

2018 Florida Statutes

Title XXIX PUBLIC HEALTH

Chapter 402 HEALTH AND HUMAN SERVICES: MISCELLANEOUS PROVISIONS

Entire Chapter

SECTION 305

Licensing standards; child care facilities:

402.305 Licensing standards; child care facilities.—

(1) LICENSING STANDARDS.—The department shall establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility.

(a) The standards shall be designed to address the following areas:

1. The health, sanitation, safety, and adequate physical surroundings for all children in child care.
2. The health and nutrition of all children in child care.
3. The child development needs of all children in child care.

(b) All standards established under ss. [402.301-402.319](#) must be consistent with the rules adopted by the State Fire Marshal for child care facilities. However, if the facility is operated in a public school, the department shall use the public school fire code, as provided in the rules of the State Board of Education, as the minimum standard for fire safety.

(c) The minimum standards for child care facilities shall be adopted in the rules of the department and shall address the areas delineated in this section. The department, in adopting rules to establish minimum standards for child care facilities, shall recognize that different age groups of children may require different standards. The department may adopt different minimum standards for facilities that serve children in different age groups, including school-age children. The department shall also adopt by rule a definition for child care which distinguishes between child care programs that require child care licensure and after-school programs that do not require licensure. Notwithstanding any other provision of law to the contrary, minimum child care licensing standards shall be developed to provide for reasonable, affordable, and safe before-school and after-school care. After-school programs that otherwise meet the criteria for exclusion from licensure may provide snacks and meals through the federal Afterschool Meal Program (AMP) administered by the Department of Health in accordance with federal regulations and standards. The Department of Health shall consider meals to be provided through the AMP only if the program is actively participating in the AMP, is in good standing with the department, and the meals meet AMP requirements. Standards, at a minimum, shall allow for a credentialed director to supervise multiple before-school and after-school sites.

(2) PERSONNEL.—Minimum standards for child care personnel shall include minimum requirements as to:

- (a) Good moral character based upon screening as defined in s. [402.302\(15\)](#). This screening shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter, and include employment history checks, a search of criminal history records, sexual predator and sexual offender registries, and child abuse and neglect registry of any state in which the current or prospective child care personnel resided during the preceding 5 years.
- (b) Fingerprint submission for child care personnel, which shall comply with s. [435.12](#).
- (c) The department may grant exemptions from disqualification from working with children or the developmentally disabled as provided in s. [435.07](#).
- (d) Minimum age requirements. Such minimum standards shall prohibit a person under the age of 21 from being the operator of a child care facility and a person under the age of 16 from being employed at such facility unless such person is under direct supervision and is not counted for the purposes of computing the personnel-to-child ratio.
- (e) Minimum training requirements for child care personnel.
 1. Such minimum standards for training shall ensure that all child care personnel take an approved 40-clock-hour introductory course in child care, which course covers at least the following topic areas:
 - a. State and local rules and regulations which govern child care.
 - b. Health, safety, and nutrition.
 - c. Identifying and reporting child abuse and neglect.
 - d. Child development, including typical and atypical language, cognitive, motor, social, and self-help skills development.
 - e. Observation of developmental behaviors, including using a checklist or other similar observation tools and techniques to determine the child's developmental age level.
 - f. Specialized areas, including computer technology for professional and classroom use and early literacy and language development of children from birth to 5 years of age, as determined by the department, for owner-operators and child care personnel of a child care facility.
 - g. Developmental disabilities, including autism spectrum disorder and Down syndrome, and early identification, use of available state and local resources, classroom integration, and positive behavioral supports for children with developmental disabilities.

Within 90 days after employment, child care personnel shall begin training to meet the training requirements. Child care personnel shall successfully complete such training within 1 year after the date on which the training began, as evidenced by passage of a competency examination. Successful completion of the 40-clock-hour introductory course shall articulate into community college credit in early childhood education, pursuant to ss. [1007.24](#) and [1007.25](#). Exemption from all or a portion of the required training shall be granted to child care personnel based upon educational credentials or passage of competency examinations. Child care personnel possessing a 2-year degree or higher that includes 6 college credit hours

in early childhood development or child growth and development, or a child development associate credential or an equivalent state-approved child development associate credential, or a child development associate waiver certificate shall be automatically exempted from the training requirements in sub-paragraphs b., d., and e.

