



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**

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**MEMORANDUM**

DATE: June 25, 2014

TO: Ms. Elizabeth Timm, DFS  
Office of Child Care Licensing

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 17 DE Reg. 1155 [DFS Proposed Early Care & Education & School-Age Center Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Services for Children, Youth and Their Families/Division of Family Services (DFS)/Office of Child Care Licensing's proposal to adopt a wholesale revision of its *DELACARE Rules for Early Care and Education and School-Age Centers* regulation. The proposed regulation was published as 17 DE Reg. 1155 in the June 1, 2014 issue of the Register of Regulations. Given the length of the regulations and time constraints, SCPD only "skimmed" the proposed standards, but has the following observations.

First, SCPD was unable to identify any general non-discrimination provision, including a provision barring discrimination based on disability. SCPD noted only isolated and oblique references (e.g. §25.1.3). Compare 14 DE Admin Code 225 for DOE equivalent. In the 1990s the Division's regulations routinely contained such provisions. See, e.g., attached excerpts from former regulations. In its December 19, 2007 commentary on proposed DFS regulations covering child care homes, the SCPD offered the following recommendation:

*2. Although there are a few cryptic references to "nondiscrimination" (e.g. §29.1.2), the regulations do not mention or proscribe discrimination based on race, disability, or other protected classes. At a minimum, §7.2.3 could be renumbered §7.2.4 and the following new §7.2.3 inserted:*

*7.2.3 Commitment to comply with applicable non-discrimination laws, including the Americans with Disabilities Act [42 U.S.C. 12101] and Delaware Equal Accommodations Law [Title 6 Del.C. Ch. 45].*

*Attached please find a December 2, 1991 Delaware Attorney General's Opinion holding that day care centers are covered by both the ADA and Delaware Equal Accommodations law.*

Indeed, consistent with the attached Attorney General's Opinion, DFS offered training on daycare center compliance with the ADA in the past. See attached May 9, 1996 excerpt from "DayCare Centers and the Americans with Disabilities Act".

The bottom line is that the current regulation would benefit from an affirmative requirement that providers comply with the ADA and Equal Accommodations law in their programs. Concomitantly, there are a number of provisions in the proposed regulation which may be "at odds" with the Attorney General's opinion and the ADA. See, e.g., §§59.1 (children excluded if unspecified illness limits child's comfortable participation or extra care needs compromise health and safety of other children); 17.4.1 (implication that programs may discourage enrollment based on special needs).

Second, §13.0 lists several "events" requiring reporting to DFS. There is no mention of reporting extended physical restraint which is ostensibly not limited by §§64.4 and 65.4. Compare Title 16 Del.C. §5162(a)(2) and 17 DE Reg. 1133, 1137, §6.1.2 (June 1, 2014). SCPD recommends that DFS require the reporting of physical restraint above a certain threshold (e.g. 10 minutes).

Third, §41.0 requires children to wear helmets if riding a bike with wheels of 20 or more inches. The State law requiring children to wear helmets [Title 21 Del.C. §4198K] does not exempt children riding on bikes with smaller wheels. The "20 inch" standard for bikes should be deleted.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Ms. Vicky Kelly  
Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

17reg1155 dscyf-dfs early care education and school-age center 6-23-14

# DELACARE

## REQUIREMENTS FOR DAY CARE CENTERS



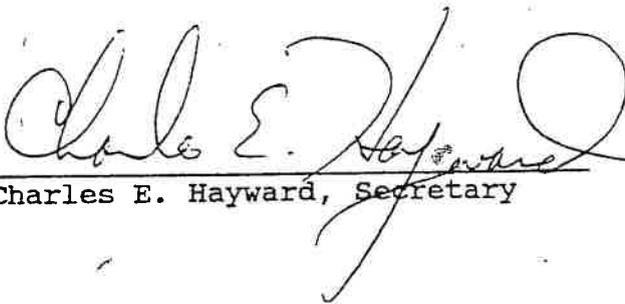
*State of Delaware*  

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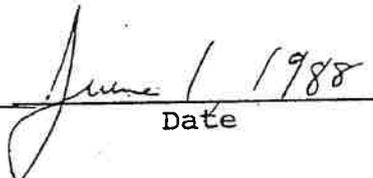
*The Department of Services  
for Children, Youth, and  
Their Families*

NOTICE OF RESCISSION AND PROMULGATION

The Division of Program Support, Department of Services for Children, Youth and Their Families adopts and promulgates the following requirements for day care centers as authorized in the Delaware Code, Title 31, Subchapter II, Subsections 341-344 and Title 29, Chapter 90, Subsection 9003(7). All previous rules, regulations and standards pertaining to such facilities are null and void. These requirements shall take effect on September 1, 1988.



