

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

TITLE 89: SOCIAL SERVICES CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

PART 405

LICENSING STANDARDS FOR DAY CARE AGENCIES

Section

- 405.1 Purpose
- 405.2 Definitions
- 405.3 Effective Date (Repealed)
- 405.4 Application for License
- 405.5 Application for Renewal of License
- 405.6 Provisions Pertaining to License
- 405.7 Provisions Pertaining to Permits
- 405.8 Responsibilities of the Governing Body
- 405.9 Finances
- 405.10 Day Care Agency Administrator
- 405.11 Staff Examining Day Care Homes
- 405.12 Background Check
- 405.13 Recommendation for Licensure of Day Care Homes
- 405.14 License-exempt Day Care Homes
- 405.15 Supervision of Homes
- 405.16 Administrative Services
- 405.17 Referral of Children
- 405.18 Agreements with Day Care Homes
- 405.19 Records and Reports
- 405.20 Confidentiality of Records
- 405.21 Records Retention
- 405.22 Cooperation with the Department
- 405.23 Severability of This Part

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

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Section 405.1 Purpose

- a) The purpose of this Part is to prescribe the standards for licensure as a day care agency and to describe how to apply for a license.
- b) The licensing standards set forth in this Part are applicable to day care agencies as defined in the Child Care Act of 1969.

Section 405.2 Definitions

“Access to children” means an employee’s job duties require that the employee be present in a licensed child care facility during the hours that children are present in

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

the facility. In addition, any person who is permitted to be alone outside the visual or auditory supervision of facility staff with children receiving care in a licensed child care facility is subject to the background check requirements of this Part.

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

"Background check" means:

- a criminal history check via fingerprints of persons age 18 and over which are submitted to the Illinois State Police and the Federal Bureau of Investigation (FBI) for comparison to their criminal history records, as appropriate, or via a LEADS check of persons ages 13 through 17; and
- a check of the Child Abuse and Neglect Tracking System (CANTS) and other state child protection systems, as appropriate, to determine whether an individual is currently alleged or has been indicated as a perpetrator of child abuse or neglect; and
- a check of the Statewide Child Sex Offender Registry.

"CANTS" means the Child Abuse and Neglect Tracking System operated and maintained by the Illinois Department of Children and Family Services.

"Child" means any person under 18 years of age. (Section 2.01 of the Child Care Act of 1969 [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 Child Care Act of 1969, established and maintained for the care of children. (Section 2.05 of the Child Care Act of 1969)

"Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. (Section 2-5 of the Criminal Code of 1961 [720 ILCS 5/2-5])

"Day care agency" means any person, group of persons, public or private agency, association or organization which undertakes to provide one or more day care homes with administrative services including, but not limited to consultation, technical assistance, training, supervision, evaluation, and provision of or referral to health and social services under contractual arrangement.

"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 and that are not licensed as a day care home or group day care home, or more than 3 children in a facility other than a family home. Exclusions from this definition are listed in Section 2.09 of The Child Care Act of 1969.

"Day care homes" means family homes which receive more than 3 up to a maximum of 12 children for less than 24 hours per day. The number counted includes the

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

family's natural or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household. [225 ILCS 10/2.18]

"Department" means the Illinois Department of Children and Family Services. (Section 2.02 of the Child Care Act of 1969 [225 ILCS 2.02])

"Employee" means any staff person employed by a child care facility, and includes any substitute or assistant. This definition includes administrative, professional, and other support staff who have access to children.

"Governing body" means the board of directors of a corporation; otherwise, the term means the owner(s) or other person(s), agency, association or organization legally responsible for the operation of the day care agency.

"Initial background check" means the individual has cleared a check of the Child Abuse and Neglect Tracking System (CANTS) and the Statewide Child Sex Offender Registry.

