

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER d: LICENSING ADMINISTRATION

PART 377
FACILITIES AND PROGRAMS EXEMPT FROM LICENSURE

Section

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AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10].

SOURCE: Adopted and codified at 7 Ill. Reg. 7288, effective June 15, 1983; amended at 9 Ill. Reg. 11282, effective July 15, 1985; amended at 11 Ill. Reg. 14013, effective August 15, 1987; amended at 17 Ill. Reg. 252, effective December 31, 1992; amended at 28 Ill. Reg., effective February 15, 2004.

Section 377.1 Purpose

These rules clarify the conditions certain child care facilities and programs must meet in order to qualify as exempt from licensure as child care facilities under the Child Care Act of 1969. Facilities and programs not meeting conditions enumerated herein are subject to licensure as child care facilities.

Section 377.2 Definitions

"Accredited" means accredited by the North Central Association of Schools and Colleges, its regional counterparts, or the National Accreditation Council.

"Child" means any person under 18 years of age [225 ILCS 10/2.01].

"Child care facility" means any person, group of persons, agency, association, or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody, in any facility as defined in the Act, established and maintained for the care of children. [225 ILCS 10/2.05].

"Church" means "religious institution" as defined in this Section.

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"Day care center" means any child care facility which regularly provides day care for less than 24 hours per day for more than 8 children in a family home, or more than 3 children in a facility other than a family home, including senior citizen buildings. The term does not include:

- *programs operated by public or private elementary school systems or secondary level school units or institutions of higher learning that serve children who shall have attained the age of 3 years; or*
- *private entities on the grounds of public or private elementary or secondary schools that serve children who have attained the age of 3 years, except that this exception applies only to the facility and not to the private entities' personnel operating the program;*
- *programs or that portion of the program which serves children who shall have attained the age of 3 years and which are recognized by the State Board of Education;*
- *educational program or programs serving children who shall have attained the age of 3 years and which are operated by a school which is registered with the State Board of Education and which is recognized or accredited by a recognized national or multistate educational organization or association which regularly recognizes or accredits schools;*
- *programs which exclusively serve or that portion of the program which serves handicapped children who shall have attained the age of 3 years but are less than 21 years of age and which are registered and approved as meeting standards of the State Board of Education and applicable fire marshal standards;*
- *facilities operated in connection with a shopping center or service, religious services or other similar facility where transient children are cared for temporarily while parents or custodians of the children are occupied on the premises and readily available;*
- *any type of day care center that is conducted on federal government premises;*
- *special activities programs, including athletics, crafts instruction and similar activities conducted on an organized and periodic basis by civic, charitable and governmental organizations;*
- *part day child care facilities, as defined in Section 2.10 of Act; or*
- *programs or that portion of the program which:*
 - *serves children who shall have attained the age of 3 years,*
 - *is operated by churches or religious institutions as described in Section 501(c)(3) of the federal Internal Revenue Code,*

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- *receives no governmental aid,*
- *is operated as a component of religious, nonprofit elementary school,*
- *operates primarily to provide religious education, and*
- *meets appropriate State or local health and fire safety standards.*

For purposes of this Section, "children who shall have attained the age of 3 years" shall mean children who are 3 years of age, but less than 4 years of age, at the time of enrollment in the program. [225 ILCS 10/2.09]

"Department" means the Illinois Department of Children and Family Services [225 ILCS 10/2.02].

"Elementary school" for purposes of this Part, means an educational program or facility which offers classes through the sixth grade and which satisfies the compulsory school attendance requirements of the School Code [105 ILCS 5] and either offers classes for the first through the sixth grade or offers classes from the levels of nursery school or kindergarten through at least the first grade with a plan to offer classes through the sixth grade within five years.

"Fee" means any charge that a parent is required to pay or agrees to pay directly or indirectly whether as money, goods, or services, for the care of a child.