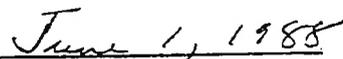
Charles E. Hayward, Secretary



Date



Virginia D. Miller, Director  
Division of Program Support



Date

19. "Meal" means breakfast, lunch or dinner.
20. "Night Care" means care for any child between the hours of 7:00 P.M. and 7:00 A.M. when the period includes any portion of the child's normal sleeping hours.
21. "Parent(s)" means the child's natural or adoptive mother or father or other legally responsible person.
22. "Preschool Child" means a child two (2) through four (4) years of age.
23. "Program Director" means the employee of the Center with direct responsibility for developing, implementing and supervising the total program of services provided to children.
24. "Regularly or on a regular basis" means day care services which are available and provided at a Center on more than one (1) day in any one (1) week.
25. "School-age Care" means care for school-age children before and/or after school and full-time during school holidays and summer months.
26. "School-age Child" means a child five (5) years of age or older in a public or private school.
27. "Snack" means supplemental food served between meals.
28. "Specialized Day Care" means care to children with special needs which necessitate more than usual personal care and/or special equipment or architectural features in the facility.
29. "Toddler" means a child between the ages of twelve (12) and twenty-four (24) months of age.
30. "Training" means participation in any formal activity related to improvement in an employee's skills or knowledge related to job performance excluding routine supervision and including participation at conferences, workshops, relevant courses and in-service training sessions.

#### GENERAL REQUIREMENTS

31. No person shall operate, establish, manage, conduct, assist in or maintain a Day Care Center, or hold out, advertise or represent by any means to do so, without first obtaining a license from the Department pursuant to 31 Del.C., Chapter 3. Any person so involved shall be subject to criminal or civil penalties in accordance with State Law.
32. A license shall be issued only to the Center for which application is made and for the address on the application, and shall not be transferable, assignable or subject to sale.
33. When a Center is sold, leased or discontinued or the operation has moved to a new location or the license has been revoked, the current license immediately becomes null and void and shall be returned to the Department.
- \* 34. A Center shall comply with the applicable provisions of Titles VI and VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, Executive Order No. 11246 of September 24, 1965, and any other Federal or State anti-discriminatory act, law, statute, regulation or policy, along with all amendments and revisions of such laws.

# DELAWARE

## REQUIREMENTS FOR LARGE FAMILY CHILD CARE HOMES



STATE OF DELAWARE  
DEPARTMENT OF SERVICES FOR CHILDREN,  
YOUTH AND THEIR FAMILIES  
OFFICE OF CHILD CARE LICENSING

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**NOTICE OF RESCISSION AND PROMULGATION**

The Division of Family Services, Department of Services for Children, Youth and Their Families, adopts and promulgates the following licensing requirements for large family child care homes as authorized in The Delaware Code, Title 31, Subchapter II, Subsections 341 - 344. All previous rules, regulations and standards pertaining to such facilities are null and void. These requirements take effect on June 1, 1994.



**Thomas P. Eichler, Secretary**  
Department of Services for Children  
Youth and Their Families

12/21/93

Date



**Gail B. Womble, Director**  
Division of Family Services

12/20/93

Date

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- A. No person working directly with children in a LFCCH shall take any substance or medication which would impair his/her ability to care for children.

