

Draft Proposed Child Care Licensing Requirements for all Settings

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I. Definitions

- A. "Applicant," an individual, agency, institution, or organization which submits an application for a license or registration certificate to the department as provided in this chapter;
- B. "Center Program," is defined as outlined in 26-6-14(3) and 26-6-14(5).
- C. "Family Day Care" is defined as outlined in 26-6-14.1 & 26-6-14.2.
- D. "Household member," a person who resides in a home or facility used for the purposes of providing care and supervision to children and may have contact with children in the facility;
- E. "License," the document described in SDCL [26-6-15](#) which certifies that a provider meets applicable licensing standards contained in this chapter;
- F. "Medication," a substance that is intended to relieve pain or treat illness or disease and includes both prescription and non-prescription medications.
- G. "Night care," care provided for a child between the hours of 7:00 p.m. and 6:00 a.m.
- H. "Program Employees," those not providing direct care and supervision such as cooks, custodians.
- I. "Provider," refers to both the individual, assistant, agency, or organization providing services covered in this chapter as well as those providing direct care and supervision to children;
- J. "Parent," a child's natural parent, adoptive parent, stepparent, or legal guardian; and
- K. "Registration certificate," the document described in SDCL [26-6-15](#) which certifies that a provider meets the family day care registration standards.
- L. "School Age Program," is defined as outlined in 26-6-14(6)

II. Licensing processes

- A. Floor plans. Upon application for a license from center and school age programs, and before building a new facility or renovating or altering an existing facility, copies of the building, renovation, or alteration plans must be submitted to the department for approval.
- B. Initial issuance a license or registration certificate is based on a review of all requirements including Pediatric CPR.

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- C. The department may deny a license or registration certificate to an applicant based on an evaluation, substantiated by facts, showing that the applicant does not meet standards for care.
- D. Within 60 days after completion of the application, the applicant must receive a written notice of approval or denial of a license or registration certificate. If the application is denied, the notice must include the reasons for the denial.
- E. An applicant may reapply when the applicant has taken corrective action related to the reasons for the original denial of the license or registration certificate.
- F. There must be at least one pre-licensure inspection and one annual unannounced inspection to determine compliance with requirements. An inspection to verify compliance with fire and life safety requirements must be conducted and documented before an initial license is issued and each year thereafter.
- G. A license or registration certificate may be revoked for violations of requirements with 30-day's written notice to the provider, subject to the following:
 - 1. The 30-day written notice is not required if the revocation is necessary to prevent danger to the life, health, or safety of a child.
 - 2. The provider may not reapply for a licensure or registration certificate for at least one year after the date of revocation.
- H. A fair hearing may be requested if a provider is dissatisfied with any action taken on an application or license or registration certificate.
- I. If the inspection resulted in a plan of correction, a copy of the plan must be made available to individuals on request.
- J. A notice with licensing's telephone number and website must be prominently posted for individuals with questions or concerns regarding the program.
- K. The provider must report to the Department the following occurrences within 24 hours of occurring:
 - 1. A change of address or other major changes in the operation and ownership of the program;
 - 2. A change in the household size-or composition;
 - 3. Damage to or a change in the condition of the facility or home;
 - 4. Provider or program employee under investigation by the Division of Child Protection Services or law enforcement concerning any, allegations of child abuse or neglect or actions that may prohibit meeting eligibility requirements;
 - 5. Any serious injury to a child that requires medical or dental attention; and

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6. The death of a child that was the result of a serious injury that occurred on the premises of the child care program.