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

"License applicant", for purposes of background checks, means the operator or person with direct responsibility for daily operation of the facility to be licensed. (Section 4.4 of the Child Care Act of 1969)

"Licensee" means those individuals, agencies, or organizations who hold a license or permit issued by the Department.

"License study" means the review of an application for license, on-site visit(s), interviews, and the collection and review of supporting documents to determine compliance with the Child Care Act of 1969 and the standards prescribed by this Part.

"Licensing representative" means those persons authorized by the Department under the Child Care Act of 1969 to examine facilities for licensure.

"Minor traffic violation" means a traffic violation under the laws of the State of Illinois or any municipal authority therein or another state or municipal authority which is punishable solely as a petty offense. (See Section 6-601 of the Illinois Driver Licensing Law [625 ILCS 5/6-601])

"Parents", as used in this Part, means the person(s) assuming legal responsibility for the care and protection of the child on a 24-hour basis; includes guardian or legal custodian.

"Permit" means a one-time only document issued by the Department of Children and Family Services for a six-month period to allow the individual(s), agency, or organization to become eligible for a license.

"Persons subject to background checks" means:

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

- the operator(s) of the child care facility; and
- all current and conditional employees of the child care facility; and
- any person who is used to replace or supplement staff; and
- any person who has access to children, as defined in Section 385.20, Definitions, of 89 Ill. Adm. Code 385, Background Checks.

If the child care facility operates in a family home, the license applicant(s) and all members of the household age 13 and over are subject to background checks, as appropriate, even if these members of the household are not usually present in the home during the hours the child care facility is in operation.

(Source: Amended at 21 Ill. Reg., effective April 1, 1997)

Section 405.3 Effective Date (Repealed)

(Source: Repealed at 21 Ill. Reg., effective April 1, 1997)

Section 405.4 Application for License

- a) The application for license shall be completed by the officers of the governing body of the day care agency or its authorized representative, on forms prescribed and furnished by the Department.
- b) For the application to be considered complete, the following shall be attached to the application:
 - 1) Articles of incorporation and by-laws, indicating that the agency's corporate status is in good standing with the Illinois Secretary of State;
 - 2) Statement of purpose(s) and policies as required by Section 405.8(c)(6);
 - 3) List of officers, board members and committees of the governing body;
 - 4) Three personal references for each member of the governing body attesting to their character, reputation, and ability to assume responsibility for the administrative services to be offered by the day care agency;
 - 5) Annual operating budget showing anticipated expenses and income;
 - 6) Staffing plan which includes job descriptions and the qualifications of the staff; and
 - 7) A list of employee subject to the background check requirements of 89 Ill. Adm. Code 385, Background Checks, and each employee's complete, signed authorization to conduct background checks.
- c) The license shall be issued when the standards prescribed by this Part have been met. Upon receipt of an application for a license, the Department shall conduct a license study in order to determine that the day care agency meets licensing standards. The licensing study shall be in writing and shall be reviewed and signed by the licensing supervisor and the licensing representative performing the study. The applicant shall receive a copy of the license study upon written request and payment of copying costs.

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

- d) A new application shall be filed:
 - 1) When an application for license has been withdrawn, and the agency seeks to reapply;
 - 2) When there is a change of address of the day care agency;
 - 3) When there is a change of name, ownership or corporate status of the agency; or
 - 4) Not sooner than 12 months after the Department has revoked or refused to renew a license, and a new license is sought.

(Source: Amended at 21 Ill. Reg., effective April 1, 1997)

