

Chapter HSS 55

DAY CARE FOR CHILDREN

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Note: Sections HSS 55.01 to 55.44 as they existed on October, 1984 were repealed and new sections HSS 55.01 to 55.44 were created effective November 1, 1984.

PREFACE

Section 48.65, Stats., requires that persons operating day care centers for children be licensed. The legislative history of s. 48.65, Stats., clearly indicates that it not only includes family and group day care centers but also day camps which provide, for compensation, care and supervision for 4 or more children under 7 years of age for less than 24 hours a day. Therefore, the department has developed rules, some of which apply to all day care centers including day camps, while others recognize and make provision for certain unique differences in the environmental and the programmatic aspects of each type of care.

The statute also requires that the department establish rules which must be met in order to qualify for a license and which protect and promote the health, safety and welfare of the children in a day care center. Chapter HSS 55 represents the *minimum* level of acceptable care that a license may provide to children in a day care center in Wisconsin. These rules should not be confused with accreditation by professional organizations which is based upon conformity with ideal rather than minimal standards, or with certification of day care providers for purchase of services with public funds.

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Clearly, the fact that a day care center is licensed in no way diminishes the responsibility of parents for vigilance in seeing that their children are receiving care which protects their physical well-being and encourages healthy intellectual and emotional development.

Whenever the rules in this chapter indicate that materials such as a request for a variance, an application for licensure or a complaint about a center are to be sent to or may be requested from the department, the specific departmental agency to contact is the department's regional office serving the geographic area of the state in which the day care center is located. If the regional office address is unknown to the day care center operator, a parent or other interested person, then he or she may get the address from the Office for Children, Youth and Families, Division of Community Services, P.O. Box 7851, Madison, WI 53707 (608-266-3036).

### Subchapter I — General Provisions

**HSS 55.01 Scope.** Sections HSS 55.01 to 55.10 apply to group day care centers for children and day camps for children.

**History:** Cr. Register, October, 1984, No. 346, eff. 11-1-84; am. Register, August, 1989, No. 404, eff. 9-1-89.

**HSS 55.02 Authority and purpose.** (1) **AUTHORITY.** Subchapters I, III and IV are promulgated under the authority of s. 48.67, Stats.

(2) **PURPOSE.** The purpose of this chapter is to protect and promote the health, safety and welfare of children in day care centers in Wisconsin.

(3) **CONSTRUCTION.** This chapter shall be liberally construed to effect the objectives in sub. (2).

(4) **EXCEPTION TO RULES.** The department may grant a variance to a requirement of this chapter when it is assured that the health, safety and welfare of the children served will not be jeopardized. A request for a variance shall be in writing, shall be sent to the department, and shall include justification for the requested action and an explanation of the alternative provisions planned to meet the intent of the rule.

**History:** Cr. Register, October, 1984, No. 346, eff. 11-1-84; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, August, 1989, No. 404.

**HSS 55.03 Applicability.** This chapter applies to all day care centers, whether the facility in which the child care and supervision is provided is known as a day care center, day camp, camp, day nursery, nursery school, preschool, head start or other designation, except that it does not apply to family day care centers which are regulated under ch. HSS 45 or to:

(1) Group lessons to develop a talent or skill, such as dance or music, social group meetings and activities, group athletic activities and religious education classes where a child attends for 2 hours or less a day or 5 hours or less a week;

(2) Care and supervision while the parents are on the premises and are engaged in shopping, recreation or other non-work activities;

(3) Seasonal programs of 10 days or less duration in any 3-month period, including day camps, vacation bible school and holiday child care programs;

(4) Care and supervision in emergency situations; and

Register, August, 1989, No. 404

(5) Care and supervision while the parent is employed on the premises if the parent's child receives care and supervision for no more than 3 hours a day.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; emerg. am. eff. 4-22-85; am. Register, August, 1985, No. 356, eff. 9-1-85; am. (intro.), Register, August, 1989, No. 404, eff. 9-1-89.

**HSS 55.04 Definitions. In subchs. I, III and IV:**

(1) "Assistant child care teacher" means a child care worker who works under the supervision of a child care teacher.

(2) "Base camp" means the permanent premises, public or private, on which the day camp is operated.

