



# LEGAL ASSISTANCE TO MICROENTERPRISES PROJECT (LAMP)

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## Got Kids? Laws Affecting Home-based Daycares

By: Andrea Beleno

### 1. What is a home-based day care business?

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

Listed Family Homes: an adult called the “the primary care-giver,” provides care in her own home for one to three children (that are not related to the primary care-giver). The primary care-giver may also care for her own children, grandchildren, nieces, nephews, and other relatives as long as there are no more than twelve children total in the home. Requirements:

- 5 Apply to state and obtain background clearances on the primary caregiver and anyone older than 14 who is regularly in the home and receive certificate;
- 6 Primary care-giver must be at least eighteen years old;
- 7 No inspections are conducted unless a report is received alleging that the child-care offered is subject to registration or unless reports of abuse or neglect are received.

Registered Family Homes: the primary caregiver provides care in his or her own residence 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 1 to 3 years. Requirements:

- 8 The primary care-giver must be over 21 years old (there are exceptions);

- 9 primary caregiver must have a high school diploma or high school equivalent (including some education obtained outside of the U.S.A.);
- 10 the primary caregiver must complete the licensing orientation; and
- 11 the primary caregiver Must take a course and obtain a certificate in CPR and first aid with rescue breathing and choking.

Licensed Family Homes: the primary care-giver provides care in his or her own home for up to twelve children (at any time), including the children related to the care-giver; the total number of children in care varies depending on the ages of the children. Licensed homes are usually inspected every 10-12 months. Requirements:

12 Primary care-giver for a licensed child care home

- over 21 years old,
- have a high school diploma or high school equivalent (including some education obtained outside of the U.S.A.),
- the primary caregiver must complete the licensing orientation,
- the primary caregiver must have current certification in CPR and first aid with rescue breathing and choking, and
- the primary caregiver must meet additional requirements of combinations of education and experience in a licensed child care center.

2. What are the minimum standards for my home-based day-care business?

Listed family homes are not subject to state standards. Registered and Licensed family 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:

- 13 develop and implement the child-care home's operational policies;
- 14 ensure that all other care-givers comply with minimum standards;
- 15 comply with the child-care licensing law found in Chapter 42 of the Human Resources Code, and all other applicable rules in the Texas Administrative Code, including the Minimum Standard Rules.
- 16 ensure that all household members comply with minimum standards;
- 17 reporting suspected abuse, neglect, and exploitation;
- 18 ensure that parents can to 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;

19 initiate background checks on the primary caregiver and anyone older than 14 who is regularly in the home;

3. How does a person start a home-based day-care?

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

(A) First chose a name for the business. Check to make sure no one else uses the same business name at the County Clerk's office or the Comptroller's web site at [www.cps.state.tx.us](http://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](http://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) Submit an application to TDPRS! Licensing staff has 21 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.

(D) Pay an application and a non-refundable \$35.00 annual fee to the Child-Care Licensing Division, Texas Department of Protective and Regulatory Services. Listed homes pay a \$20.00 annual fee.

What are other legal requirements for home-based day cares?

- 20 Registered and licensed child care homes must have at least 30 feet of indoor activity space per child in care, and must have 80 square feet of outdoor activity space for each child outside, it is possible to get approval for local park or school yard to serve as outdoor activity space.
- 21 Small businesses must comply with zoning and lease provisions. Check with 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.
- 22 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 who will be present when children are there. Certain criminal

convictions will bar individuals aged fourteen and over 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 childcare home.

- 23 All child abuse, exploitation or neglect must be reported.
- 24 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.
- 25 Pay income taxes!

Additional information:

Child Care Licensing Agency  
Department of Protective and Regulatory Services  
Child Care Licensing  
P.O. Box 149030  
M.C. E-550  
Austin, Texas 78714-9030  
Phone: Day Care Hotline: (800) 862-5252 or 512-834-3195  
[www.txchildcaresearch.org](http://www.txchildcaresearch.org)  
- will send information packets upon request

Child Care Subsidy Agency  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street, Suite 434T  
Austin, Texas 78778-0001  
Phone: 512-936-3137

Head Start - State Collaboration Office  
Texas Head Start State Collaborative Office  
Office of the Governor  
7000 Fannin Street, Ste. 2054  
Houston, Texas 77030  
Phone: 713-500-3835

State Child Care Resource and Referral Contact  
Texas Association of Child Care Resource and Referral Agencies  
1500 W. University Avenue, Ste. 105  
Georgetown, Texas 78628  
Phone: 512-868-0552

To Report Child Abuse or Neglect:  
1-800-252-5400 or <https://www.txabusehotline.org>

Internal Revenue Service:  
[www.irs.gov](http://www.irs.gov)  
<http://www.irs.gov/businesses/index.html>

The Redleaf National Institute  
The National center for the Business of Family Child Care  
[www.redleafinstitute.org](http://www.redleafinstitute.org)

Alliance for Early Childhood Finance  
[www.earlychildhoodfinance.org](http://www.earlychildhoodfinance.org)

Texas C-Bar  
[www.texasobar.org/legal\\_library/child\\_care/useful\\_links.php](http://www.texasobar.org/legal_library/child_care/useful_links.php)

**Legal Assistance to Micro-enterprises Project (LAMP) provides free legal services for qualified low-income residents of the Texas RioGrande Legal Aid service area to start up or sustain a small business. LAMP provides useful legal advice and assistance on the laws that may affect proposed and existing businesses, including: formation, contracts, employment issues, tax, health and safety laws, commercial landlord/tenant leases, and lending laws. To complete an application, call toll-free: 1-888-988-9996.**