

ORDINANCE #04/91, AS AMENDED
OF THE FOND DU LAC RESERVATION BUSINESS COMMITTEE
ADOPTING THE
FOND DU LAC DAY CARE STANDARDS
AND LICENSING PROCEDURES

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Fond du Lac Reservation Business Committee dated February 13, 1992.
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Fond du Lac Reservation Business Committee dated July 9, 1998.

FOND DU LAC RESERVATION DAY CARE STANDARDS
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101. Authority. Pursuant to the authority granted by Article VI Section 1(d) of the Constitution of the Minnesota Chippewa Tribe, and recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. Section 476. the Fond du Lac Reservation Business Committee does hereby promulgate and prescribe the following standards as applicable to the operation of all day care facilities located with the exterior boundaries of the Fond du Lac Reservation.

102. Purpose. The purpose of this Ordinance is to assure quality standards in the provision of day care services to all individuals receiving such services on the Fond du Lac Reservation.

103. Definitions. The following definitions shall govern the scope and applicability of all provisions of this Ordinance.

(a) Adult - "Adult" shall mean a person at least eighteen (18) years of age.

(b) Agency - "Agency" shall mean the Human Services Division of the Fond du Lac Reservation shall be the duly delegated representative of the Reservation Business Committee for the purposes of implementing this ordinance.

(c) Applicant - "Applicant" shall mean the person seeking a license to be the primary provider of day in the residence.

(d) Caregiver - "Caregiver" shall mean the provider, substitute, helper, or another adult giving care in the residence.

(e) Certified Child Care Provider - a status given to persons who have met the training and experience obligations and are available for independent child care assignments on the Reservation.

(f) Child - "Child" shall mean a person thirteen years of age or younger; or a person who is under age eighteen and is physically or mentally incapable of caring for himself or herself; or under court supervision.

(g) Day Care - "Day Care" shall mean the care of a child in a residence outside the child's own home or when a caregiver comes into the child's residence for gain or otherwise, on a regular basis, for any part of a 24-hour day.

(h) Family Day Care - "Family Day Care" shall mean day care for no more than ten children at one time of which no more than six are under school age. The licensed capacity must include all children of any caregiver when the children are present in the residence.

(i) Fire Marshal - "Fire marshal" shall mean the person designated by the Reservation Business Committee to administer and enforce the Fond du Lac Fire Code, which shall be substantively similar to the Uniform Fire Code, as codified under Minnesota Statutes § 299F.011.

(j) Group Family Day Care - "Group Family Day Care" shall mean day care for no more than 14 children at any one time. The total number of children includes all children of any caregiver when the children are present in the residence.

(k) Helper - "Helper" shall mean a person at least 13 years of age who assists the provider with the care of children.

(l) Infant - "Infant" shall mean a child who is at least six weeks of age but less than 12 months of age.

(m) Licensed Capacity - "Licensed Capacity" shall mean the total number of children thirteen years of age or younger permitted at any one time in the residence. The licensed capacity includes all children of any caregiver when the children are present in the residence.

(n) Medicine - "Medicine" shall mean a prescription or non-prescription substance taken internally or applied externally to prevent or cure disease, heal, or relieve pain.

(o) Mental Illness - "Mental Illness" shall mean the inability to interpret reality realistically and the impaired functioning in primary aspects of daily living, such as personal relations, living arrangements, work, and recreations; which is listed in the International Classification of Disease (ICD-9-CM) Ninth Revision (1980), code range 290.0-299.9, or the corresponding code in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-III) Third Edition (1980), Axes I, II, or III. These publications are incorporated by reference and are not subject to frequent change. They are available in the Minnesota law library.

(p) Newborn - "Newborn" shall mean a child between birth and six weeks of age.

(q) Parent - "Parent" shall mean a person who has the legal responsibility for a child such as the child's mother, father, or legally-appointed guardian.

(r) Preschooler - "Preschooler" for classes A, C1, C2 and C3 licenses shall mean a child at least 24 months of age. For specialized infant/toddler licenses (classes B1, B2, D) the child is considered preschool until 30 months up to enrollment in the first day of school in the local school district.