(3) "Camp director" means the individual on the campsite who is responsible for the administration of the camp, including program operations, business operations, food service, health service, and other supportive services.

(4) "Care" means providing for the safety and the developmental needs of a child in a group day care center, family day care center or day camp.

(5) "Child care teacher" means a child care worker who plans and implements daily activities for a designated group of children.

(6) "Child care worker" means an adult in a group day care center who meets the qualifications for child care teacher under s. HSS 55.32 (1) (c) or assistant child care teacher under s. HSS 55.32 (1) (d).

(7) "Compensation" means salary or wage or other material consideration such as gifts or compensatory labor received for the care and supervision of children. "Compensation" does not include cooperative arrangements made between 2 or more parents for the exchange of child care and supervision, and the payments made by them for the actual cost of equipment, supplies or facilities incidental to the operation of the cooperative arrangements.

(8) "Counselor" means a staff member who works directly with children.

(9) "Day camp" or "camp" means a licensed day care center that provides an experience in a seasonal program oriented to the out-of-doors for periods less than 24 hours a day.

(10) "Day care center" or "center" means a licensed facility where a person, other than relative or guardian, provides care and supervision for 4 or more children under 7 years of age, for less than 24 hours a day and for compensation.

(11) "Department" means the department of health and social services unless otherwise noted.

(12) "Family day care center" means a center that provides care and supervision for 4 to 8 children.

(13) "Field trip" means any experience a child has away from the premises of the center while under the care of center staff.

(14) "Group" means a specific number of children who have the same child care worker responsible for the children's well-being and meeting the children's basic needs and who are cared for in the same self-contained room or area at the center.

(15) "Group day care center" means a center that provides care and supervision for 9 or more children.

(16) "Infant" means a child under one year of age.

(17) "Licensee" means the corporation, individual, partnership or nonincorporated association or cooperative which has legal and financial responsibility for the operation of a day care center and for meeting the licensing rules.

(18) "Night care center" means a group day care center which operates during any time between 9:00 p.m. and 5:00 a.m.

(19) "Parent" means either "parent" as defined in s. 48.02 (13), Stats., or "guardian" as defined in s. 48.02 (9), Stats.

(20) "Parent cooperative" means a center organized by parents for their preschool children in which the parents have decision-making authority to establish and change policy, program and personnel practices.

(21) "Parochial or private school" means an educational program which meets all the criteria specified under s. 118.165 (1), Stats., or as determined by the superintendent of public instruction under s. 118.167, Stats.

(22) "Physician" has the meaning prescribed in s. 448.01 (5), Stats.

(23) "Premises" means a tract of land with buildings, structures or shelters on it.

(24) "Self-contained room or area" means a room separated by permanent walls or an area separated by permanent or portable partitions or dividers acting as a visual barrier which:

(a) Is reserved for a specific group of children; and

(b) Contains the indoor equipment and furnishings required for that group.

(25) "Supervision of children" means guidance of the behavior and activities of children for their health, safety and well-being.

(26) "Supervision of staff" means guidance of the behavior and activities of center employees which may include provision of instructions to carry out activities for limited periods of time out of sight or hearing of the supervisor.

(27) "Toddler" means a child at least one year of age but less than 2 years of age.

(28) "Volunteer" means a person who agrees to give time, without compensation, to provide transportation or to work with children in a day care center.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; am. (18), r. (24), renum. (25) to (29) to be (24) to (28), Register, August, 1989, No. 404, eff. 9-1-89; correction in (Intro.) made under s. 13.93 (2m) (b) 7, Stats., Register, August, 1989, No. 404.

Register, August, 1989, No. 404

HSS 55.05 Licensing administration. (1) LICENSING PROCEDURES. (a) A person making an inquiry to the department about obtaining a license to operate a group day care center or a day camp shall be:

1. Provided with the relevant parts of this chapter;
2. Given other written materials or listings of publications about establishing a day care center;
3. Offered an opportunity to meet with a departmental representative to discuss the materials;
4. Supplied with the necessary forms if licensing is desired; and
5. Assisted through the licensing process by a departmental representative.

Note: The licensure application form, DCS-102, may be obtained from any department regional office.