"License" means a document issued by the Department of Children and Family Services which authorizes child care facilities to operate in accordance with applicable standards and the provisions of the Child Care Act of 1969.

"Parents" means persons assuming legal responsibility for the care and protection of a child on a 24-hour basis; includes guardian or legal custodian.

"Part day child care facility" means a facility conducted by a church, religious organization or social service agency in which individual children are provided care, on an intermittent basis, for up to 10 hours per 7 day week [225 ILCS 10/2.10], and which has notified the Department of its operation in accordance with Section 377.4 of this Part.

"Partially exempt program" means a child care program for children who have attained the age of three years and is operated by a private entity on grounds of a public or private elementary or secondary school where children have been attending school during the day. In a partially exempt program, the physical facility is exempt from Department regulations; however, the Department regulates the personnel and operating programs.

"Religious institution" or "religious organization," for purposes of the Part, means an entity which declared its intent to operate for religious purposes in securing its tax exempt status pursuant to 26 USC 501(c)(3) of the Internal Revenue Code.

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"School", for purposes of this Part, means an educational program or facility which satisfies the compulsory school attendance requirements of the School Code [105 ILCS 5].

"School system" means one or more schools operated by a public or private board of education or other central administrative body which exercises control over curriculum, staffing, admissions, and other educational policies.

"Social service agency", for purposes of this Part, means an organization exempt from taxation pursuant to 26 USC 501(c)(3) of the Internal Revenue Code that provides social services directed toward the accomplishment of one or more of the following purposes:

Protecting and promoting the welfare of children, including homeless, dependent, or neglected children;

Preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children;

Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing the break-up of the family where the prevention of child removal is desirable and possible;

Restoring to their families children who have been removed, by the provision of services to the child and the families;

Placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate;

Assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption;

Providing supportive services and living maintenance which contribute to the physical, emotional and social well-being of children who are pregnant and unmarried;

Providing shelter and independent living services for homeless youth; and placing and maintaining children in facilities that provide separate living quarters for children under the age of 18 years of age and older, unless a child 18 years of age is in the last year of high school education or vocational training, in an approved individual or group treatment program, or in a licensed shelter facility. The Department is not required to place or maintain children:

who are in a foster home; or

who are developmentally disabled, as defined in the Mental Health and Developmental Disabilities Code; or

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who are female children who are pregnant, pregnant and parenting or parenting; or

who are siblings;

in facilities that provide separate living quarters for children 18 years of age and older and for children under 18 years of age [20 ILCS 505/5].

(Source: Amended at 28 Ill. Reg., effective February 15, 2004)

Section 377.3 Day Programs Exempt From Licensure

- a) Whether called "schools", "child care centers", "nursery schools", "kindergartens", "day nurseries", or similar names, the following day programs are exempt from licensure as day care centers to the extent that their services are provided exclusively to children who have attained the age of 3 years:
- 1) *Programs operated by public or private elementary school systems; secondary school units; or institutions of higher learning. This exemption includes programs operated by institutions of higher learning as laboratories for the training of their adult students as part of their regular academic curriculum, whether the program is on the campus of the institution of higher learning or at other facilities controlled by the institution.*
 - 2) *Programs or that portion of programs recognized by the Illinois State Board of Education.*
 - 3) *Programs operated by a school registered with the Illinois State Board of Education and recognized or accredited by a national or multi-state educational organization or association which regularly recognizes or accredits schools such as Association Montessori Internationale or the American Montessori Society.*
 - 4) *Programs serving handicapped children less than 21 years of age which are registered with and approved by the Illinois State Board of Education and which meet the standards of the Illinois State Fire Marshal. [225 ILCS 10/2.09]*
 - 5) Programs providing primarily religious education as part of the instructional program of an elementary school operated by a church or religious organization which also meet the following criteria:
 - A) Receive no governmental aid or assistance other than exemption from taxation as a non-profit organization;
 - B) Comply with the fire safety standards of the Illinois State Fire Marshal (41 Ill. Adm. Code 100); or comply with local fire prevention and safety standards for schools which are equal to or higher than rules adopted by the Illinois State Fire Marshal; or