Section 405.5 Application for Renewal of License

- a) Application forms for license renewal shall be mailed to the day care agency by the Department six months prior to the expiration date of the license.
- b) The application for the renewal of a day care agency license must be completed, signed by the governing body or its authorized representative, and submitted to the Department three months prior to the expiration date of the current license for the application to be considered timely and sufficient.
- c) When a licensed day care agency seeks to change its name, address, corporate status or ownership, a new application reflecting the revised status must be completed, signed by the governing body or its authorized representative, and submitted to the Department thirty days prior to the effective date of the change(s) for the application to be considered timely and sufficient. In addition, a change of name, corporate status or ownership shall be documented by the filing of a copy of the amended articles of incorporation or ownership agreement with the Department within thirty days of its effective date.
- d) When a licensee has made timely and sufficient application for renewal of a license or a new license with reference to any activity of a continuing nature and the Department fails to render a decision on the application for renewal of the license prior to the expiration date of the license, the existing license shall continue in full force and effect for up to thirty (30) days until the final Department decision has been made. Upon a showing of good cause by the licensee or the Department, the Department shall further extend the period in which such decision must be made in individual cases for up to 30 days. "Good cause" includes but is not limited to shortages of staff or forced relocation of the agency. Both the request for the second extension and the Department's decision on that request shall be in writing.
- e) Upon receipt of the application for license renewal, the Department shall conduct a license study in order to determine that the day care agency continues to meet licensing standards. The licensing study shall be in writing and shall be reviewed and signed by the licensing supervisor and the licensing representative performing the study. The license shall receive a copy of the license study upon written request and payment of copying costs.

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

Section 405.6 Provisions Pertaining to License

- a) A day care agency license is valid for three years unless revoked by the Department or voluntarily surrendered by the licensee.
- b) The license shall not be transferred or transmitted to another person, organization, or other legal entity.
- c) The license shall not be valid for a name or address other than the name or address shown on the license.
- d) The current license shall be displayed at the agency headquarters at all times.
- e) There shall be no fee or charge for the license.
- f) Unless a day care agency is in compliance with the standards prescribed by this Part, it shall not expand its services or increase the number of homes under its supervision.

(Source: Amended at 21 Ill. Reg., effective April 1, 1997)

Section 405.7 Provisions Pertaining to Permits

- a) A permit shall not be issued prior to the following:
 - 1) Completion of the application for license and submission to the Department;
 - 2) Employment of an administrator who meets the standards set forth in Section 405.10 and who has passed the background check requirements of 89 Ill. Adm. Code 385, Background Checks and development of a projected staffing plan indicating the timetable by which qualified staff shall be hired;
 - 3) Established procedures and forms for records and reports required by Sections 405.18, 405.19, and 405.20;
 - 4) A written plan which indicates that requirements for a license shall be met within the permit period; and
 - 5) Demonstration of financial capability through an annual projected budget showing anticipated operating expenses and income.
- b) A permit shall not be issued retroactively.
- c) The permit shall not be renewable.
- d) The permit shall not be transferred or transmitted to another person or other legal entity.
- e) The permit shall not be valid for a name or address different from the name or address shown on the issued permit.
- f) A current permit shall be on display at the agency headquarters at all times while the agency is operating under a permit.

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

- g) A license shall be issued anytime within the six months period covered by the permit provided the facility achieves and maintains compliance with the standards prescribed by this Part.
- h) There shall be no fee or charge for the permit.

(Source: Amended at 21 Ill. Reg., effective April 1, 1997)

Section 405.8 Responsibilities of the Governing Body

- a) The members of the governing body of the day care agency shall be legally responsible to the Department for maintaining the standards set forth in this Part. The members of the governing body shall be of reputable and responsible character as attested by the three personal references required by Section 405.4(c)(4).
- b) The governing body shall:
 - 1) establish written by-laws;
 - 2) assure that the day care agency operates at all times with an administrator who, by written notice, is made known to the Department;
 - 3) hold at least two meetings annually;
 - 4) keep written records or minutes of all Board meetings reflecting official actions of the Board;
 - 5) notify the Department, in writing, of any major changes in the corporate structure, or a change in the administrator of the day care agency, including articles of incorporation and bylaws, board membership, officers, or other changes in services provided by the agency;
 - 6) establish written policies of the day care agency which shall be made available to all board members and employees, including services to be provided by the agency, admissions, personnel policies, fiscal operations, care of children, and other policies as needed to direct the agency.
 - 7) provide and maintain permanent offices for the administrative program and supportive services. These day care offices shall be staffed during regular hours, equipped with telephones, open to the public and shall have a permanent mailing address;
 - 8) maintain and keep all records and documents required by this part in the State of Illinois where they shall be readily available for licensing review;
 - 9) obtain fidelity bonding for fiscally responsible officers and employees against breach of fiduciary duty or the loss of monies, securities, or other property which the agency may sustain through any fraudulent or dishonest act, or acts, committed by an officer or employee acting alone or in collusion with others. These employees must be bonded regardless of whether the employee is elected or appointed or whether the employee is compensated by salary; and

