

WSR 22-03-016
PERMANENT RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed January 7, 2022, 3:38 p.m., effective February 7, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Establish conditions for waiving licensed family home child cares' capacity to serve more than 12 children.

Citation of Rules Affected by this Order: New WAC 110-300-0358; and amending WAC 110-300-0355.

Statutory Authority for Adoption: RCW 43.216.692.

Adopted under notice filed as WSR 21-20-111 on October 4, 2021.

Changes Other than Editing from Proposed to Adopted Version:

- Clarification inserted in WAC 110-300-0358(3) to describe all possible department actions following consideration of waiver applications;
- WAC 110-300-0358 (3)(c) revised to allow for equivalencies that satisfy the education requirement;
- WAC 110-300-0358 (3)(d) revised to expand staff-to-child ratio from 1:6 to 1:8, except when caring for children under two years of age;
- WAC 110-300-0358 (3)(g) revised to allow household members and staff to use toilets and handwashing sinks on the premises outside of licensed space; and
- A new subpart inserted in WAC 110-300-0358(7) to give additional example of grounds for rescission.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 7, 2022.

Brenda Villarreal
Rules Coordinator

OTS-3317.4

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0355 Family home capacity, ratio, and group size.

(1) The department issues initial or nonexpiring family home licenses for up to (~~twelve~~) 12 children. The department will not issue a fam-

ily license to care for more children than permitted by the rules in this chapter but may issue a license to care for fewer than the maximum allowable enrolled children. Family home licenses state:

(a) The maximum number of children that may be in care at any one time (total capacity); and

(b) The age range of children allowed in care.

(2) The department determines capacity for a family home early learning program after considering:

(a) Square footage of the early learning program;

(b) An early learning provider's years of experience in licensed child care (experience must be from working as a center director, program supervisor, lead teacher, family home licensee, or another similar role in a child care setting);

(c) A provider's education and ongoing training;

(d) The age range requested or approved by the department;

(e) The amount of developmentally appropriate equipment, materials, and toys an early learning program can provide children to use;

(f) A provider's licensing history with the department; and

(g) The number of qualified staff available to meet staff-to-child ratios.

(3) A family home licensee must not exceed the total capacity or age range stated on the child care license at any time except as provided in this section and WAC 110-300-0358. All children on the premises, signed in to child care, on an off-site trip from the early learning program, or being transported by the early learning program staff are counted in capacity including the children of staff.

(a) A family home licensee must receive department approval to care for a child with special needs, pursuant to WAC 110-300-0300, if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age (~~nine-teen~~) 19 and must be counted in both capacity and staff-to-child ratio.

(b) A child with special needs who requires individualized supervision pursuant to WAC 110-300-0300 counts towards capacity but does not count in the staff-to-child ratio.

(c) A child who turns (~~thirteen~~) 13 years old permitted by chapter 110-15 WAC and who must be counted in both capacity and staff-to-child ratio.

(4) Any child birth through (~~twelve~~) 12 years old on the premises, signed in to the child care, on an off-site trip from the early learning program, or being transported counts in capacity. This includes a family home licensee's own children, children of staff, or visiting children not accompanied or supervised by an adult.

(5) A family home licensee must provide qualified staff to fulfill the staffing requirements and staff-to-child ratios during operating hours, including off-site activities and when transporting children in care.

(6) A family home licensee must provide additional staff, pursuant to WAC 110-300-0350, when children are participating in water activities or activities near water.

(7) When applying for an initial or nonexpiring family home license, a family home licensee with less than one year of experience may request from the department a capacity of up to six children, birth through (~~twelve~~) 12 years of age.

(a) A maximum of three children may be under two years of age.

(b) If there are three children under two years of age, one of these children must be able to walk independently.

(8) When applying for an initial or nonexpiring family home license, a family home licensee with at least one year but less than two years of experience and:

(a) Working alone may request a capacity of up to eight children ages two through (~~twelve~~) 12 years of age, with a maximum of four children under three years of age.

(b) Working with a qualified assistant may request a capacity of up to nine children birth through (~~twelve~~) 12 years of age with a maximum of four children under two years of age.

(9) When applying for an initial or nonexpiring family home license, a family home licensee with at least two years' experience and:

(a) Working alone may request a capacity of up to (~~ten~~) 10 children ages three years through (~~twelve~~) 12 years of age;

(b) Working alone may request a capacity of up to (~~twelve~~) 12 children for school age children only; and

(c) Working with a qualified assistant, may request a capacity of up to (~~twelve~~) 12 children birth through (~~twelve~~) 12 years of age with a maximum of six children under two years of age with two children being able to walk independently.

(10) A family home licensee, with two years of experience, may request a license for birth to (~~twenty-four~~) 24 months of age with a maximum group size of eight when:

(a) There are two staff present with the group consisting of one staff who meets the qualification of the licensee and another who meets the qualifications to be counted in ratio;

(b) The staff-to-child ratio is 1:4;

(c) Fifteen additional square feet are provided for each infant or toddler; and

(d) A second staff member is present whenever:

(i) More than two children in care do not walk independently; or

(ii) When there are more than four children in care.

(11) The staff-to-child ratio is determined by the ages and number of children in care. Two early learning program staff are required anytime:

(a) More than six children are in care and any child in care is under two years of age;

(b) More than eight children are in care and any child in care is under three years of age; or

(c) More than (~~ten~~) 10 children are in care and any child is under school age.

[WSR 18-15-001, recodified as § 110-300-0355, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0355, filed 6/30/18, effective 8/1/19.]

NEW SECTION

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

Pursuant to section 313, chapter 199, Laws of 2021, 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) Family home providers must apply to the department in writing to request waivers to serve more than 12 children. To apply in writ-

ing, 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 family home 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) **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 infant or toddler 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.

(c) **Staffing qualifications:**

(i) The licensee must have an ECE short certificate or equivalent when operating with 13 or more children. 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.

(ii) In addition to the requirements in (c)(i) of this subsection, at least one staff person or volunteer working on-site must have an ECE initial certificate or equivalent when operating with 13 or more children.

(d) **Staff-to-child ratios and age group limits:**

(i) A family home provider licensed to care for children ages two years old and above must not exceed a maximum staff-to-child ratio of 1:8 when operating with 13 or more children.

(ii) A family home provider licensed to care for children under two years of age must not exceed a maximum staff-to-child ratio of 1:6 when operating with 13 or more children.

(iii) A family home provider licensed to care for children under two years of age may have up to six children under two years of age 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.

(iv) A family home provider licensed to care for children under two years of age must not have more than six children under two years of age attend at any one time;

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

(f) **The emergency preparedness plan.** The emergency plan must account for the total capacity of children requested.

(g) **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 family home 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.

(h) **The provider's licensing history.**

(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 family home provider implements a waiver under this section, the waiver must be approved in writing by the department secretary or the secretary's designee.

(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 or more children for the first time; and

(b) When a new child or new family is enrolled.

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