

WAC 110-300-0358 Capacity waiver for family home providers. (1)

Pursuant to RCW 43.216.692, the department may waive the limit established in RCW 43.216.010 (1)(c) that restricts family home providers from serving more than 12 children.

(2) Providers must apply to the department in writing to request waivers to serve more than 12 but not more than 16 children. To apply in writing, family home providers must use the process prescribed by the department.

(3) The department will consider the following criteria to determine whether to grant, continue, or rescind waivers to family home providers' total capacity of 12 children:

(a) **The licensee's years' of experience providing early learning services.** A provider must have at least three years' of experience to be eligible for a waiver under this section. To satisfy the three years' experience requirement, the family home provider must have served for a total of three years or more in one or more of the following child care roles: Center director, program supervisor, family home licensee, or other similar role in a child care setting.

(b) **The providers licensing history.** The licensee must be operating under a full, nonexpiring family home license to be approved for a waiver under this section.

(c) **Available square footage:**

(i) There must be at least 35 square feet of licensed, accessible indoor space for each child included in the total capacity.

(ii) There must be an additional 15 square feet of licensed, accessible indoor space for each child under the age of 24 months included in the total capacity.

(iii) There must be at least 75 square feet of licensed, accessible outdoor space for each child included in the total capacity. Alternatively, a family home provider may develop a plan to rotate groups of children to play outdoors or a department-approved plan to use an off-site play area.

(d) **Staffing qualifications when operating with the 13 to 16 children present:**

(i) The licensee must have an ECE short certificate or equivalent, as approved and verified in the electronic workforce registry by the department.

(ii) When the licensee is not on-site, they must designate a person on-site who meets the requirements of this subsection to manage the early learning program.

(iii) Additionally, at least one staff person or volunteer working on-site must have an ECE initial certificate or equivalent.

(e) **Staff-to-child ratios and age group limits.** When operating with 13 to 16 children:

A provider licensed to care for children ages:

(i) Two years old and above must not exceed a maximum staff-to-child ratio of 1:8;

(ii) Under two years of age must not exceed a maximum staff-to-child ratio of 1:6; and

(iii) Under two years of age may have up to six children attend at any one time under the following conditions:

(A) Five children under two years of age may attend at any one time if at least one of those children can walk independently.

(B) Six children under two years of age may attend at any one time if at least two of those children can walk independently.

(f) **The intended use of licensed space.** Plans to use the space must include details regarding napping, supervision, and diapering, if

applicable. A waiver granted under this section does not allow a licensee to provide overnight care for more than 12 children.

(g) **The emergency preparedness plan.** Licensees granted a waiver under this section must follow:

(i) WAC 110-300-0470.

(ii) The emergency plan must account for the total capacity of children requested.

(iii) The early learning program space must have emergency lighting for interior stairs that automatically turns on when electrical power goes out. Such emergency lighting may include, but is not limited to, battery operated overhead lights.

(iv) Any kitchen within the early learning program space or used by and connected to the early learning program space must have:

(A) At least one fire extinguisher or one can of fire extinguisher aerosol spray; and

(B) A heat detector.

(v) The early learning program staff must be able to demonstrate, at least annually to licensing staff, the ability to evacuate all early learning staff and children from inside the home to a safe location outside the home in two minutes or less.

(h) **The number of working, accessible toilets and sinks.**

(i) There must be a ratio of at least one working flush toilet and one handwashing sink for every 15 household members, staff, and requested capacity of children.

(A) A child in diapers does not count for purposes of toilet calculations until the child begins toilet training.

(B) Staff persons and household members may use toilets and handwashing sinks located outside of licensed space on the premises.

(ii) A provider whose facility relies on a private septic system must provide to the department verification from the local health jurisdiction the system can accommodate the total number of household members, staff, and requested capacity of children.

(i) **The number and variety of early learning materials.** For the total capacity requested there must be a sufficient number and variety of materials to engage children in the early learning program.

(j) **The total capacity the provider is requesting.**

(4) A waiver granted under this section may be time specific or may remain in effect for as long as the family home provider continues to comply with the waiver's conditions. If the waiver is time-limited, the provider must not exceed the time frame established by the department.

(5) Before the provider begins providing care for 13 to 16 children pursuant to a waiver under this section:

(a) The waiver must be approved in writing by the department secretary or the secretary's designee; and

(b) The licensee must provide documentation to the department from the city or county within which the early learning program operates (or a third party approved by the city or county) that states the early learning program space and structures meet local building codes and the requirements of the department's Family Home Child Capacity Waiver inspection checklist.

(6) A denial of a waiver request is not an enforcement action as described in RCW 43.216.010 and is not subject to an appeal by a provider.

(7) The department may rescind a waiver granted under this section at any time including, but not limited to, the following reasons:

- (a) The provider no longer meets the criteria described in this section;
 - (b) The department issues an enforcement action against the provider;
 - (c) The department and the provider enter into a facility licensing compliance agreement;
 - (d) The department determines that continued operation under the waiver does or may harm the health, safety, or well-being of enrolled children;
 - (e) A licensing rule that was considered in granting the waiver is repealed or amended; or
 - (f) A license is transferred pursuant to RCW 43.216.305 and WAC 110-300-0011 and the conditions of the waiver can no longer be met.
- (8) A family home provider granted a waiver under this section must inform the parents and guardians of enrolled children of the approved waiver:
- (a) Prior to operating with 13 to 16 children for the first time; and
 - (b) When a new child or new family is enrolled.

[Statutory Authority: Chapters 43.216 and 42.56 RCW, RCW 43.216.692, 43.216.020, 43.216.250, 42 U.S.C. §§ 9857-9858r, and 45 C.F.R. part 98. WSR 25-01-087, s 110-300-0358, filed 12/13/24, effective 1/13/25. Statutory Authority: RCW 43.216.692. WSR 22-03-016, § 110-300-0358, filed 1/7/22, effective 2/7/22.]