



Legal Minute

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Got Kids?

Laws Affecting Home-based Day Care Providers

By Andrea Beleno, LAMP Staff Attorney

What is a home-based day care business?

There are three types of home-based day-care businesses: listed family homes, registered child care homes, and licensed child care homes.

Listed Family Homes: an adult called the “the primary caregiver,” provides care in his or her own home for one to three children (that are not related to the primary caregiver). The primary caregiver may also care for her own children, grandchildren, nieces, nephews, and other relatives as long as there are no more than a total of twelve children in the home. No inspections are conducted unless a report is received either alleging abuse or neglect of children or that the caregiver is subject to registration. The primary caregiver must be at least eighteen years old.

Registered Child Care Homes: the primary caregiver provides care in his or her own home for four to six children (plus up to six school-aged children **after** school hours). No more than twelve children can be in care at any time, including children related to the caregiver. Registered homes are usually inspected every one to three years. The primary caregiver must be at least twenty one years old (there are exceptions).

Licensed Child Care Homes: the primary caregiver provides care in his or her own home for up to twelve children (at any time), including the children related to the caregiver. The total number of children in care varies depending on the ages of the children. Licensed homes are usually inspected every ten to twelve months. The primary caregiver must be over twenty one years old.

What are the minimum standards for a home-based day-care business?

For all types of home-based day child care, (Listed Family Homes, Registered and Licensed Child Care Homes), the primary caregiver must:

- initiate background checks on the primary caregiver and anyone older than fourteen years old who is regularly in the home; and
- report suspected abuse, neglect, and exploitation.

In addition, Registered and Licensed Child Care Homes must follow the published Minimum Standard Rules, found on the Texas Department of Family and Protective Services website and in the Texas Administrative Code, and the licensing requirements in Chapter 42 of the Human Resources Code.

The primary caregiver in a registered or licensed child care home must:

- have a high school diploma or high school equivalent (some education obtained outside of the U.S.A. meets this requirement);
- take a course and obtain a certificate in CPR and first aid with rescue breathing and choking;
- complete the licensing orientation and obtain a certificate of completion;

- develop and implement the child care home's operational policies;
- comply with applicable minimum standards;
- ensure that all other caregivers and all household members comply with minimum standards;
- provide at least thirty feet of indoor activity space and eighty square feet of outdoor activity space for each child in care, outside. (It is possible to get approval for local park or school yard to serve as outdoor activity space.);
- ensure that parents can visit any time during all hours of operation to observe their child, the home's operation, and program activities, without having to secure prior approval; and
- for a licensed child care home, meet additional requirements of combinations of education and experience in a licensed child care center.

How can I start a home-based day child care business?

Starting a small business is not difficult. Home-based day care businesses are typically started as sole owner/proprietorships.

- (A) First choose a name for the business. Check to make sure no one else uses the same business name at the County Clerk's office or check the Comptroller's web site at www.cps.state.tx.us by looking at the Franchise Tax Account Status. Another option is to pay for an Assumed Name search on the Secretary of State's web site at www.sos.state.tx.us.
- (B) File an Assumed Name (DBA), which means "doing business as," at the County Clerk's office so that no one else can use the same business name. Fees are usually around \$10.00.
- (C) For Listed Family Homes, file a listing request form and pay an application fee of \$20.00. The fee will be payable on an annual basis as long as the business is in operation.
- (D) For Registered or Licensed Child Care Homes, submit an application to TDPRS. Licensing staff has twenty one days to review the paperwork. Applicants will be notified in writing that the application is complete and accepted for processing, incomplete, or that the materials submitted do not show compliance with the relevant laws or minimum standard rules. An applicant has three opportunities per year to submit all the required materials.
- (E) For Registered Child Care Homes, pay a non-refundable \$35.00 fee to the Child-Care Licensing Division, Texas Department of Protective and Regulatory Services. The fee will be payable on an annual basis as long as the business is in operation.
- (F) For Licensed Child Care Homes, pay a non-refundable \$35.00 application fee and a \$35.00 permit fee to the Child-Care Licensing Division, Texas Department of Protective and Regulatory Services. The permit fee will be payable on an annual basis as long as the business is in operation.

What are other legal requirements for home-based day child care business?

- Follow laws to keep children safe. No one may cause physical harm to a child. No one may consume or be under the influence of alcohol or controlled substances in the child care home. No one may smoke or use tobacco products during operating hours. Background checks are required for everyone aged fourteen years or older who will be present when children are there. Certain criminal convictions will bar individuals aged fourteen years or older from being in the child care home. Individuals who have been found to be perpetrators of child abuse or neglect may not be present at the child care home.
- Keep good records. Plan and keep menus of meals and snacks. Do not administer medicine without obtaining written permission and instructions from the parents of the child. Keep records to track children's attendance, outstanding balances due, and payments made by parents or public agencies.
- Small businesses must comply with zoning and lease provisions. Check with the local municipal or county government to make sure that a home-based business does not violate zoning laws. Tenants should check with landlords to make sure that running a small business does not violate a provision of the lease.
- Pay income taxes, employment taxes, and sales taxes!

For more information or to apply for small business legal services contact Andrea Beleno by phone at (512) 447-7707, ext. 333 or by e-mail at abeleno@trla.org.