2. The introductory course in child care shall stress, to the extent possible, an interdisciplinary approach to the study of children.
3. The introductory course shall cover recognition and prevention of shaken baby syndrome; prevention of sudden infant death syndrome; recognition and care of infants and toddlers with developmental disabilities, including autism spectrum disorder and Down syndrome; and early childhood brain development within the topic areas identified in this paragraph.
4. On an annual basis in order to further their child care skills and, if appropriate, administrative skills, child care personnel who have fulfilled the requirements for the child care training shall be required to take an additional 1 continuing education unit of approved inservice training, or 10 clock hours of equivalent training, as determined by the department.
5. Child care personnel shall be required to complete 0.5 continuing education unit of approved training or 5 clock hours of equivalent training, as determined by the department, in early literacy and language development of children from birth to 5 years of age one time. The year that this training is completed, it shall fulfill the 0.5 continuing education unit or 5 clock hours of the annual training required in subparagraph 4.
6. Procedures for ensuring the training of qualified child care professionals to provide training of child care personnel, including onsite training, shall be included in the minimum standards. It is recommended that the state community child care coordination agencies (central agencies) be contracted by the department to coordinate such training when possible. Other district educational resources, such as community colleges and career programs, can be designated in such areas where central agencies may not exist or are determined not to have the capability to meet the coordination requirements set forth by the department.
7. Training requirements shall not apply to certain occasional or part-time support staff, including, but not limited to, swimming instructors, piano teachers, dance instructors, and gymnastics instructors.
8. The department shall evaluate or contract for an evaluation for the general purpose of determining the status of and means to improve staff training requirements and testing procedures. The evaluation shall be conducted every 2 years. The evaluation shall include, but not be limited to, determining the availability, quality, scope, and sources of current staff training; determining the need for specialty training; and determining ways to increase inservice training and ways to increase the accessibility, quality, and cost-effectiveness of current and proposed staff training. The evaluation methodology shall include a reliable and valid survey of child care personnel.

9. The child care operator shall be required to take basic training in serving children with disabilities within 5 years after employment, either as a part of the introductory training or the annual 8 hours of inservice training.

(f) Periodic health examinations.

(g) By January 1, 2000, a credential for child care facility directors. By January 1, 2004, the credential shall be a required minimum standard for licensing.

(3) MINIMUM STAFF CREDENTIALS.—By July 1, 1996, for every 20 children in a licensed child care facility, if the facility operates 8 hours or more per week, one of the child care personnel in the facility must have:

(a) A child development associate credential;

(b) A child care professional credential, unless the department determines that such child care professional credential is not equivalent to or greater than a child development associate credential; or

(c) A credential that is equivalent to or greater than the credential required in paragraph (a) or paragraph (b).

The department shall establish by rule those hours of operation, such as during rest periods and transitional periods, when this subsection does not apply.

(4) STAFF-TO-CHILDREN RATIO.—

(a) Minimum standards for the care of children in a licensed child care facility as established by rule of the department must include:

1. For children from birth through 1 year of age, there must be one child care personnel for every four children.

2. For children 1 year of age or older, but under 2 years of age, there must be one child care personnel for every six children.

3. For children 2 years of age or older, but under 3 years of age, there must be one child care personnel for every 11 children.

4. For children 3 years of age or older, but under 4 years of age, there must be one child care personnel for every 15 children.

5. For children 4 years of age or older, but under 5 years of age, there must be one child care personnel for every 20 children.

6. For children 5 years of age or older, there must be one child care personnel for every 25 children.

7. When children 2 years of age and older are in care, the staff-to-children ratio shall be based on the age group with the largest number of children within the group.

(b) This subsection does not apply to nonpublic schools and their integral programs as defined in

s. [402.3025\(2\)\(d\)1](#). In addition, an individual participating in a community service program activity under

s. [445.024\(1\)\(e\)](#), or a work experience activity under s. [445.024\(1\)\(f\)](#), at a child care facility may not be considered in calculating the staff-to-children ratio.

(5) PHYSICAL FACILITIES.—Minimum standards shall include requirements for building conditions, indoor play space, outdoor play space, napping space, bathroom facilities, food preparation facilities, outdoor equipment, and indoor equipment. Because of the nature and duration of drop-in child care, outdoor play space and outdoor equipment shall not be required for licensure; however, if such play space and equipment are provided, then the minimum standards shall apply to drop-in child care. With respect to minimum standards for physical facilities of a child care program for school-age children which is operated in a public school facility, the department shall adopt the State Uniform Building Code for Public Educational Facilities Construction as the minimum standards, regardless of the operator of the program. The Legislature intends that if a child care program for school-age children is operated in a public school, the program need not conform to standards for physical facilities other than the standards adopted by the Commissioner of Education.