#### **PROVISION OF OTHER REGULATED SERVICES**

72. The LFCCH shall not be licensed or approved to care for convalescent, aged or patients requiring nursing care.
73. The LFCCH shall not provide foster care for children or adults without the prior written approval of the Department.
- A. The decision for dual service shall be made by the Administrator based upon the recommendation of the licensing specialist and foster home finder of the placing agency. The recommendation shall consider the specific needs of potential child care children and foster care placements.
- B. The written approval shall include the number and ages of children/adults to be cared for in each program in accordance with requirements.
- C. The decision for dual service shall be reviewed periodically.
- D. Foster children of preschool age and younger shall be counted in the capacity of the LFCCH.

#### **DISCRIMINATION**

74. The LFCCH shall not discriminate on the basis of sex, race, religion, cultural heritage, disability, marital status, or economic status.

#### **INFORMATION PROVIDED TO PARENTS AND ACCESS TO THE LFCCH**

75. The LFCCH shall give the parent of each child enrolled in the LFCCH a copy of "Licensing Information for Parents" as furnished by the Department. The LFCCH shall have written verification that each parent has received a copy.
76. The LFCCH shall have written verification that each parent of an enrolled child has received a copy of:
- A. Procedures related to the release of children.
- B. Policy and procedures on discipline and guidance of children.
- C. Policy on health and prevention of communicable diseases, injuries and child abuse.
- D. Policy on pets, if pets will be present in the LFCCH.
77. The LFCCH shall have a regular system of communication with parents concerning:
- A. The child's daily activities and routines.
- B. The child's developmental progress and concerns about the child's development and behavior.
- C. Accidents, injuries, illnesses, and other critical incidents.
78. Parents shall have free access to areas of the LFCCH used for child care while their children are in care.

#### **RELEASE OF CHILDREN**

79. The LFCCH shall release children only to persons authorized by the parent(s) who has placed the child(ren) in care.
80. The LFCCH shall have and use written policy and procedures for the release of children including:
- A. Procedures for emergency release of children.
- B. Procedures regarding the release of the child to any person not known to the Caregiver.
- C. Procedures for handling situations in which a noncustodial parent attempts to claim the child without the consent of the custodial parent.
- D. Procedures to be followed when a person not authorized to receive a child, or a person who is intoxicated or otherwise incapable of bringing the child home safely, requests release of a child.



STATE OF DELAWARE  
DEPARTMENT OF JUSTICE  
STATE OFFICE BUILDING  
820 N. FRENCH STREET, 8TH FLOOR  
WILMINGTON, DELAWARE 19801

CHARLES M. OBERLY, III  
ATTORNEY GENERAL

DIRECT DIAL:  
577-2500

December 2, 1991

The Honorable Terry R. Spence  
House of Representatives  
State of Delaware  
Legislative Hall  
Dover, DE 19903

Re: Applicability of the Americans with  
Disabilities Act (ADA) to Daycare Providers  
Informal Opinion No. 91-C005

Dear Representative Spence:

You have asked this office to provide an advisory opinion with respect to the applicability of the Americans with Disabilities Act (ADA) to daycare providers. In particular, you have asked:

1. Can a home daycare provider request each child receive a blood test to detect any communicable disease including the HIV virus and Hepatitis B?

2. If a parent refuses to have the child receive a blood test, can a home daycare provider then refuse care for their child?

3. If the test is returned positive for HIV or Hepatitis B, can the home daycare provider refuse care for that child without violating the law?

4. (a) Are family daycare homes covered under the Americans with Disabilities Act or other applicable federal or state law governing the right to deny services to individuals carrying contagious diseases?

(b) Are daycare centers covered or not covered under ADA?

5. Can a daycare provider have a parent sign a release form, which states that if their child has HIV virus the parent of the child will be held responsible for all liability should the HIV virus be transmitted within the child-care setting?

6. Presently, can a daycare provider refuse care for a "special needs" child for any reason without violating any laws or regulations?

We answer by way of this informal opinion.

The ADA was enacted by Congress to provide comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It is subchapter III of the Act, "Public Accommodations and Services Operated by Private Entities," which governs the questions you raised. This subchapter of the ADA and the regulations promulgated thereunder become effective on January 26, 1992.