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comply with Illinois State Board of Education Rule 200, Efficient and Adequate Standards for the Construction of Schools (23 Ill. Adm. Code 175);

- C) Comply with the standards of the Illinois Department of Public Health (77 Ill. Adm. Code 750) or the local health department; and
 - D) Either offers classes for the first through the sixth grade or offers classes from the levels of nursery school or kindergarten through at least the first grade with a plan to offer classes through the sixth grade within five years.
- b) The Child Care Act of 1969 also exempts the following from licensure as day care centers:
- 1) *Facilities operated in connection with a shopping center or service, religious services, or other similar facilities, where transient children are cared for temporarily while parents or custodians of the children are occupied on the premises and readily available;*
 - 2) *Any type of day care center that is conducted on federal government premises; and*
 - 3) *Special activities programs, including athletics, crafts instruction and similar activities conducted on an organized and periodic basis by civic, charitable and governmental organizations. [225 ILCS 10/2.09]*
- c) Per the Child Care Act [225 ILCS 10/2.09(a)(ii)], partially exempt child care programs, as defined in Section 377.2 of this Part, are exempt from meeting the facility requirements of 89 Ill. Adm. Code 407 (Licensing Standards for Day Care Centers). The operating programs and staff are not exempt from licensing standards and shall be in compliance with Part 407 (Licensing Standards for Day Care Centers).
- d) Family homes that care for no more than 3 children under the age of 12 or that receive only children from a single household, for less than 24 hours per day, are exempt from licensure as day care homes. The three children to whom this exemption applies includes the family's natural or adopted children and any other persons under the age of 12 whether related or unrelated to the operator of the day care home.

(Source: Amended at 28 Ill. Reg., effective February 15, 2004)

Section 377.4 Part Day Child Care Facilities

- a) Part day child care facilities are required to provide written notification to the Department of their operation. The written notification shall include the following:

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- 1) The name of the church, religious organization or social service agency responsible for the facility;
 - 2) A copy of the trust instrument, certificate and articles of incorporation, articles of association, or other written instrument establishing the church, religious organization or social service agency;
 - 3) The address at which the part day child care facility operates or intends to operate;
 - 4) The name, address and telephone number of the person or persons responsible for on-site supervision of the program;
 - 5) The usual days and hours that the part day child care facility operates or intends to operate; and
 - 6) A notarized statement that
 - A) the facility complies with the standards of the Illinois Department of Public Health (77 Ill. Adm. Code 750) or the local health department;
 - B) the facility complies with the fire safety standards of the Illinois State Fire Marshal (41 Ill. Adm. Code 100). (Part day child care facilities operated in public school buildings may satisfy this requirement with a notarized statement that the facility meets the health and safety standards of the Illinois State Board of Education -SBE Rule 201, Building Specifications for Health and Safety in Public Schools (23 Ill. Adm. Code 185);
 - C) the facility does not provide care for any child for more than eight hours in any given day;
 - D) no child is provided care for more than 10 hours in a 7 day week; and
 - E) the facility provides at least one caregiver per 20 children.
- b) The church, religious organization or social service agency responsible for a continuing part day child care facility shall re-notify the

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Department, in writing, of its operation within two years of its original or last notification, and within thirty (30) days of a change in the information required by this Section.