(6) SQUARE FOOTAGE PER CHILD.—Minimum standards shall be established by the department by rule.

(a) A child care facility that holds a valid license on October 1, 1992, must have a minimum of 20 square feet of usable indoor floor space for each child and a minimum of 45 square feet of usable outdoor play area for each child. Outdoor play area shall be calculated at the rate of 45 feet per child in any group using the play area at one time. A minimum play area shall be provided for one half of the licensed capacity. This standard applies as long as the child care facility remains licensed at the site occupied on October 1, 1992, and shall not be affected by any change in the ownership of the site.

(b) A child care facility that does not hold a valid license on October 1, 1992, and seeks regulatory approval to operate as a child care facility must have a minimum of 35 square feet of usable floor space for each child and a minimum of 45 square feet of usable outdoor play area for each child.

The minimum standard for outdoor play area does not apply in calculating square footage for children under 1 year of age. However, appropriate outdoor infant equipment shall be substituted for outdoor play space. The centers shall provide facilities and equipment conducive to the physical activities appropriate for the age and physical development of the child.

(7) SANITATION AND SAFETY.—

(a) Minimum standards shall include requirements for sanitary and safety conditions, first aid treatment, emergency procedures, and pediatric cardiopulmonary resuscitation. The minimum standards shall require that at least one staff person trained in cardiopulmonary resuscitation, as evidenced by current documentation of course completion, must be present at all times that children are present.

(b) In the case of a child care program for school-age children attending before and after school programs on the public school site, the department shall use the public school fire code, as adopted in the rules of the State Board of Education, as the minimum standard for firesafety. In the case of a child care

program for school-age children attending before-school and after-school programs on a site operated by a municipality, the department shall adopt rules for such site and intended use.

(c) Some type of communications system, such as a pocket pager or beeper, shall be provided to a parent whose child is in drop-in child care to ensure the immediate return of the parent to the child, if necessary.

(8) **NUTRITIONAL PRACTICES.**—Minimum standards shall include requirements for the provision of meals or snacks of a quality and quantity to assure that the nutritional needs of the child are met.

(9) **ADMISSIONS AND RECORDKEEPING.**—

(a) Minimum standards shall include requirements for preadmission and periodic health examinations, requirements for immunizations, and requirements for maintaining emergency information and health records on all children.

(b) During the months of August and September of each year, each child care facility shall provide parents of children enrolled in the facility detailed information regarding the causes, symptoms, and transmission of the influenza virus in an effort to educate those parents regarding the importance of immunizing their children against influenza as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(c) During the months of April and September of each year, at a minimum, each facility shall provide parents of children enrolled in the facility information regarding the potential for a distracted adult to fail to drop off a child at the facility and instead leave the child in the adult's vehicle upon arrival at the adult's destination. The child care facility shall also give parents information about resources with suggestions to avoid this occurrence. The department shall develop a flyer or brochure with this information that shall be posted to the department's website, which child care facilities may choose to reproduce and provide to parents to satisfy the requirements of this paragraph.

(d) Because of the nature and duration of drop-in child care, requirements for preadmission and periodic health examinations and requirements for medically signed records of immunization required for child care facilities shall not apply. A parent of a child in drop-in child care shall, however, be required to attest to the child's health condition and the type and current status of the child's immunizations.

(e) Any child shall be exempt from medical or physical examination or medical or surgical treatment upon written request of the parent or guardian of such child who objects to the examination and treatment. However, the laws, rules, and regulations relating to contagious or communicable diseases and sanitary matters shall not be violated because of any exemption from or variation of the health and immunization minimum standards.

(10) **TRANSPORTATION SAFETY.**—Minimum standards shall include requirements for child restraints or seat belts in vehicles used by child care facilities and large family child care homes to transport children, requirements for annual inspections of the vehicles, limitations on the number of children in the vehicles, procedures to avoid leaving children in vehicles when transported by the facility, and accountability for

children transported by the child care facility. A child care facility is not responsible for children when they are transported by a parent or guardian.

(11) ACCESS.—Minimum standards shall provide for reasonable access to the child care facility by the custodial parent or guardian during the time the child is in care.