III. Provider Requirements

- A. All providers must maintain records for all employees that include the following information:
 1. Name, date of birth, dates of employment;
 2. Documentation of orientation and ongoing annual training;
 3. Signed statement which defines child abuse and neglect and outlines their responsibility to report all incidents of child abuse or neglect under the provisions of SDCL 26-8A-3 and 26-8A-8; and
 4. Comprehensive background check results.
- B. All required records must be:
 1. Reviewed and updated at least annually;
 2. Made available to the department for verification of the contents; and
 3. Retained for six months after the staff member leaves the program.
- C. All child care providers, program employees age 14 and older and family day care household members who are 18 years of age and older are required to meet federal background check requirements. An individual is prohibited from providing care or working in a child care setting if the background check detects any of the following:
 1. A crime that would indicate harmful behavior towards children;
 2. A crime of violence as defined by SDCL 22-1-2 or a similar statute from another state;
 3. A sex crime pursuant to SDCL chapters 22-22 or 22-24A or SDCL 22-22A-3 or similar statutes from another state;
 4. A felony conviction for domestic abuse, physical assault or battery, kidnapping or arson;
 5. Within the preceding five years, a conviction for any other felony;
 6. A substantiated report of child abuse or neglect; or
 7. Any federal restrictions
- D. A family day care provider is prohibited from providing care if a household member's background check detects any of items included above.
- E. The department must notify the provider that the individual is eligible for employment or cannot be employed or have any access to children when of the following occurs:
 1. Thirty days have lapsed since the department notified the individual that a prohibited offense was identified, the name was located and the individual has not requested a review;
 2. Thirty days have lapsed since a review was held which upheld the department's action and the individual has not requested a fair hearing;

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3. A fair hearing was held, and the decision upheld the department's action; or
 4. A screening in a state other than South Dakota resulted in a finding as outlined in SDCL.
- F. A background check is required at least once during every five-year period following the initial submission.
- G. Qualifications for director or owner of a licensed child care or school-age program must be at least 18 years of age. The director is responsible for employee management and demonstrate the ability to provide care for children that attends to the child's physical growth and development and to the physical, emotional, cognitive, and social needs of the child.
- H. The individual responsible for planning and implementing the program in a licensed child care or school-age program must be at least 18 years of age and meet one of the following requirements:
1. Have a bachelor's degree in any of the following: early childhood education, elementary education, or the field of education or human development; or
 2. Have a two-year degree in the field of early childhood education; or
 3. Have a valid Child Development Associate (CDA) credential or similar credential; or
 4. Hold certification in a specific child learning philosophy i.e. Montessori, Reggio, etc. and have at least one year of experience in a child care setting; or
 5. Have a child development technician diploma; or
 6. Have four years of verifiable experience in a center or school age program.
- I. All providers must be at least 18 years of age and demonstrate the ability to provide care for children that attends to the child's physical growth and development and to the physical, emotional, cognitive, and social needs of the child.
- J. A provider's assistant in a licensed child care or school-age program must be at least 14 years old and may be counted in the staff-child ratio only when they are under the direct and constant supervision of a provider, program director or the individual responsible for planning and implementing the program and not left alone with children in care. A provider's assistant must demonstrate the ability to provide care for children that attends to the child's physical growth and development and to the physical, emotional, cognitive, and social needs of the child.
- K. A family day care assistant must meet the meet the following requirements and conditions:
1. A family day care assistant must be at least 14 years old:
 2. An assistant under the age of 18 may be included in the adult-child ratio only if there is another adult present in the home; and
 3. An assistant who is under the age of 18 may not be left alone on the premises with children in care.

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- L. When it is reported or observed that a provider or household member has a physical, mental, or emotional condition that could negatively impact children's care, a licensed physician's statement may be requested.
- M. The files and records of the provider must be kept confidential. A child's records, photographs, and information about a child or their family may not be shared with unauthorized individuals or publicly posted unless a signed authorization by parents is obtained. Authorized individuals include licensing, Child Protective Services, and law enforcement.