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

- 10) assure that all agency employees and volunteers, if applicable, working directly with children are of reputable character through compliance with Section 405.12.

Section 405.9 Finances

- a) The agency shall maintain a degree of financial solvency to assure compliance with the standards prescribed in this Part. An agency is considered insolvent if its financial condition is such that the sum of its debts is greater than all of its property, at a fair valuation, exclusive of property transferred, concealed or removed with intent to hinder, delay or defraud its creditors. (This definition of "insolvency" is based on the definition contained in the United States Bankruptcy Code of 1978, 11 U.S.C. 1011.)
- b) The agency shall maintain records which shall include projected and current operating budget.
- c) Financial records shall be maintained and kept in the State of Illinois where they shall be readily available for licensing review.
- d) A certified copy of the agency's annual audit as performed by an independent auditor shall be submitted to authorized Department staff upon request.

Section 405.10 Day Care Agency Administrator

- a) The Day Care Agency Administrator is that person designated by the governing body to carry out the day-to-day management of the agency and the established policies and procedures.
- b) The Day Care Agency Administrator shall have:
 - 1) a Master's Degree in Child Development or an equivalent Master's Degree in a human service field from an accredited college or university, and two years supervisory experience in a nursery school, kindergarten, or licensed day care center;
 - 2) or Bachelor's Degree from an accredited college or university and four years of experience in a nursery school, kindergarten, or licensed day care center, at least two years of which were supervisory.
- c) The Day Care Agency Administrator shall have the following responsibilities:
 - 1) Recommendation to the Department regarding the licensure of day care home supervised by the agency in accordance with 89 Ill. Adm. Code 406: Licensing Standards For Day Care Homes.
 - 2) Provision of referral services, technical assistance, supervision and training to day care homes as determined by the governing body.

Section 405.11 Staff Examining Day Care Homes

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

- a) All staff who have responsibility for examining day care homes for purposes of licensure must pass an examination administered by the Department demonstrating familiarity with the Child Care Act of 1969, as amended, and 89 Ill. Adm. Code 406: Licensing Standards for Day Care Homes.
- b) Staff responsible for examining day care homes shall have as a minimum a Bachelor's Degree from an accredited college or university plus at least two years experience in working in a children's program such as a nursery school, kindergarten, licensed day care center or child welfare service program.

Section 405.12 Background Checks

- a) The governing body shall ensure that all prospective and current employees submit to fingerprinting (when required), authorize a background check and otherwise meet the requirements of 89 Ill. Adm. Code 385, Background Checks.
- b) As a condition of issuance or renewal of a license by the Department, the day care agency shall require all persons subject to background checks to furnish written information on any offenses (other than a minor traffic violation) for which they have been convicted in accordance with 89 Ill. Adm. Code 385.
- c) An employee may be working while awaiting the results of the background check. Such employees shall not be left alone with children until the results of the initial background check have been received.

(Source: Amended at 21 Ill. Reg., effective April 1, 1997)

Section 405.13 Recommendation for Licensure of Day Care Homes

- a) Day care homes which require a license and are supervised by a day care agency shall be licensed in accordance with 89 Ill. Adm. Code 406: Licensing Standards For Day Care Homes.
- b) Applications and recommendations for the licensure of day care homes supervised by a day care agency shall be made to the Department by the agency in accordance with 89 Ill. Adm. Code 406: Licensing Standards For Day Care Homes on forms provided by the Department.