(12) CHILD DISCIPLINE.—

(a) Minimum standards for child discipline practices shall ensure that age-appropriate, constructive disciplinary practices are used for children in care. Such standards shall include at least the following requirements:

1. Children shall not be subjected to discipline which is severe, humiliating, or frightening.
2. Discipline shall not be associated with food, rest, or toileting.
3. Spanking or any other form of physical punishment is prohibited.

(b) Prior to admission of a child to a child care facility, the facility shall notify the parents in writing of the disciplinary practices used by the facility.

(13) PLAN OF ACTIVITIES.—Minimum standards shall ensure that each child care facility has and implements a written plan for the daily provision of varied activities and active and quiet play opportunities appropriate to the age of the child. The written plan must include a program, to be implemented periodically for children of an appropriate age, which will assist the children in preventing and avoiding physical and mental abuse.

(14) URBAN CHILD CARE FACILITIES.—Minimum standards shall include requirements for child care facilities located in urban areas. The standards must allow urban child care facilities to substitute indoor play space for outdoor play space, if outdoor play space is not available in the area, and must set forth additional requirements that apply to a facility which makes that substitution, including, but not limited to, additional square footage requirements for indoor space; air ventilation provisions; and a requirement to provide facilities and equipment conducive to physical activities appropriate for the age of the children.

(15) TRANSITION PERIODS.—During the periods of time in which children are arriving and departing from the child care facility, notwithstanding local fire ordinances, the provisions of subsection (6) are suspended for a period of time not to exceed 30 minutes.

(16) EVENING AND WEEKEND CHILD CARE.—Minimum standards shall be developed by the department to provide for reasonable, affordable, and safe evening and weekend child care. Each facility offering evening or weekend child care must meet these minimum standards, regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility. The department may modify by rule the licensing standards contained in this section to accommodate evening child care.

(17) SPECIALIZED CHILD CARE FACILITIES FOR THE CARE OF MILDLY ILL CHILDREN.—Minimum standards shall be developed by the department, in conjunction with the Department of Health, for specialized child care facilities for the care of mildly ill children. The minimum standards shall address the following areas: personnel requirements; staff-to-child ratios; staff training and credentials; health and safety; physical

facility requirements, including square footage; client eligibility, including a definition of “mildly ill children”; sanitation and safety; admission and recordkeeping; dispensing of medication; and a schedule of activities.

(18) TRANSFER OF OWNERSHIP.—

(a) One week prior to the transfer of ownership of a child care facility or family day care home, the transferor shall notify the parent or caretaker of each child of the impending transfer.

(b) The department shall, by rule, establish methods by which notice will be achieved and minimum standards by which to implement this subsection.

History.—s. 5, ch. 74-113; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 3, ch. 81-318; ss. 1, 6, 7, ch. 83-248; s. 3, ch. 84-551; s. 24, ch. 85-54; s. 41, ch. 87-225; s. 23, ch. 87-238; s. 25, ch. 89-379; s. 2, ch. 90-35; s. 2, ch. 90-225; s. 35, ch. 90-306; s. 10, ch. 91-33; s. 28, ch. 91-57; s. 92, ch. 91-221; s. 2, ch. 91-300; s. 56, ch. 92-58; ss. 1, 2, ch. 93-115; s. 14, ch. 93-156; s. 22, ch. 94-134; s. 22, ch. 94-135; s. 1060, ch. 95-148; s. 18, ch. 95-152; s. 15, ch. 95-158; s. 22, ch. 95-195; s. 41, ch. 95-228; s. 131, ch. 95-418; ss. 76, 77, ch. 96-175; s. 12, ch. 96-268; s. 2, ch. 97-63; s. 2, ch. 98-165; s. 1, ch. 99-241; s. 10, ch. 99-304; s. 164, ch. 2000-165; s. 19, ch. 2000-253; s. 18, ch. 2000-337; ss. 21, 26, ch. 2001-170; s. 2, ch. 2002-300; s. 40, ch. 2003-1; s. 1, ch. 2003-131; s. 3, ch. 2003-146; s. 10, ch. 2004-41; s. 1, ch. 2004-49; s. 58, ch. 2004-267; s. 15, ch. 2004-269; s. 32, ch. 2004-357; s. 7, ch. 2005-71; s. 12, ch. 2007-6; s. 3, ch. 2007-197; s. 1, ch. 2009-147; s. 3, ch. 2010-224; s. 24, ch. 2013-252; s. 16, ch. 2018-103.