(s) Provider - "Provider" shall mean the license holder and/or primary caregiver.

(t) RBC - "RBC" shall mean the Reservation Business Committee is the duly elected and federally recognized governing body of the Fond du Lac Reservation. The RBC is composed of five members; a Chairman, a Secretary-Treasurer, and three District Representatives.

(u) Regularly or Regular Basis - "Regularly or Regular Basis" shall mean a cumulative total of more than 30 days within any 12-month period.

(v) Related - "Related" shall mean any of the following relationships by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, child, niece, nephew. Related also includes a legally appointed guardian.

(w) Residence - "Residence" shall mean a dwelling unit in which day care is provided and which is occupied as a home.

(x) School Age - "School Age" shall mean a child ten years of age or younger and enrolled in the first day of kindergarten or eligible to enter kindergarten within the next 4 months, but is younger than 11 years old, in the local school district.

(y) Substitute - "Substitute" shall mean an adult at least 18 years of age who assumes the responsibility of the provider.

(z) Supervision - "Supervision" shall mean a caregiver being within sight or hearing of an infant, toddler, or preschooler at all times so that the caregiver is capable of intervening to protect the Health and safety of the child. For the school-age child, it means a caregiver being available for assistance and are so that the child's health and safety is protected.

(aa) TEC - "TEC" shall mean the Tribal Executive Committee is the governing body of the Minnesota Chippewa Tribe. The Minnesota Chippewa Tribe is composed of six Reservations, namely Leech Lake, White Earth, Grand Portage, Bois Forte, (Nett Lake), Fond du Lac and Mille Lacs. The Tribal Executive Committee is the governing body of the Minnesota Chippewa Tribe. It is composed of twelve members, consisting of the Chairman and the Secretary-Treasurer of each Reservation Business Committee of the six member Reservations.

(bb) Toddler - "Toddler" for classes A, C1, C2, C3 licenses shall mean a child at least 12 months of age but less than 24 months of age. For specialized infant and toddler licenses (classes B1, B2 and D) a toddler means a child who is at least 12 months old but less than 30 months old.

(cc) Uniform Fire Code - "Uniform Fire Code" shall mean the Uniform Fire Code as codified under Minnesota Statute Section 299F.011 et seq., except that enforcement shall be exclusively as provided under the terms of this Ordinance and other applicable laws of the Fond du Lac Band.

(dd) Variance - "Variance" shall mean a written permission by the RBC for a provider or applicant to depart from the standards.

104. Licensing of Facilities for Children Family Day Care and Group Family Day Care Homes, and Certified Child Care Providers.

(a) Purpose. The purpose of this listing is to establish procedures and standards for licensing family day care and group family day care homes, and certified child care providers to ensure that minimum levels of care and service are given and the protection, proper care, health, safety, and development of the children are assured.

(b) Applicability. These standards and procedures are authorized by the Fond du Lac Reservation Business Committee and govern the licensing of family day care homes and group family day care homes, and certified child care providers. No person, association, corporation or other legal entity shall maintain or operate a day care facility on the Fond du Lac Reservation unless licensed by the Reservation Business Committee pursuant to this Ordinance.

(c) Exclusion from licensure. The following day care situations are excluded from licensure under this Ordinance: (1) day care provided by a relative to only related children; or (2) day care provided to children from a single, unrelated family, for any length of time; or (3) day care provided for a cumulative total of less than 30 days in any 12-month period; or (4) the exclusions contained in items A and B are mutually exclusive.

105. Licensing Process.

(a) License application. A license to operate a family or group family day care residence must be obtained from the RBC.

(1) Application for a license must be made on the application form issued by the Social Services Department of the Fond du Lac Reservation.

(2) The applicant shall be the person who will be the provider of care in the residence, present during the hours of operation, and who shall be legally responsible for the operation of the residence.