IV. Pre-service and ongoing professional development

- A. All providers must complete and have documentation of orientation within 90 days after the date of employment in at least the following health and safety topic areas:
 - 1. Prevention and control of infectious diseases;
 - 2. Prevention of sudden infant death syndrome and use of safe sleep practices if infant care is provided ;
 - 3. Administration of medication;
 - 4. Prevention of and response to an emergency due to food and allergic reactions;
 - 5. Building and physical premises safety;
 - 6. Prevention of shaken baby syndrome and abusive head trauma if infant care is provided ;
 - 7. Emergency preparedness and response planning for an emergency resulting from a natural disaster or man-caused event;
 - 8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
 - 9. Precautions in transporting a child (if the program provides transportation for any purpose);
 - 10. Recognition and reporting of child abuse and neglect;
 - 11. Pediatric first aid;
 - 12. Pediatric cardiopulmonary resuscitation (CPR); and
 - 13. Child development.
- B. Providers must have completed orientation training in each of health and safety topic areas before caring for children unsupervised. Orientation training may count toward the required annual training for each provider in the year the training was taken. Progressive training in the health and safety categories included in orientation training, is required once every 5 years for all providers.
- C. Each provider used to meet staff-child ratios must participate in the following hours of training annually:
 - 1. Child and school age care providers – 10 hours

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2. Family child care – 6 hours.

D. Annual training must be obtained in topic areas identified through federal health and safety standards or topics identified by the department

V. Supervision, ratios and group size

A. All center providers must supervise by means of hearing or seeing children and being present in the same room and on the playground with children. Children over 18 months of age in a center program can be supervised by hearing if all children are resting and visually checked every 15 minutes. All family day and school-age programs must supervise children by hearing or seeing children and be close enough to intervene at all times.

B. For center and school age programs, the following ratios for providers and children present must be maintained:

1. 5:1 for children up to three years of age
2. 10:1 for children three years through four years; and
3. 15:1 for five years and over.

C. For programs serving 20 or less children and routinely operating in a mixed age group, must meet a 10:1 ratio with no more than four children under the age of 2 years.

D. For programs serving more than 20 children in a mixed age group, the following must be maintained:

1. When providing care to three or more children under the age of three, a 1:5 ratio must be maintained.
2. When providing care to children three years of age and older, the staff-child ratio for the age group that comprises the majority of the grouping must be maintained.

E. Maximum group sizes are determined by individual room capacity, subject to the following conditions:

1. All space used must be approved for care.
2. The provider must ensure that the number of children in care at any given time does not exceed the capacity identified on the license.

E. Children of program employees must be included in determining group size and the staff-child ratio.

F. Family day care providers may take up to 12 children in their home for care. The following ratios are required:

1. No more than four of the 12 children may be under the age of two years with one provider;

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2. If a family day care assistant is present in the home, no more than eight of the twelve children may be under the age of two; and
3. A family child care provider's own children under the age of six are included in the total capacity and ratios.

VI. Disease prevention and control

- A. Child care providers must have documentation from a health facility or state system showing children are age appropriately immunized as recommended by the South Dakota Department of Health before they are accepted into care. Children may be exempted from immunization if:
 1. A written statement that their parents object to immunization on religious grounds.
 2. A written statement from the child's primary health care provider that the child's medical condition contraindicates immunization.
- B. If a child's immunizations are not current, there must be documentation of progress toward achieving adequate immunization levels. A grace period may be allowed for children experiencing homelessness and children in foster care.
- C. Ill children must be separated from other children and the child's parents notified.
- D. Providers must follow 44:20:02:02 regarding reporting reportable diseases. To prevent cross-contamination and the spread of infectious diseases, a program shall provide an individual storage unit or container for each child's personal articles including combs, brushes, towels, and clothing. Children diagnosed with a reportable disease can only be readmitted when they are no longer contagious or pose a risk to other children.
- E. All child care providers, program employees, and children must wash their hands with soap:
 1. Before preparing food or beverages, eating, handling food, or feeding a child; and
 2. After changing a diaper, using the toilet or helping a child use a toilet, or handling bodily fluid (mucus, blood, vomit).
- G. Equipment, utensils, kitchenware, dining tables, and food contact surfaces of equipment must be washed, rinsed, and sanitized.
- H. Toys capable of being placed in a child's mouth must be cleaned and sanitized daily using an approved solution.