(b) An applicant shall file an application and other materials required for group day care center or day camp licensure and licensure renewal on forms provided by the department at least:

1. Sixty days prior to the date proposed for the center to begin operating;
2. Except for day camps, 30 days prior to the end of the current licensing period;
3. Forty-five days prior to opening an additional center;
4. Thirty days prior to changing the address of the center; and
5. Thirty days prior to new ownership of the center.

(c) Group day care centers and day camps shall include the following materials when submitting an application for licensure:

1. A clearly defined statement of purpose as it relates to the provision of child care services;
2. A signed statement by the applicant or licensee accepting legal responsibility for complying with applicable parts of this chapter;
3. The articles of incorporation and by-laws if the center is organized as a corporation, association or cooperative;
4. A signed authorization which permits the department to make whatever investigation it considers necessary for the verification of pertinent application information;

5. Specifications regarding the center's premises as follows:

a. Group day care applicants shall submit a diagrammatic floor plan of the center, including room dimensions and room usage, and a diagram of the outdoor areas, including area dimensions, location and enclosures;

b. Day camp applicants shall submit a general description of the camp area, geographic location and size of the base camp; and

c. Day camps operating without a base camp and having a program consisting primarily of day trips shall submit the proposed itinerary of day trips to the department.

6. Group day care and day camp applicants shall include a written delegation of administrative authority signed by the licensee which outlines the organizational structure and designates, in a chain of command form, those persons on the premises in charge of the center for all hours of operation;

8. Day camp applicants shall include:

a. A statement from the state laboratory of hygiene or a state approved laboratory indicating that the water source has been tested and found to be safe; and

b. The name, address and telephone number of the person to be contacted by the licensing representative for the pre-camp licensing review.

(d) Within 20 working days after receiving an application for initial licensure, a departmental representative shall contact the applicant in person or by phone and develop a check list for the applicant to utilize in meeting pre-licensing requirements, including:

1. Necessary building inspections;
2. Required equipment, furnishings and supplies;
3. Requirements for staffing and staff qualifications;
4. Required safety and sanitation equipment and supplies; and
5. Required written policies and procedures.

(e) When the applicant determines that all requirements on the check list have been met, the applicant shall notify the departmental representative.

(f) Within 20 working days after the notification under par. (e) the departmental representative shall survey the day care center site to determine whether the applicant has complied with all of the requirements.

(g) When the applicant is found to be in compliance with all requirements, the department shall issue a day care center license within 5 working days from the date of completing the survey study.

(h) If the applicant is not in compliance, the department shall specify in writing the areas of non-compliance and the applicant shall have an opportunity to make the necessary changes and shall be re-surveyed within 20 working days after notifying the departmental representative.

(2) AMENDMENT TO LICENSE. A written request for an amendment to the license shall be submitted to the department by the licensee before changes are made in the conditions of the current license such as maximum number of children, age range of children, hours, days of the week, months of the year in operation or change in the name of the center.

(3) TERMS OF LICENSE. (a) The number of children under 7 years of age in care of the center at any one time may not exceed the number for which the center is licensed.

(b) The age of children served may not be younger or older than the age range specified in the terms of the license.

(c) The hours, days and months of a center's operation may not exceed those specified in the license.

(4) **ADDITIONAL LICENSE.** A licensee seeking licensure for an additional center location shall demonstrate compliance with applicable parts of this chapter in the operation of the existing center.

(5) **CONDITION OF LICENSURE.** The department may refuse to grant a license or may revoke a license if the licensee, applicant or proposed or current employe or volunteer:

(a) Is the subject of a pending criminal charge if the charge substantially relates to the circumstances of caring for children or activities of the center;

(b) Has been convicted of a felony, misdemeanor or other offense the circumstances of which substantially related to the care of children or activities of the center;

(c) Has been determined to have abused or neglected a child pursuant to s. 48.981, Stats.; or

(d) Is the subject of a court finding that the person has abandoned his or her child, has inflicted sexual or physical abuse on a child or has neglected or refused, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of a child.