(3) The Social Services Department shall supply the applicant with the application form and a copy of the Fond du Lac Day Care Standards and Licensing Procedures. The agency shall stamp and date a signed and completed application form on the date of receipt.

(4) An application for licensure is completed when the applicant completes, signs, and submits all forms and documentation needed for licensure to the Fond du Lac Reservation and the agency receives all inspection, zoning, evaluations, and investigative compliance with Fond du Lac Reservation Day Care Standards.

(5) All applicants must give written consent to the Reservation Business Committee, or the Fond du Lac Social Services Department as its designated representative, to conduct any and all investigations into the affairs of the applicant which are directly relevant to the standards prescribed by this ordinance.

(b) Licensing study. The applicant shall give the designated Social Services workers access to the residence for a licensing study to determine compliance with Fond du Lac Reservation Day Care Standards.

(1) If, in the judgment of the designated representative, a potentially hazardous condition may be present, due to violations of parts of the Day Care Standards, the applicant shall obtain an inspection from a fire marshal, building official, or health officer to verify the absence of hazard and report to the health agency.

(2) The residence must comply with any applicable local ordinances. If the commissioner or the agency has reasonable cause to believe a hazardous condition may be present and requests an inspection by fire marshal, building official, or health officer, then any condition cited by a fire marshal, building official, or health officer as hazardous and creating an immediate danger of fire, or threat to human life and safety, must be corrected or a variance approved in accordance with all written standards.

(3) An initial inspection of the residence by a fire marshal to determine compliance with the standards established by the Uniform Fire Code and compliance with orders issued are conditions of licensure for all residences with freestanding solid fuel heating appliances; manufactured (mobile) homes; new applicants for licensure with a licensed capacity of more than ten; day care residences which use the basement for child care; and -residences in mixed or multiple occupancy buildings. "Multiple occupancy building" means a structure with two or more residential dwelling units such as a duplex, apartment building, or town home. "Mixed occupancy building" means a residence in a structure that contains non-residential occupancies or an attached garage.

(4) The licensing representative may require prior to licensure, or anytime during the licensed term of day care, a physical, mental illness, or chemical dependency or abuse evaluation of any caregiver or person living in the residence or present during the hours children are in care if the licensing representative has reasonable cause to believe that any of the disqualification factors in the Fond du Lac Day Care Standards, or that the provider is not physically able to care for the children. These evaluations, conducted by a licensed physician, psychiatrist, psychologist, consulting psychologist, or certified chemical dependency practitioner or counselor may be used to verify physical or mental illness, chemical dependency or chemical abuse, or behavior that would reflect on the ability of the provider to give day care.

(c) Licensing agency. The RBC shall accept and process applications for licensure and recommend license suspensions and revocations based upon established Day Care Standards.

(1) The designated representatives of the Fond du Lac Social Services Department shall conduct the initial licensing study of the residence and the investigation of caregiver qualifications and the annual relicensing study.

(2) The RBC shall evaluate and recommend an application for approval or denial of licensure to the department within 30 days after the agency has in its possession all completed and signed forms, reports, evaluations, information, and documentation required from the applicant and all inspection, zoning, and investigative reports required to verify compliance with established standards.

(3) If a recommendation cannot be made by the agency within 30 days after all information, documentation, and evaluations necessary to verify compliance with the rule parts has been received, the Social Services Coordinator must inform the applicant in writing why a recommendation cannot be made.

(d) Issuance. The Reservation Business Committee shall issue a license to an applicant which it deems to be qualified under the provisions of this Ordinance. Each license issued may be limited or conditioned in whatever manner deemed appropriate by the Reservation Business Committee consistent with the standards and purposes of this ordinance. Each licensee shall be informed in writing by the Reservation Business Committee of any limitation or condition so imposed.

(e) Period of licensure: non-transfer. All license must be issued by the department for up to one year when the provider fully complies with established standards. The license must not be transferred to another provider.

(f) Provisional license. An applicant for initial licensure may be granted a provisional license by the RBC for up to one year if all laws and rules cannot be met immediately and do not threaten the health, rights, or safety of the children, and which will be corrected within the time specified by the commissioner but not to exceed one year. Failure to correct deviations within the stated time shall be cause for revocation, suspension, or non-renewal.