VII. Safe sleep practices

- A. The provider must follow the most current safe sleep practices as recommended by the American Academy of Pediatrics for infants under the age of one.

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- B. Cribs and mattresses must be maintained in good repair.
- C. Infants must be fed according to their individual schedule and propping of bottles while feeding infants is prohibited.
- D. Nap mats, blankets or another sleep surface for children over one year of age must be provided during nap time.

VIII. Medication administration

- A. Permission of the parent or guardian must be documented before any medications are administered to a child. Permission must include the name of the child and medication, and the dates, times and dosage the medication is to be administered.
- B. Any medication administered to a child must be documented to include the dose, name of child, time and date administered, and name of the person administering the medication. This documentation must be available to the child's parent or guardian.
- C. Medications must be provided by the parent and kept in their original container with the original label. The label for prescription medications must contain the child's name, amount and frequency of dosage, the expiration date, the physician's name, and instructions for storage.
- D. Medications must be stored in a place which is inaccessible to children.
- E. Medication requiring refrigeration must be placed in a nonabsorbent container and labeled "medications."
- F. Medication must be administered only to the child it was intended for.
- G. Medication must be returned to the parents when no longer needed or expired.

IX. Food and allergic reactions

- A. Child care providers must have a written care plan for each child with a known food allergy that includes:
 1. Instructions regarding the food(s) to which the child is allergic and steps to be taken to avoid that food; and
 2. A detailed treatment plan to be implemented in the event of an allergic reaction, including the names, doses, and methods of prompt administration of any medications. The plan must include specific symptoms that would indicate the need to administer one or more medications.

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X. Building and physical premises

- A. Licensed child and school age programs operating outside of a school building, must follow applicable construction and fire safety requirements outlined in ARSD 61:15:05 and 61:15:06. School age programs operating in a school building must follow applicable construction and fire safety requirements in ARSD 61:15:01, 61:15:02 and 61:15:07.
- B. A family day care home must have the following fire safety measures in place:
 - 1. Working smoke detector on each level of the home.
 - 2. Fully charged, portable fire extinguisher with a minimum 2A rating, as identified on the extinguisher label, must be kept near the kitchen.
 - 3. A carbon monoxide detector must be installed according to manufacturer's instructions when there is a fuel burning appliance in the home.
 - 4. Each level of the home must have at least two remote exits that must remain clear of obstructions. One of these exits must be a standard-sized door, the second exit may be an unobstructed, operable window at least five square feet in operable space which has a minimum of 20 inches wide and 24 inches high.
 - 5. When in use, portable space heaters, wood burning stoves, and fireplaces are inaccessible to children.
- C. Children must be protected from the following hazards that pose a risk to their health and well-being. The department may direct a provider to remove or correct hazardous conditions or circumstances not covered in this chapter if the department considers the conditions or circumstances to have the potential to cause injury or illness to the children in care.
 - 1. Firearms including pellet guns, BB guns, and cap guns. If present, they must be unloaded, equipped with child protective devices, and kept under lock and key with the ammunition locked separately in areas inaccessible to the children.
 - 2. Matches, lighters and candles;
 - 3. Tip-over hazards, such as chests, bookshelves, and televisions;
 - 4. Unused electrical outlets without outlet covers or tamper-resistant covers;
 - 5. Platforms measuring more than 30" above the ground level would require a railing; and
 - 6. Other hazardous conditions.
- D. All walls, ceilings, floors, and equipment must be easily cleanable, kept clean, and maintained in good repair. Food preparation areas must be kept clean and sanitized.
- E. Providers must meet the following requirements regarding bathrooms:
 - 1. Bathroom facilities must be available and easily accessible to children and providers;
 - 2. Hot water for plumbing fixtures normally used by children in care must not exceed 120 degrees Fahrenheit;
 - 3. All toilets and hand sinks must be kept clean and in good repair;
 - 4. For child care centers and school age programs,
 - i. All bathrooms must have natural or mechanical ventilation;