In response to Question 4, both daycare centers and family daycare homes are covered by the ADA. Title 42 U.S.C. sec. 12181(7)(K) specifically refers to daycare centers as places of public accommodation. Family daycare homes become subject to the ADA provisions in accord with the definitions of "public accommodation" and "private entity." A "public accommodation" means a private entity that owns, leases [or leases to], or operates a place of public accommodation; a "private entity" includes an individual. 28 C.F.R. sec. 36.104. The ADA regulations further provide that the ADA applies to a place of public accommodation located in a private residence, except for those portions of the residence utilized exclusively as a residence. 28 C.F.R. sec. 36.207(a). It should be noted that

religious organizations and entities controlled by religious organizations are specifically exempted from the application of subchapter III relating to public accommodations. 42 U.S.C. sec. 12187.

The term "disability" is defined by the ADA to mean:

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

42 U.S.C. sec. 12102(2). The regulations include, without limitation, contagious and non-contagious diseases as physical or mental impairments, specifically listing HIV disease, whether symptomatic or asymptomatic. 28 C.F.R. sec. 36.104. Hepatitis B would also fall within the definition of disability. The ADA precludes the denial of an individual's participation in or benefit from services, facilities or accommodations of an entity, as well as the imposition or application of eligibility criteria which screen out or tend to screen out an individual with a disability. 42 U.S.C. sec. 12182(b).

The use of a blood test to detect HIV or hepatitis B is an eligibility criterion which screens out or tends to screen out individuals with a disability, and would be a violation of the ADA if requested by a daycare provider. To use the results of such a test, or the refusal to have a test done, as a basis to

refuse to provide services to a child would constitute discrimination on the basis of, or perception of, a disability in direct violation of the ADA. Therefore, the answer to questions 1, 2 and 3 is in the negative.

You have asked whether a daycare provider can require a parent to sign a "release form" which would hold the parent responsible for all liability in the event HIV is transmitted within the child care setting from their child. Again the answer is no, as it would be a direct violation of the ADA. Requiring parents to sign a "release form" would constitute the use of a method of administration which would have the effect of discriminating on the basis of the child's disability. 42 U.S.C. sec. 12182(b)(1)(D). Such a document would have questionable legal validity, and would most likely not serve to eliminate the provider's liability.

Your final question is whether daycare providers can refuse to care for a "special needs" child for any reason without violating any laws or regulations. In addition to the ADA, daycare providers are subject to the State Equal Accommodations statute (6 Del. C. ch. 45) and, if they receive Federal funds, Section 504 of the Rehabilitation Act of 1973. The definition of "handicap" in these two statutes closely parallels or has been interpreted to parallel the definition of "disability" found in the ADA. Therefore, if the child's special needs fall within the definition of "disability" or

"handicap," the provider would be violating these laws in the event services were refused due to the special needs. This general rule applies in all but the narrowest circumstances.

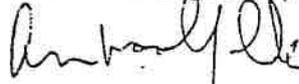
There are two exceptions in the ADA to the requirement that places of public accommodation provide their services or facilities to disabled persons. First, if the entity is able to show that making reasonable modifications to its policies, practices or procedures would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations offered, it would not constitute discrimination to refuse to serve a disabled person. 42 U.S.C. sec. 12182(b)(2)(A)(ii). Second, if the entity can show that the individual poses a direct threat to the health or safety of others, it would not constitute discrimination to refuse to serve a disabled person. 42 U.S.C. sec. 12182(b)(3). Policies and procedures currently required by the Office of Child Care Licensing and the Division of Public Health would ensure good infection control if utilized. The existence of these requirements would make it unlikely that a provider could show that reasonable modifications would fundamentally alter the provision of services. If the daycare provider is unable to show that a particular situation falls within one of these two exceptions, the entity would be in violation of the ADA and subject to enforcement action.

The Honorable Terry R. Spence  
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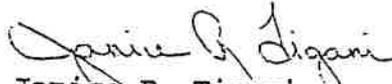
For these reasons, it is our opinion that daycare providers are subject to the provisions of the ADA, that they would be in violation of the ADA if they utilized blood tests to identify and/or screen out individuals who are disabled, and that daycare providers cannot refuse to provide care for children with "special needs" unless reasonable modifications cannot be made or the child poses a direct threat to the health or safety of others.