- c) A church, religious organization or social service agency operating more than one program shall provide the Department a separate, written notification for each site from which a part day child care facility is operated under its sponsorship.
- d) A part day child care facility which operates more than 10 hours per 7 day week or charges fees is required to maintain a written record on each child which shall include the name(s) of the child's parent(s); the telephone number(s) at which the parent(s) can be reached during the hours the child is at the facility; and the number of hours each child is served (Ill. Rev. Stat. 1991, ch. 23, par. 2212.10).
 - 1) The facility staff shall refuse to release a child to any person, whether related or unrelated to the child, who has not been authorized, in writing, by the parent(s) or guardian to receive the child. Persons not known to the facility staff shall be required to provide a driver's license (with photo) or photo identification card issued by the Illinois Secretary of State to establish their identity prior to a child's release to them.
 - 2) The facility shall maintain a list of persons designated, in writing, by the parent(s) or guardian to whom the facility can be expected to discharge the child at least once per week. These persons, in addition to the parent(s) or guardian, shall constitute the primary list of persons to whom the child may be released. In addition, the facility shall maintain a contingency list of persons designated, in writing, by the parent(s) or guardian to whom the child may be released less frequently than once per week. When the child is released to a person on the contingency list, the facility shall maintain a record of the person to whom the child was released, and the manner that the child left the facility (whether on foot, by passenger car, by taxicab or other means of transportation.)
- e) Records required by this Section may be examined by the Department or its authorized agent to verify compliance with this Part, and shall be retained by the facility for 3 years.

(Source: Amended at 16 Ill. Reg., effective November 15, 1992)

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Section 377.5 Child Care Facilities Under Single Circuit Court

In accordance with 89 Ill. Adm. Code 361.5, child care facilities used solely by a single circuit court for the placement of minors adjudicated as wards of the Court under Section 5-7 of the Juvenile Court Act (Ill. Rev. Stat. 1981, ch. 23, par. 707-4) are exempt from licensure when approved by the Department. This approval shall follow written certification to the Department that the facility meets all of the standards established by the Department for licensing such facilities.

Section 377.6 License Required for Government Benefit

Any facility, program or agency otherwise exempt from licensure may apply for a child care license if such a license is required in order to qualify for a governmental benefit. Such entities shall be licensed upon compliance with licensing standards prescribed in the Department's administrative rules for the type of facility for which they seek licensure.

(Source: Amended at 9 Ill. Reg. 11282, effective July 15, 1985)

Section 377.7 Severability of This Part

If any court of competent jurisdiction finds that any rule, clause, phrase, or provision of this Part is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portions of this Part.

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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

POLICY GUIDE 2001.12

Day Camps

Distribution: L, and X

DATE: May 21, 2001
TO: All DCFS and Private Agency Licensing Staff and Supervisors
FROM: Jess McDonald, Director
EFFECTIVE: Immediately

PURPOSE

The purpose of this Policy Guide is to assist DCFS day care licensing staff in determining how to treat programs that operate during summer and other school holidays.

PRIMARY USERS

The primary users of this Policy Guide are Department licensing staff who license and monitor day care centers.

KEY WORDS

Camp, Day Camp, Summer Camp, Youth Camp Code, License-Exempt, Illinois Department of Public Health, Day Care Center, Replacement Programs, Declaratory Rulings.

IV. APPLICABLE SITUATIONS

A) Licensed Day Care Center (Subject to Licensure)

A licensed day care center that is subject to licensure may stop operating all or any part of its licensed child care program to operate a summer and/or school holiday replacement program that is exempt from DCFS licensure in the same space occupied by the licensed program/portion of the program or in a space at a different location/address only when the replacement program/portion of the program:

- 1) holds a valid license from the Illinois Department of Public Health (IDPH) to operate a "youth camp/day camp" under **77 Illinois Administrative Code, Part 810, Youth Camp Code**, or



- 2) has been determined by DCFS to be exempt from licensure under **89 Illinois Administrative Code, Part 377, Facilities and Programs Exempt from Licensure**, prior to the start of operation of the replacement program/portion of the program.

In addition to a copy of the license from the IDPH for a “youth camp” or “day camp” **or** a written request for DCFS to review the description of the proposed replacement program to determine its status under **Part 377, Facilities and Programs Exempt from Licensure**, the licensee must send the following documents to the licensing representative at least 60 days before the projected start date of the proposed replacement program/portion of the program:

- 1) a written statement that the center intends to temporarily voluntarily cease operation of its licensed program or a designated portion of its licensed program to operate a replacement program; and
- 2) the start date and end date of the proposed replacement program/portion of the program; and
- 3) a written description of the proposed replacement program/portion of the program; and
- 4) a written description of the location of the replacement program/portion of the program.