(6) **SUMMARY SUSPENSION OF A LICENSE.** (a) Under the authority of s. 227.51 (3), Stats., the department may order the summary suspension of a license and, therefore, the closing of a day care center following a finding of imminent danger to the health, safety or welfare of the children in care. A finding of imminent danger may be based on, but not limited to, the following:

1. Failure to provide environmental protections such as heat, water, electricity or telephone service;

2. The licensee, employe or volunteer has been convicted of or has a pending charge for a crime against life or bodily injury;

3. The licensee, employe or volunteer has been convicted of a felony, misdemeanor or other offense or has a pending criminal charge which substantially relates to the circumstances of caring for children or activities of the center; or

4. The licensee, employe or volunteer is the subject of a current investigation for alleged child abuse or neglect pursuant to s. 48.981, Stats.

Note: Examples of actions the department will consider in making determinations under s. HSS 55.05 (6) and (7), are: abuse and neglect of children; sexual assault; abuse of residents of facilities; crimes against life and bodily security; kidnapping; abduction; arson of buildings or property other than buildings; robbery; receiving property from children; crimes against sexual morality, such as enticing a minor for immoral purposes or exposing minors to harmful materials and interfering with the custody of a child. The list is illustrative. It is not all-inclusive of the types of offenses that may be considered.

(b) An initial order to close may be a verbal order by a departmental representative but shall be approved at a regional administrative level

before it becomes effective. The department shall within 72 hours of the approval either permit the reopening of the center or initiate proceedings in accordance with s. 227.51 (3), Stats., for the revocation of the license to operate. A preliminary hearing on the revocation shall be provided within 10 working days of the initial order to close.

(7) **EFFECT OF NOTICE TO REVOKE OR DENY A LICENSE.** The department shall provide a center with a written 30-day notice of intent to revoke or deny a license. Upon receipt of that notice and during any revocation or denial procedures which may result, a day care center may not accept for care any child not enrolled as of the date of receipt of the 30-day notice without the written approval of the department.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; r. (1) and (2) (c) 7., renum. (2) (a) to (c) 6. and 8. and (d) to (h) and (3) to (8) to be (1) (a) to (c) 6. and 8. and (d) to (h) and (2) to (7) and am. (1) (a) (intro.), (b) (intro.), (c) (intro.) and 5. a., Register, August, 1989, No. 404, eff. 9-1-89.

**HSS 55.06 Complaints.** All complaints concerning a licensed or illegally operating day care center shall be submitted to the department by telephone, letter or personal interview. Complaints will be investigated by a licensing representative of the department. A written report of the findings of the investigation will be sent to the complainant upon request.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

**HSS 55.07 Non-discrimination, confidentiality and reporting child abuse.**  
(1) **DISCRIMINATION PROHIBITED.** The licensee shall ensure that the day care center does not discriminate on the basis of age, race, color, sex, sexual orientation, creed, handicap, national origin or ancestry against:

(a) Any employe or applicant for employment, in regard to hire, tenure or term, condition or privilege of employment as specified in the Fair Employment Act. ss. 111.31 to 111.395, Stats.; or

(b) Any enrolled child and family or any applicant for enrollment in regard to admission, privilege of enrollment or discharge condition except where it is a reasonable and necessary age requirement specified under this chapter.

(2) **CONFIDENTIALITY OF RECORDS.** The licensee is responsible for compliance by the day care center with s. 48.78, Stats., and this subsection.

(a) Persons having access to children's records may not discuss or disclose personal information regarding the children and facts learned about children and their relatives. This does not apply to:

1. The parent or a person authorized in writing by the parent to receive such information; or

2. Any agency assisting in planning for the child when informed written parental consent has been given.



Subchapter II — Additional Requirements for Family Day Care Centers

Note: See ch. HSS 45 for requirements for family day care.

HSS 55.20 Scope. History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; r. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 55.21 Operations requirements. History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; r. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 55.22 Day care provider. History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; r. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 55.23 Home. History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; r. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 55.24 Child. History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; r. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 55.25 Additional requirements for infant and toddler care. History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; r. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 55.26 Additional requirements for night care. History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; r. Register, August, 1989, No. 404, eff. 9-1-89.

HSS 55.27 Additional requirements for care of school-age children. History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; r. Register, August, 1989, No. 404, eff. 9-1-89.

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