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- ii. Separate bathrooms must be available for each gender;
 - iii. Ratios for toilet and hand sinks must align with the current plumbing commission requirements;
- F. Providers serving children in diapers except for family day care, hand sinks must be located in the same room as the diaper changing area. Handwashing sinks used after diapering and toileting must not be used for food preparation.
- G. Heating, ventilating and cooling systems must be adequate for the protection of children's health, including the following:
- 1. For a child care center and school age programs, all heating and cooling systems must be inspected annually by a certified technician.
 - 2. A provider that cares for more than 20 children must provide a ventilation hood over all cooking areas which is vented to the outside.
 - 3. A provider utilizing commercial grade appliances is required to provide a hood suppression system.
- H. Playground areas for all child care settings must be safe, in good repair and must be kept free of debris, trash, and weeds.
- 1. Playground equipment must be installed according to manufacturer's instructions and maintained in good repair;
 - 2. For a child care center, a fence that measures at least four feet high is required around the outdoor play space; and
 - 3. For family day care and school age programs, a fence may be required if hazards, bodies of water or vehicular traffic have the potential to cause injury or be a life-threatening situation to children; and
 - 4. Use of playgrounds and parks may be used for outdoor play
- I. Providers must meet the following water safety requirements:
- 1. All swimming pools utilized on premises must be emptied after each use or be enclosed with a five-foot fence and self-closing and latching gate that can be locked while not in use.
 - 2. Children may not play in areas where there is any body of water unless they are under constant supervision.
 - 3. All hot tubs must have a secure cover.
- J. Square footage requirements for indoor and outdoor space must be met, including the following:
- 1. For a child care center, a minimum of 35 square feet of play space indoors and 50 square feet of play space outdoors for each child while outdoors in the licensed capacity;
 - 2. For a school age program, a minimum of 25 square feet of play space indoors and 50 square feet of play space outdoors for each child while outdoors in the licensed capacity;

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XI. Prevention of child maltreatment

- A. All providers must meet the physical, social, emotional, and cognitive needs of children and identify procedures regarding behavior management strategies to be used with children in care. Behavior management strategies must offer clear-cut limits with positive guidance and direction to help a child to develop self-control and respect for the rights of others.
- B. All providers caring for infants must outline procedures to identify and prevent shaken baby syndrome and abusive head trauma such as coping with crying babies.
- C. Behavior management strategies must be appropriate to the child's age and developmental level.
- D. Separation, when used as a strategy, must be within sight or hearing range of a provider responsible for caring for children.
- E. Behavior management strategies may not be delegated to older children, peers or the child's parents while working at the program.
- F. The following methods of discipline are prohibited:
 - 1. Spanking, hitting, pinching, biting, shaking, or inflicting any other physical punishment;
 - 2. Verbal abuse, shouting, threats, humiliation, or derogatory or sarcastic remarks about the child or their family;
 - 3. Restriction of movement or confinement;
 - 4. Isolating a child in an adjacent room, hallway, closet, darkened area, or any other area where a child cannot be seen or supervised;
 - 5. Punishment for lapses in toilet training;
 - 6. Withholding or forcing of meals, snacks, naps or outdoor time to correct behavior;
 - 7. Demanding excessive physical exercise, excessive rest, or difficult postures; and
 - 8. Placing substances in a child's mouth to cause discomfort such as soap, food, or spices.
- G. Providers under investigations for abuse and neglect shall not be in a caregiving role if the Department determines imminent safety concerns to child in care.