If we can be of any further assistance, or if you have any questions, please do not hesitate to call us.

Very truly yours,



A. Ann Woolfolk  
Deputy Attorney General



Janice R. Tigani  
Deputy Attorney General

AAW/JRT/rt

APPROVED:



Michael F. Foster  
State Solicitor

DAYCARE CENTERS  
AND THE AMERICANS WITH DISABILITIES ACT

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MAY 9, 1996

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Law Center, 22 Second Street, 5th Floor, San  
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## IMPLICATIONS OF ADA ON CHILD CARE FACILITIES

### WHAT IS ADA? AMERICANS WITH DISABILITIES ACT

- Broadest law ever covering disabilities
- Provides civil rights protections to individuals with disabilities
- Various parts of law:
  - Section protecting employment rights
  - Section requiring nondiscrimination by local and state governments.
  - Section requiring nondiscrimination by public accommodations - part of this on transportation
  - Section requiring improvements in telecommunications for hearing impaired.

Public accommodations includes family child care homes and child care centers which are also covered by employment section.

### WHO IS COVERED?

- Children and adults with a physical or mental impairment that substantially limits the child from a "major life activity".
  - Caring for her/himself - sleeping, eating, breathing, communication, walking, seeing, hearing, speaking, learning.
  - Disabilities vary from simple allergies, moderate retardation, diabetes, cerebral palsy to terminal illness.
  - Includes emotional or mental illness - even a child with a severe behavioral problem.
- People who have a history of these impairments although are not currently impaired (e.g., child with cancer in remission).
- People regarded to have impairments even if they really do not - e.g., severe facial burn scars, history of psychotherapy.
- People associated with those with disabilities both relatives and non-relatives - child whose parent uses wheelchair, brother with HIV.

### IMPORTANT PRINCIPLES -

- There is no one single approach to caring for child with disabilities.
- Anyone can become disabled.
- Children with disabilities are more like other children than they are different.
- Children with disabilities, as with any child, should be encouraged to help themselves as much as they can.

### Also

- Many children with special needs can be integrated into child care programs without changes in routine or environment.
- Support services exist to help care for children with disabilities.
- The experience of working with children with special needs can be rewarding for everyone.

### CAN A PROVIDER DENY CARE BECAUSE OF DISABILITY?

- No, a provider may not automatically deny admission simply because child or person close to child is disabled -
- May not have such a written policy.

### ADA requires a new way of thinking

- Each child's needs and conditions must be evaluated on an individual basis.
- Once admitted, each child is entitled to equal, non-segregated inclusion in the program to the extent appropriate to child's needs.
- Since 1/26/93 all programs, regardless of size, can be sued if they don't comply.
- If a provider is sued and loses, provider must:
  - Comply with statute immediately
  - Can be ordered to pay attorneys fees

- If determined to be reckless violation, can be ordered to pay the child's family monetary compensation and/or public fine up to \$50,000.00 for first violation and up to \$100,000.00 for additional violations.
- Provider must assess needs of a child & balance those against size of program budget, staff and resources, to determine if the child's needs can be accommodated. Provider must take necessary steps to accommodate special needs of child before denying care.

\* REASONS FOR DENIAL - (ONLY 4)

1. Accommodation (added equipment and/or services) imposes undue burden on provider or would fundamentally alter nature of program and no alternative steps can be taken.
2. Accommodation requires architectural changes not readily achievable and no reasonable alternative exists.
3. Child's condition poses a direct threat to health and safety of any of the other children or staff and no reasonable way exists to eliminate threat through changes.
4. Taking the child would fundamentally alter the nature of program and there are no reasonable alternatives.

ACCOMMODATIONS

- Modifications in policies, procedures, practices.
- Auxiliary aids and service.
  - e.g., interpreters, audio tapes, large print materials, etc.
- Removal of physical barriers which are readily achievable - rearrange tables or play areas, ramps, grab bars in toilet stall.

Examples of Accommodations:

1. Problem:

A child with severe mobility problems requiring wheelchair plus other limitations such as loss of bladder/bowel control and inability to feed self requiring special attention from provider.

