a manner which could result in an accidental ignition of children's clothing. Candles must not be used.

(6) A flashlight must be available for use as an emergency power source.

(7) All electrical circuits, devices and appliances must be properly maintained. Circuits must not be overloaded. Extension cords and multiplug adapters must not be used in lieu of permanent wiring and proper receptacles.

(8) The use of portable space heaters of any kind is prohibited.

(9) Approved numbers or addresses must be placed on all new and existing homes and in the driveway to the house when the house is not visible from the road. The numbers or address must be in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers must contrast with their background.

(10) Fireplaces, woodstoves, similar devices and their connections must be approved by the local building official. If the woodstove is used as a sole source of heat or is used during hours of operation, such devices must be cleaned, maintained and inspected on at least an annual basis by a person or firm specializing in such work and licensed.

Where open flames and/or hot surfaces are accessible, approved barriers must be erected to prevent children from coming in contact with the open flames and/or hot surfaces.

WA ADC 388-155-640
WAC 388-155-640
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Statutory Authority: RCW 74.15.030. 01-17-084, S 388-155-640, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), S 388-155-640, filed 4/26/96, effective 5/27/96.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-650. Sprinkler system maintenance.

Sprinkler systems, if installed, must be tested on an annual basis by a person or agency qualified by licensing. The results of the system test must be documented on forms provided by the licensor and maintained at the home for inspection by the licensor.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-650, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-650, filed 4/26/96, effective 5/27/96.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-650
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388-155-660. Fire evacuation plan.

Each home must develop written fire evacuation plans. The evacuation plan must include an evacuation floor plan, identifying exit doors and windows, that must be posted at a point clearly visible to the assistant and parents. Plans must include the following:

- (1) Action to be taken by the person discovering a fire;
- (2) Method to be used for sounding an alarm on the premises;
- (3) Action to be taken for evacuation of the building and assuring accountability of the children; and
- (4) Action to be taken pending arrival of the fire department.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-660, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-660, filed 4/26/96, effective 5/27/96.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-670. Fire evacuation drill.

A fire evacuation drill must be conducted at least once each month. A written record, the fire safety record and evacuation plan, must be maintained and posted on the premises indicating the date, time and other required entries on the form. Such forms are available from the division of child care and early learning.

Statutory Authority: RCW 74.15.030. 02-24-022, S 388-155-670, filed 11/26/02, effective 12/27/02; 01-17-084, S 388-155-670, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW. 96-10-042 (Order 9373), S 388-155-670, filed 4/26/96, effective 5/27/96.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-670
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388-155-680. Staff training.

The licensee and each employee or assistant must be familiar with all elements of the fire evacuation plan and must be capable of accomplishing the following:

- (1) Operation of fire extinguisher installed on the premises.
- (2) Testing smoke detectors (single station types).
- (3) Conducting frequent inspections of the home to identify fire hazards and take action to correct any hazards noted during the inspection. Such inspections should be conducted on a monthly basis and records kept on the premises for review by the licensor.

Statutory Authority: RCW 74.15.030, 01-17-084, S 388-155-680, filed 8/16/01, effective 9/16/01. Statutory Authority: RCW 74.12.340 and chapter 74.15 RCW, 96-10-042 (Order 9373), S 388-155-680, filed 4/26/96, effective 5/27/96.

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388-155-991. Waiver of fees.

Any person or agency subject to license fees under chapter 440-44 WAC, and organizations in the person's or agency's behalf, may submit a sworn, notarized petition seeking waiver of fees for a licensee or distinguishable class of licensee.

The petition shall be mailed or delivered to the office of the secretary. Following receipt of the petition, the secretary may require submission of additional information considered relevant.

00-23-088, recodified as S 388-155-991, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), S 440-44-002, filed 6/4/82.

<General Materials (GM) - References, Annotations, or Tables>

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388-155-992. Fee payment and refunds.

(1) Fees are due with applications for initial license or renewal. The department will not proceed on applications until required fees are paid.

Except as otherwise provided in these rules, fees shall be paid for a minimum of one year.

(2) Fees for licenses issued for other than yearly periods shall be prorated based on the stated annual fee.

(3) When the department issues a license for more than one year:

(a) Fees may be paid for the entire licensing period by paying at the rate established at the time the application was submitted, or

(b) If the licensee does not pay the fee for the entire license period, annual fees shall be due thirty days prior to each annual anniversary date of the license, at the annual fee rate established by these rules at the time such fee is paid.