Section 405.14 License-exempt Day Care Homes

The agency shall maintain on file, and available to the Department upon request, the names and addresses of all day care homes which are exempt from licensure under the Child Care Act of 1969 for which the day care agency provides administrative services.

Section 405.15 Supervision of Homes

- a) The day care agency shall be responsible for the supervision of each day care home licensed upon the agency's recommendation.
- b) Supervisory visits to the day care home shall be made at least quarterly to assist day care homes in meeting and maintaining the standards prescribed in 89 Ill. Adm. Code 406: Licensing Standards for Day Care Homes. Each visit and the findings shall be documented in the agency's record of the day care home.

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

- c) The day care agency shall be responsible for assuring that licensed day care homes supervised by it continue to meet licensing standards and shall recommend to the Department the revocation of a license or permit or the refusal to renew the license of any day care home which fails to meet standards or otherwise violates the Child Care Act of 1969.

Section 405.16 Administrative Services

- a) In addition to the examination and supervision of day care homes for licensure as required by this Part, the day care agency may provide other administrative services to day care homes. Such services shall only be provided in accordance with policies set by the governing body. "Administrative services" include, but are not limited to, providing consultation, technical assistance and training to day care homes; and providing health and social services to day care homes, children and their families either directly or by referral to other community agencies.
- b) The day care agency's policies regarding administrative services shall be in writing, and available upon request, to day care homes and the parent(s) or guardian of children served.
- c) The day care agency shall provide an opportunity for day care home caregivers and assistants to participate in at least 15 hours of training annually.

Section 405.17 Referral of Children

The Day Care Agency Administrator or designee shall interview the parent(s) or guardian and child before suggesting day care home resources for the child. The parent(s) or guardian shall make the determination regarding placement of the child.

Section 405.18 Agreements with Day Care Homes

- a) A day care agency may provide substitute caregivers and may meet record keeping and reporting requirements set forth in 89 Ill. Adm. Code 406: Licensing Standards For Day Care Homes. The agency shall clearly state in its policies and agreements with day care homes which standards it assumes responsibility for meeting.
- b) Prior to referring a child to a day care home, the agency shall have a written agreement with the home provider. The agreement shall specify at minimum the following and the Day Care Agency Administrator shall be responsible for assuring that the terms are met:
 - 1) Agency services to be provided to the day care home;
 - 2) The agency's role in planning a program to meet the needs of each child;
 - 3) The agency's role in planning for regular conferences with the parent(s) of children in care, the day care home providers and, if applicable, school and other community agencies involved in providing care and services to the child;
 - 4) Procedures for referring children to a day care home, if applicable;

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

- 5) The agency's role in planning for substitute care;
- 6) Whether the home may accept a child from any source other than the agency;
 - 7) That the home shall release a child only to person(s) designated in the written agreement;
 - 8) The agency's responsibility for recommending licensure and providing supervision of the day care home; and
 - 9) Procedures for keeping records and making reports to the agency.
- c) The day care agency shall have a written agreement between the agency, the day care home, and child's parent(s) or guardian which shall include but not be limited to:
 - 1) rate and schedule of payment for day care services,
 - 2) responsibility for payment to the day care home,
 - 3) liability for a delinquent or unpaid fee, and
 - 4) any fees assessed for agency services.
- d) The agreement must be signed by the parent(s) or guardian, day care home provider, and an authorized representative of the day care agency.