Response:

Family Child Care Provider may not be able to provide adequate care without having additional staff which would pose undue burden - but child care center with large building and staff might have to shift staff coverage or hire staff as long as the care did not pose an undue burden.

2. Problem:

Child with less severe mobility impairment, crutches or leg brace, or wheelchair without required additional extraordinary care.

Response:

Less likely to pose undue burden on provider of any size or budget. As long as the child can be integrated into the program and his/her needs reasonably met provider must take the child.

Examples of accommodation(s) needed are:

- Remove braces as needed
- Incorporate activities for child, ensuring access to facilities, adult assistance as needed.
- Or similar simple accommodation.

WHAT IS "UNDUE BURDEN"

- Defined as "a significant difficulty or expense".
- There are no clear-cut standards to measure.
- Provider must assess each situation considering:
  - Nature and cost of accommodation
  - Overall financial resources of program
  - Number of employees
  - Legitimate safety regulations at site
  - If part of larger corporation - financial resources, size and location of parent corporation
  - If accommodation poses significant difficulty or expense, whether reasonable alternatives exists, that do not pose a burden

Example:

- If child needs books in Braille or audio-recorded books to participate, family child care provider will be responsible to furnish.
  - If child needs full-time interpreter may pose undue burden for family child care but centers may be able to accommodate.
  - However, before claiming undue burden family child care must explore alternatives to expensive interpreters first.
- Generally, providers of larger programs will have greater obligation under the law than family child care providers to meet the needs.
  - Parents can provide accommodation or fee or provider may be able to borrow from toy lending library.
  - It is suggested that resource centers be stocked with loaners.

FEES FOR ACCOMMODATIONS/SERVICES

- Provider may not pass higher cost of accommodations to parent of child unless all parents are charged.
  - Provider must absorb cost or charge all
  - Provider is encouraged to seek outside funds to defray cost before refusing child for an undue burden.
  - Tax deductions and credits are available to help defray cost.

WHAT IS "DIRECT THREAT"

- Exception is narrow, not easy to determine
- Provider must base determination on current medical information or "best available objective evidence" and consider:
  - Nature of child's condition that poses risk
  - Probable duration of condition that poses risk
  - Severity of risk
  - Probability of actual harm to others by the condition

- If risk can be eliminated by modifying policies, practices or procedures to not fundamentally alter nature of progress.
- Factors must be considered in light of accepted medical information and knowledge, not on public perceptions.
- Behavioral disorder can only be considered a direct threat if safely accommodating child's behavior creates an undue burden e.g., providing adequate supervision would significantly decrease necessary support of other children compromising their safety - but provider needs objective evidence and encourage parents to get professional help.

#### ADMISSION CRITERIA INVOLVING HEALTH CONCERNS

- May establish if imposed on all children - examples-
  - Require immunizations for all children, not just for some children.
  - Toilet training regulations can not exclude children whose disabilities prevent toilet training.
  - Children with HIV can not be excluded.

#### FEES AND DOCUMENTATION

- Parent(s) never under obligation to cover the cost.
- Provider must carefully document process of assessing undue burden and inform parent of his/her right not to cover cost (if parent offers, provider does not have to refuse funds).
  - Exception - cost of professional services such as physical therapy which parent wants during hours of care can be passed on to parent.

#### IS PARENT REQUIRED TO DISCLOSE SPECIAL NEEDS IF NOT OBVIOUS?

- No, parent is not obligated to disclose
- However, provider not expected to accommodate needs which are not obvious or disclosed
  - Ask for good health records as per licensing regulations
  - If provider is concerned parent has not fully disclosed information, may ask for clarification.

- Only generic information about limitations or needs & risks associated with condition may be sought.
- It is illegal to require additional health tests or information solely to screen out or deny child, but provider can ask for these to better evaluate reasonable care.

FLOW CHART:

- Review to walk through the process to determine an individual child's needs.