(4) Except as otherwise provided in these rules, if an application is withdrawn prior to issuance or denial, one-half of the fee shall be refunded.

(5) If there is a change of or by the licensee requiring a new license, the fee paid for a period beyond the next license anniversary date shall be refunded. Changes requiring a new license shall require a new application and payment of fee as provided herein.

(6) If there is a change by the applicant or licensee that requires an amendment placing the licensee in a higher fee category, the additional fee shall be prorated for the remainder of the license period.

(7) Fees becoming due on or after the effective date of this chapter shall be at the rates provided herein.

(8) To the extent fees are reduced through regular rule adoption of this chapter on or before December 31, 1982, fees shall be refunded.

(9) Fee payments shall be by mail. Payment shall be by check, draft, or money order made payable to the department of social and health services.

00-23-088, recodified as S 388-155-992, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), S 440-44-010, filed 6/4/82.

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388-155-993. Denial, revocation, suspension, and reinstatement.

- (1) If a license is denied, revoked, or suspended, fees shall not be refunded.
- (2) Application for license after denial or revocation must include fees as provided for in these rules.
- (3) Failure to pay fees when due will result in suspension or denial of license.

00-23-088, recodified as S 388-155-993, filed 11/20/00, effective 11/20/00. Statutory Authority: 1982 c 201. 82-13-011 (Order 1825), S 440-44-015, filed 6/4/82.

<General Materials (GM) - References, Annotations, or Tables>

WA ADC 388-155-993
END OF DOCUMENT

Appendix E

INSTRUCTION NO. *19*

An administrative rule relating to licensed in-home daycares within the State of Washington, under the heading of "Water Safety" provides:

- (5) A five foot high fence with gates, locked when not in use, is required to prevent access to water hazards such as swimming pools, lakes, streams, or natural or artificial pools.

Appendix F

DEFENDANT'S PROPOSED INSTRUCTION NO. _____

A regulation should not be read in isolation but rather within the context of the regulatory and statutory scheme as a whole.

Where an agency is charged with the administration and enforcement of a statute, the agency's interpretation of the statute, as well as the agency's own regulation, is given great weight in determining legislative intent.

Odyssey Healthcare v. Washington State Dept. of Health,
185 P.3d 652 (June, 2008)
Port of Seattle v. Pollution Control Hearings Board,
151 Wn.2d 568, 90 P.3d 659
Kaiser Aluminum & Chemical Corp. v. Dept. of Ecology,
32 Wn.App. 399, 647 P.2d 551

COURT OF APPEALS
DIVISION II

CO. JUL - 8 PM 3:58

STATE OF WASHINGTON

BY *Cm* DEPUTY

NO. 38563-5-II

COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON

JENNIFER L. TOBIN, as
Administratrix of the Estate of
GABRIEL M. TOBIN, deceased;
JENNIFER L. TOBIN and
CHRISTOPHER M. TOBIN,
individually and the marital community
composed thereof, and as the parents of
ISABELLE TOBIN, their minor child,

Respondents,

v.

THE STATE OF WASHINGTON;
VICTOR BERDECIA, in his individual
capacity, and as an employee of the
State of Washington; AMY
CICHOWSKI, in her individual
capacity, and as an employee of the
State of Washington; MARY KAY
QUINLAN, in her individual capacity,
and as an employee of the State of
Washington; EAVANNE
O'DONOGHUE, in her individual
capacity, and as an employee of the
State of Washington; and "JOHN DOE"
and "JANE DOE" 1-10, in their
individual capacities, and as employees
of the State of Washington,

Appellants.

CERTIFICATE OF
SERVICE RE BRIEF
OF APPELLANTS'

NO. 38563-5-II

Pierce County Cause
No. 06-2-12148-7

I, Breanne Higginbotham, certify that I caused a true and correct copy of the Brief of Appellants to be served on the following in the manner and on the date indicated below:

Counsel for Plaintiffs Tobin
Paul A. Lindenmuth
4303 Ruston Way
Tacoma, WA 98402

Hand Delivered on July 8, 2009

Defendant Lisa Fish, pro se
1607 NW 3rd Street
Battle Ground, WA 98604

Via USPS on July 8, 2009

DATED this 8th day of July, 2009.



Breanne Higginbotham
Legal Assistant

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

- US Mail Postage Prepaid
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered by Breanne Higginbotham

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 8th day of July, 2009, at Tacoma, WA.


Breanne Higginbotham, Legal Assistant