Section 405.19 Records and Reports

- a) The agency shall maintain current records, as delineated in this Section, on each child receiving care or services, on agency personnel (including volunteers), and on each facility operating under its supervision.
- b) Records for each child shall include written agreements as required by Section 405.18(b) and (c).
- c) Records shall be maintained on all employees and shall contain all pertinent information relative to character, suitability, and qualifications for the position; health; three verified character references; history of employment for the previous five years; date of employment by the day care agency; and, if applicable, date and reason(s) for separation from the day care agency.
- d) The day care agency shall maintain a separate file of the results of the background check required by Section 405.12 and 89 Ill. Adm. Code 385, Background Checks.
- e) The day care agency shall maintain and submit reports on staff and volunteers to the Department on forms provided by the Department.
 - 1) An individual report on each new employee (including owner, operator, or directors) shall be filed with the Department; a copy of this report shall be kept at the agency.

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

- 2) All staff changes shall be reported to the Department within two business days after beginning employment. Such reports shall be accompanied by complete, signed authorizations for background checks, as required by 89 Ill. Adm. Code 385, Background Checks.
- 3) Copies of documentation of medical information, verification of educational achievement, and character references of employees shall be provided upon request by the Department.
- f) The day care agency shall maintain a file on each day care home under its supervision. The file shall contain, but not be limited to, the following information:
 - 1) A copy of the day care home's application for a license.
 - 2) All licensing studies and related documents and findings, including the agency's recommendation regarding the licensing of the home.
 - 3) Copy of the day care home license.
 - 4) Reports from supervisory visits.
- g) Financial records of operations shall be maintained as part of the permanent records of the agency.
- h) The day care agency shall enter in the child's record and orally report immediately to the child's parent, guardian, and the Department any serious occurrences involving children. Oral reports shall be confirmed in writing within two working days of the occurrence. If the agency is unable to contact the parent, guardian or Department immediately, it shall document this fact in the child's record. These occurrences include serious accident or injury requiring extensive medical care or hospitalization; death; arrest; alleged abuse or neglect; major fire or other emergency situations.
- i) Evidence of child abuse or neglect shall be reported immediately in accordance with the Abused and Neglected Child Reporting Act. [325 ILCS 5]
- j) Records shall be kept in safe, locked places.
- k) Authorized Department licensing representatives or other Department representatives who have the Director's written authorization which specifies the statutory authority or administrative rule under which the access is granted shall have access to records and reports. All persons who have access to the records and reports shall respect their confidential nature.

(Source: Amended at 21 Ill. Reg., effective April 1, 1997)

Section 405.20 Confidentiality of Records

- a) The agency personnel shall respect the confidential nature of the child and personnel records.
- b) Information pertaining to an individual child shall be confidential and limited to agency staff designated by the Day Care Agency Administrator, the home caregiver, and

LICENSING STANDARDS FOR DAY CARE AGENCIES

April 1, 1997- P.T. 97.17

Department representatives unless the parent(s) of the child has granted written permission for disclosure or dissemination.

- 1) The agency shall have confidentiality release forms signed by the parent(s) which specify to whom information may be released and how long the release form is valid. Such release forms shall be on file at the agency prior to the release of confidential information.
- 2) If information is requested by outside persons or agencies, a specific written request signed by the person requesting the information shall be obtained and placed on file at the agency prior to the release of the information.

Section 405.21 Records Retention

- a) Personnel, general and financial records required of the day care agency shall be maintained for five years. Children's records shall be maintained for five years after the child has been discharged from care or services. Records of closed day care homes shall be maintained by the day care agency for seven years after closing.
- b) The provisions of this Section notwithstanding, records required by this Part shall be maintained until all audits have been completed and no litigation is pending or anticipated.

Section 405.22 Cooperation with the Department

- a) Authorized representatives of the Department shall be admitted to the agency during the hours of operation for the purpose of determining compliance with the Child Care Act of 1969 and standards set forth in this Part.
- b) The day care agency shall cooperate with the Department and assist the Department in the investigation of any day care home under its supervision to determine the day care home's compliance with the Child Care Act of 1969 and 89 Ill. Adm. Code 406: Licensing Standards For Day Care Homes.

Section 405.23 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.