XII. Emergency preparedness and response planning

- A. Children's records for each child must include:
 - 1. Child's name, date of birth;
 - 2. Parent or guardian's names and telephone numbers;
 - 3. Emergency contact name and telephone number;
 - 4. Parent permission for emergency medical treatment
 - 5. Names of individuals authorized to pick up child as needed;
 - 6. Health information including any allergies or special needs;

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7. Current immunization record; or name of school for school-age children
 8. Medication permission as needed;
 9. Attendance records; and
 10. Dates of beginning and ending enrollment.
- B. All required records must be:
1. Reviewed and updated at least annually; and
 2. Made available to the department for verification of the contents.
- C. Child care provider must have written procedures for an emergency preparedness and response plan to include the following:
1. Emergencies resulting from a natural disaster or a man-caused event such as flood, fire, tornado, or responding to an intruder.
 2. Procedures for evacuation, relocation, shelter-in-place, lock-down, accommodation of infants and toddlers and children with disabilities or medical conditions, communication and reunification with parents, and continuity of operations.
- D. Child care providers must practice evacuations, shelter-in-place and lock down procedures outlined in the emergency preparedness and response plan a minimum of twice each calendar year for each procedure. Dates are to be documented for monitoring purposes.
- E. Child care providers must communicate the emergency preparedness and response plan to each new individual upon hire.
- F. All child care providers except for family day care are required to have liability insurance.
- G. Each vehicle used for transporting children must have liability insurance that covers the children being transported.

XIII. Handling, storage, and disposal of hazardous materials

- A. All toxic or hazardous substances such as cleaners, chemicals, and flammable materials are:
1. Inaccessible to children;
 2. Used according to manufacturer instructions;
 3. Stored in the original labeled container or labeled if stored in alternate container; and
 4. Disposed of properly.
- B. Bio-contaminants including blood, bodily fluids, and other infectious materials must be handled and disposed of properly. Diaper changing procedures to be followed:
1. Diapers must be changed promptly as needed in a designated area on a non-porous surface.

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2. The diaper changing area must be cleaned and disinfected using an approved sanitizing solution.
3. Diapers must be disposed of using a plastic-lined, hands-free, covered container.

XIV. Transportation

- A. When children are transported, the following must be met:
 1. Parents must provide written permission for transportation of their child.
 2. The vehicle must not carry more people than its stated passenger capacity.
 3. The required staff-child ratio must be maintained when children are in transport.
 4. The driver must be at least 18 years of age and have a valid driver's license to operate the type of vehicle being driven.
 5. When children are driven in a vehicle other than a bus, all children must be restrained in a car seat, booster seat, or seat belt appropriate for their weight and age.

XV. Pediatric first aid and cardiopulmonary resuscitation

- A. All child care providers providing direct care to children must have and maintain documentation of satisfactory completion of training in pediatric first aid and current certification in pediatric CPR, which includes a hands-on skills test. Until all providers have completed their training, they must work under supervision.

XVI. Reporting of child abuse and neglect

- A. All child care providers must personally report any suspected abuse or neglect immediately to Child Protective Services, law enforcement, or the States Attorney's office.
- B. All child care providers must read and sign a statement which defines child abuse and neglect and outlines the caregiver's responsibility to report all incidents of child abuse or neglect according to SDCL 26-8A-3 and 26-8A-8.

XVII. Night-time care

- A. When care is provided between 7:00 p.m. and 6:00 a.m., the following must be met:
 1. Center providers on duty must be awake and alert to the needs of children. Family providers must be accessible and responsive to children who awaken during the night and requires attention.
 2. Providers must provide a cot or bed for each child in overnight care.

XVIII. Parental access

- A. Parents must be allowed to observe their child or children at any time and immediately on request.

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- B. Access must be denied to a parent if the parent is restricted through a court order from having contact with the child and the provider has been provided with a copy of the court order.
- C. Parents must be notified immediately regarding any serious injury's received involving their child while attending the program.
- D. Parents must be notified within 24 hours by the provider regarding changes in circumstances that may impact the program operation to include registration or license suspension, or revocation; program location; and changes in ownership.

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