If the replacement program/portion of the program will operate at a location where a licensed program/portion of a program will continue to operate, the written description must describe how the program/portion of the program that will continue to operate under DCFS licensure will meet the requirements of Part 407.370 (b) which states: *“The building or portion of the building to which children from the center have access shall be used only for a program of child care during the hours that the center is in operation.”*

Note: Since licensing standards restrict the “sharing” of the licensed portion of the facility, it is essential that access to water, food, toilets, or other services that may be required by the proposed exempt program not be located in the areas where a licensed child care program will operate.

B) Licensed Day Care Center (Not Subject to Licensure)

A licensed day care center that is not subject to licensure as a “child care facility” but is licensed for governmental or other benefits may close down the licensed child care program/portion of its licensed program to operate a replacement program that is exempt from DCFS licensure during summer and/or other school holidays, in either the same space occupied by the licensed program/portion of the program or a space at a different location address that is not currently licensed by DCFS.

The licensee shall provide to the Department written notification of the change in the program status prior to the start of the replacement program.

Upon receiving such notification, the Department shall alter the center's license to reflect the changes to the licensed operation.

C) New Unlicensed Entity

When a new entity begins operating a "day camp" or "youth camp" during the summer or other school holidays and it is reported to the Department as an unlicensed "child care facility" or "day care facility," the Department shall refer the information/complaint to the Illinois Department of Public Health to determine if it is a day camp subject to IDPH licensing.

Note: The Department will not conduct an "unlicensed" facility investigation.

V. DCFS ACTION

Immediately upon receipt of a written request described in IV (A) above, the licensing representative shall submit the request to the licensing supervisor and the Regional Licensing Administrator (RLA).

Within 14 days of receiving the written request from the day care center, the licensing supervisor shall consult with the RLA to determine the exempt status of the proposed replacement program/portion of the program.

If the Licensing Supervisor and Regional Licensing Administrator determine that the replacement program/portion of the program meets the criteria of a program exempt from licensure, the licensing supervisor shall immediately:

- 1) inform the licensee/day care center, in writing, that the replacement program/portion of the program meets the criteria and is license-exempt and that the center's license will be altered to reflect the voluntary closing of the identified portions of the licensed program that will not operate at the day care center for the dates specified; and
- 2) alter the center's license to reflect the changes to the licensed operation.

If the Licensing Supervisor and Regional Licensing Administrator determine that the replacement program/portion of the program does **not** meet the criteria of a facility or program exempt from licensure, the licensing supervisor shall immediately:

- 1) inform the licensee/day care center, in writing, that the replacement program/portion of the program, as described, is not license-exempt and, therefore, continues to be subject to licensure in accordance with the Child Care Act of 1969 and **Part 407, Licensing Standards for Day Care Centers**, and operating such a program without a valid license is a violation of those statutes.
- 2) send a copy of the letter to the Regional Licensing Administrator and the Office of Child and Family Policy.

VI. SPECIAL INSTRUCTIONS FOR SUMMER 2001

For programs operating in the summer of 2001, notification to the Department under Section IV is to be made at least 30 days prior to the projected start date of the program. DCFS response time under Section V will be within 7 days of receiving a written request from a licensed day care center to review the proposed description of a replacement program to determine exempt status.

VII. QUESTIONS

Questions on this Policy Guide may be addressed to:

Office of Child and Family Policy
406 E. Monroe, Station # 65
Springfield, Illinois 62701
Telephone (217) 524-1983

VIII. FILING INSTRUCTIONS

File this Policy Guide directly behind **Part 377, Facilities And Programs Exempt From Licensure**.