

DRAFT 110-300-0358

Capacity waiver for family home providers.

(1) Pursuant to ~~RCW section 313, chapter 199, Laws of 2021~~ [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.

Commented [FT(1): Clerical fix

(2) Family home providers must apply to the department in writing to request waivers to serve more than 12 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 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.

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(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. A waiver granted under this section does not allow a Licensee to provide overnight care for 13 or more children.

(f) **The emergency preparedness plan--:**

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

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

(iii) Any kitchen within the early learning program space or used by and connected to the early learning program space must have at least one fire extinguisher or one can of fire extinguisher aerosol spray.

(iv) An early learning program must have a UL-listed residential fire alarm system that is monitored by a third party and that can detect smoke or heat throughout the entire indoor licensed space.

(v) The early learning program staff must be able to evacuate all early learning staff and children from inside the home to a safe location outside the home in two minutes or less. The department must monitor and time emergency evacuation drills under this section at least once every three months.

(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 Licensee must be operating under a full, nonexpiring family home license to be approved for a waiver under this section.

(ii) The Licensee must have an established pattern of improvement and correction when assessed any notice of non-compliance.

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Commented [FT(2): Overnight care of 13 or more children prohibited (12 or fewer still allowed)

Commented [FT(3): Emergency lighting

Commented [FT(4): Excludes flashlights b/c those do not count as emergency lighting

Commented [FT(5): Fire alarm system (monitored and UL-listed)

Commented [FT(6): 2-minute fire drill, monitored and timed by DCYF. But DCYF is still considering this provision.

Commented [CK(7): Emergency evacuation drill (not just fire)

Commented [FT(8): No initial license

(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~~ begins providing care for 13 or more children pursuant to a waiver granted under this section,

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

(b) The Licensee must provide to the department:

(i) Proof that the Licensee has day care insurance as defined in RCW 48.88.020 or is self-insured pursuant to chapter 48.90 RCW or proof that the Licensee notified the parents of enrolled children that the Licensee does not have such day care insurance; and

(ii) Documentation 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 Care Capacity Waiver Local Building 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 or more children for the first time; and

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

[Statutory Authority: RCW 43.216.692. WSR 22-03-016, § 110-300-0358, filed 1/7/22, effective 2/7/22.]

Commented [FT(9)]: OPTIONAL day care insurance coverage

Commented [FT(10)]: Verification from city or county building department or approved 3rd party

Commented [CK(11)]: Ensure space and structures meet family home waiver inspection checklist

Commented [FT(12)]: DCYF has not yet developed this checklist. This checklist will be based on DSHS's "Adult Family Home (AFH) Local Building Code Inspection Checklist" (find here: <https://www.dshs.wa.gov/altsa/residential-care-services/afh-building-inspections>)

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