

**71-3-503. Program and facilities exempt from licensing.**

**(a)** A program or activity that falls within the definition of a child care agency shall be exempt from the licensing requirements of this part upon demonstration of clear and convincing evidence that it meets one (1) of the following exemptions in subdivisions (a)(1)-(11), or, if no specific exemption exists in subdivisions (a)(1)-(11), there is clear and convincing evidence demonstrating that the program or activity meets the criteria of subsection (c):

**(1)** Entities or persons licensed or otherwise regulated by other agencies of the state or federal government providing health, psychiatric or psychological care or treatment or mental health care or counseling for children while the entity or person is engaged in such licensed or regulated activity;

**(2)** Preschool or school age child care programs, a Title I program, a school-administered head start or an even start program, and all state-approved Montessori school programs, that are subject to regulation by the department of education or other departments of state government;

**(3)** Private or parochial kindergartens for five-year-old children if such kindergartens operate on the public school kindergarten schedule;

**(4)** Child care centers operated by church-related schools, as defined by § 49-50-801, which shall be subject to regulation by the department of education pursuant to title 49, chapter 1, part 11;

**(5)** Educational programs. To qualify for an educational program exemption, a child care agency must meet the following criteria:

**(A)** That the sole or primary purpose of the program is:

**(i)** To prepare children for advancement to the next educational level through a prescribed course of study or curriculum that is not typically available in a department-regulated child care setting;

**(ii)** To provide specialized tutoring services to assist children with the passage of mandatory educational proficiency examinations; or

**(iii)** To provide education-only services to special needs children; and

**(B)** That the program time scheduled to be dedicated to the educational activity is reasonably age appropriate for the type of activity and the ages served;

**(6) (A)** "Parents' Day Out" or similar programs operated by a religious institution or religious organization that provide custodial care and services for children of less than school age, with no child attending more than two (2) days in each calendar week for not more than six (6) hours each day;

**(B)** Existing and all future programs shall register with the department their intent to operate a Parents' Day Out program prior to offering the service, and, as evidence of their exempt status, these programs shall maintain records that include, at a minimum, dates and times of each child's attendance;

**(C)** The records and forms shall be made available during regular business hours to the commissioner or commissioner's designee;

**(D)** Each separate location or campus of a religious institution or religious organization shall be considered a separate religious institution or religious organization for the purpose of Parents' Day Out or any similar program;

**(7)** Recreational programs. To qualify for a recreational program exemption, a child care agency must meet the following criteria:

**(A)** That the sole or primary purpose of the program or activity is to provide recreational services, e.g., organized sports or crafts activities;

**(B)** That the sole or primary purpose of the program or activity is dedicated to recreational activities for a substantial portion of the hours of operation;

**(C)** That the majority of program staff responsible for the direct delivery of services possesses specialized qualifications that are directly related to the recreational services being offered;

**(D)** That at least seventy-five percent (75%) of any individual child's program time is spent engaging in the recreational activities that are reasonably age appropriate for the type of activity and the ages served;

**(E)** That the supervision or care of children, or other types of child care-related services, is incidental to its overall purpose; and

**(F)** That no individual child could participate in the program or activity:

**(i)** For more than seven (7) hours per day; or

**(ii)** If a child participates for more than seven (7) hours per day, that such child could not continue to participate for more than seven (7) consecutive weeks and for no more than one hundred twenty (120) days per calendar year;

**(8)** Camp programs. To qualify for a camp program exemption, a child care agency must meet the following criteria:

**(A)** That the primary purpose of the program or activity is to provide intensive recreational, religious, outdoor or other activities that are not routinely available in full-time child care;

**(B)** That the program or activity operates exclusively during the summer months and less than ninety (90) days in any calendar year; and

**(C)** That the enrollment periods for participation in the program or activity clearly define the duration of the program or activity and exclude drop-in child care;

**(9) (A)** "Casual care" operations consisting of places or facilities operated by any person or entity that provides child care, at the same time, for a minimum of five (5) children, but less than fifteen (15) children, who are not related to the primary caregiver, during short periods of time that do not exceed ten (10) hours per week or six (6) hours per day for any individual child while the parents or other custodians of the children are engaged in short-term activities, not including employment of the parent or other custodian of the child;

**(B)** These operations shall register with the department their intent to conduct casual care of children, and, as evidence of their exempt status, these operations shall maintain records that include, at a minimum, the children's names, ages, addresses, dates and times of attendance, the parents' or custodians' names, addresses, and intended whereabouts while the children are in care, and the telephone numbers of persons to contact in the event of an emergency. All records shall be made available at any time to any authorized representative of the department;