(g) Disqualification factors. An applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children:

(1) Abuses prescription drugs or uses controlled substances as defined in the Minnesota Statutes, Chapter 152, or alcohol, to the extent that the use or abuse has or may have a negative effect on the ability of the provider to give care or is apparent during

the hours children are in care. Caregivers who have abused prescription drugs or have been dependent on controlled substances as defined in Minnesota Statutes, Chapter 152, or alcohol, such that the use, abuse, or dependency has a negative effect on the ability to give care, was apparent during the hours children are in care, or required treatment or therapy, must have 12 months of verified abstinence before licensure.

(2) Has mental illness and the behavior has or may have a negative effect on the ability of the provider to give care or is apparent during the hours children are in care.

(3) Has had parental rights terminated by any court of competent jurisdiction.

(4) Refuses to give written consent for the disclosure of criminal history records.

(5) Has had a conviction of, has admitted to, or there is substantial evidence indication incest, abuse, or neglect (as those terms are defined in the Minnesota Statutes).

(6) Has had a conviction of, had admitted to, or there is a preponderance of the evidence indicating the commission of any crime listed other than those listed in item D. Conviction, admission, or a preponderance of evidence indicating the commission of the same or similar crime in another state or national jurisdiction shall also be grounds for license denial, revocation, non-renewal, or suspension.

(7) Has had a child placed in foster care within the past 12 months and the agency determines the reasons for placement reflect on the ability of the provider to give care. A license may not be denied if the primary reason for the placement was due to a physical illness of the parent, mental retardation of the child, a handicap of the child, or for the temporary care of an infant being relinquished for adoption.

(8) Has had a child placed in residential treatment within the last 12 months for emotional disturbance or antisocial behavior and the agency determines that the reasons for the placement reflect on the ability of the provider to give care.

(h) License suspension or probation. A license shall be suspended or may be probationary if the provider, or any other person living in the day care residence or present during the hours children are in care or working with children, is awaiting trial for a crime.

(i) Variance standard. An applicant or provider may request a variance from compliance. When reviewing a variance request, the department shall assess whether alternative methods are identified by the applicant or provider to ensure the health, safety, and protection of children in care. A variance may be granted only if:

(1) The applicant complies with all applicable laws, ordinances, and regulations;

(2) Specific equivalent measures are identified by the applicant or provider to ensure the health, safety, and protection of the children in care;

(3) Any variance to the safety provisions which relate to the Uniform Fire Code, or such other similar code as may be established by the Fond du Lac Reservation Business Committee, and is approved by a fire marshal and alternative measures are identified to ensure the safety of children in care;

(4) Any variance of the provisions relating to sanitation and health and on water, food, and nutrition are approved by a health officer and alternative measures are identified to ensure the safety of children in care;

(5) Any variance of the provision relating to stairways, decks, and sewer disposal which relate to Building Code, are approved by a building official and alternative measures are identified to ensure the health and safety of children in care; and

(6) Any variance regarding disqualification factors must have clear and convincing evidence presented by the applicant or provider that no threat or harm whatsoever will result to the children in care due to the granting of the variance. The department shall consider the nature of the crime committed and the amount of time which has elapsed without a repeat of the crime.

(j) Variance procedure. Request for a variance must comply with and be handled according to the following procedures:

(1) An applicant or provider must submit to the agency a written request for variance. The request must include the following information:

(A) the sections with which the applicant or provider cannot comply;

(B) the reason why the applicant or provider needs to depart from the specified sections;

(C) the period of time for which the applicant or provider requests a variance; and

(D) the specific equivalent alternative measures which the applicant or provider will provide so the health, safety, and protection of children in care are ensured if the variance is granted.

(2) An applicant or provider must submit to the agency written approval from a fire marshal of a variance request and the alternative measures identified to ensure the safety of children in care when a variance of the fire safety provisions on physical