**(C)** Failure to comply with the requirements of this subdivision shall subject the violator to a civil penalty by the department not to exceed five hundred dollars (\$500) for the first violation and not to exceed one thousand dollars (\$1,000) for subsequent violations, and the department may seek injunctive relief in the chancery or circuit court of the county where the place or facility is located to prevent further operation of the place or facility or to obtain entry to conduct any inspection of the operation;

**(10) (A)** Any program or facility operated by, or in affiliation with, any Boys and Girls Club that provides care for school-aged children and that holds membership in good standing with Boys and Girls Clubs of America and that is certified as being in compliance with the purposes, procedures, voluntary standards and mandatory requirements of Boys and Girls Clubs of America;

**(B)** Any such Boys and Girls Club that applies to participate in state or federally funded programs that require child care licensing by the state as a term of eligibility may elect to apply to the department for child care licensing and regulation. Upon meeting departmental standards, the Boys and Girls Club may be licensed as a child care center/provider;

**(C)** The department is hereby authorized to grant a waiver from any rule concerning

grouping of children and adult/child ratios for child care centers to any Boys and Girls Club that falls within both subdivisions (a)(11)(A) and (a)(10)(A) and (B), and that is providing after-school child care to mixed groups of school-aged children; and

**(11)** Nurseries, babysitting services and other children's activities that are not ordinarily operated on a daily basis, but are associated with religious services or related activities of churches or other houses of worship. Such services or activities may include limited special events that shall not exceed fourteen (14) days in any calendar year.

**(b) (1)** Exempt programs under subdivisions (a)(3), (6) and (9) shall post a sign stating, "This facility is not required to be licensed by the state as a child care agency."

**(2)** When a parent, custodian or guardian initially registers a child with an exempt program under subdivisions (a)(3), (6) and (9), which is required to post a sign pursuant to this subsection (b), the parent, custodian or guardian shall sign a form indicating that the parent, custodian or guardian has been advised and understands that the program is not licensed and is not required to be licensed by the state as a child care agency. The same language that is required to be placed on the sign shall be printed on such form at least in 16-point type with a signature line for the parent, custodian or guardian immediately following such language. The signed form shall be maintained with the records of the exempt entity.

**(c)** In analyzing whether the program or activity is exempt pursuant to this section, unless the department determines upon clear and convincing evidence that the program or activity qualifies for an exemption based upon the criteria set forth in subdivisions (a)(1)-(11), the department shall consider the following nonexclusive criteria to determine if the program or activity is clearly distinguishable from child care services typically regulated by the department and otherwise qualifies for exemption from licensing:

**(1)** The sole or primary purpose of the program or activity is to provide specialized opportunities for the child's educational, social, cultural, religious or athletic development, or to provide the child with mental or physical health services;

**(2)** The time period in which the program or activity provides these opportunities is consistent with a reasonable time period for the completion of the program or activity, considering the age of each child served and the nature of the program;

**(3)** The primary purpose of the program or activity is not routinely available or could not be made routinely available in the typical child care settings regulated by the department;

**(4)** Parents could reasonably be expected to choose the program or activity because of the unique nature of what it offers, rather than as a substitute for full-time, before or after school, holiday or weather-related child care; and

**(5)** If the program or activity is regulated by any other federal, state or local agency, it is required by such other agency to comply with standards that substantially meet or exceed

department licensing regulations.

**(d) (1)** The department shall not be required to grant exemptions to programs or activities that offer otherwise exempt opportunities or services as a mere component of a program or activity that the department determines primarily constitutes substitute child care.

**(2)** No program or activity shall be exempt from licensing solely for the reason that the care and supervision of children that constitutes child care is offered only on a part-time or periodic basis.

**(3)** Exemption from licensure does not exempt the program or activity from compliance with any other local, state or federal requirements.

**(e)** A child care agency claiming an exemption pursuant to this section may submit to the department's licensing director, or designee, a sworn, written request for exemption in such manner and form as the department may require. The request shall provide a detailed description of the operation of the program or activity, the program's or activity's purpose and the applicant's basis for claiming an exemption. The department shall provide a written response to the exemption request stating the reasons the exemption was granted or denied.

**HISTORY:** Acts 2000, ch. 981, § 4; 2001, ch. 453, § 7; 2005, ch. 151, §§ 8-12; 2013, ch. 72, §§ 1, 2.