\* ACCOMMODATING CHILD IN SPECIAL NEEDS:

- Entitled to participate as equals in the "most integrated setting appropriate to child's needs"
- Provider must assess what is appropriate in consultation with parents, physician, public health and other special need resources.
- If parent does not disclose disability, provider not under obligation to provide accommodations.
- If child's disability becomes apparent, parent is unwilling to have child evaluated, Provider can not provide adequate, safe care without accommodations and after taking reasonable steps, care becomes unduly burdensome - Provider is under no obligation to continue.

PHYSICAL CHANGES TO HOME OR CENTER:

- Provider must remove accessibility barriers where "readily achievable" - means "easily accomplishable and able to be carried out without much difficulty or expense":

**Example:**

Family child care home front door has steps, but there is a side door at ground level - making it accessible is achievable (even if it means removing weeds, overgrown brush, lawn furniture or building small ramp for one step) - but permanent ramp to front door may not be readily achievable due to cost.

However, provider must first seek alternatives.

- Changes not required if change would involve a fair amount of difficulty or expense "as measured by size and budget." (reasonableness)
- Architectural changes to homes only required for parts of homes used for child care. New construction or additions to facility or home after 1/26/93 must be made accessible regardless of cost.

#### Tax Benefits Available

- NOT AVAILABLE TO NON-PROFITS.
- IRS Code Section 190 - Provider can deduct cost of "qualified architectural and transportation barrier removal expenses: - meet own, or lease facility or vehicle to qualify - capped at \$15,000.00.
- IRS - Section 44 - allows small businesses to take tax credit for expenses connected with ADA compliance includes architectural barrier removal, cost of interpreters, readers, taped texts, modification of equipment and devices, etc. Credit is 50% of any amount between \$250.00 and \$10,250.00 paid for a given expenditure. Eligibility requires gross receipts less than one million dollars or employment of 30 or fewer full-time employees.

#### Changes to Car or Van?

- If barriers can be removed with out too much difficulty or expense, required if transportation is part of program. (Required if readily achievable).
- Changes may be more readily achievable by larger programs than small centers or family child care homes, e.g., accommodating a wheelchair - even if vehicle can not be altered, provider is obligated to look for alternatives such as assisting child to the car and storing wheelchair in trunk.
- Private providers transporting in vehicles that seat more than 16 and who transport on fixed route (regular daily) must have accessible vehicles with hydraulic lifts.

### Need Special Equipment or Toys?

- Called "auxiliary aids and services" - must provide unless would pose "undue burden" or would "fundamentally alter nature of program or facility".
- Equipment such as interpreter, phones compatible with hearing aids, etc - large centers may be better able to buy high tech equipment.
  - Sometimes cost is more reasonable than thought
  - Or family child care home may be able to borrow equipment.
  - Must check out options before claiming "undue burden" and check for alternative aids, e.g., magnifying glass instead of large print reading material.
  - Cost can not be passed onto parent of child.

### What if Rent Home?

- ADA holds both provider and landlord responsible for compliance - does not specify who is responsible for which accommodations.
- ADA recommends each landlord and tenant enter ADA into contract specifying responsibilities. ADA suggests division of responsibilities as follows.
  - Landlord - Architectural barriers and providing auxiliary aids in any common area of multi unit structure (apartment or community building.)
  - Tenant responsible for auxiliary aids and architecture barriers in rental unit. Check local laws/ordinances.
  - Tenants must obtain landlord's permission for permanent changes.

### Rent from Church

- Religious organizations that operate their own child care and those that rent to private programs are exempt from ADA unless state law requires compliance. However, §504 which predates ADA and applies to programs which receive federal funds, also applies to religious programs that operate own program (and receive federal funds).

- The private provider located in a church must comply with ADA-responsibility rests with that program as tenant.

#### Liability Insurance Impart

- ADA does not adequately address issue
- ADA says a program can not refuse a child because insurance coverage won't permit but =>
- ADA does not prohibit insurers from canceling or not renewing liability insurance based on program providing care for disability

- However, ADA may provide a remedy to program if insurer raises rates or discontinues policy - (insurer can not use this as an attempt to avoid insuring a program caring for disabled) -- check with State Insurance Commission about unfair business practice regulations which may apply.

#### Special Record Keeping?

- May be important for providers to keep good records on absences for all children.
- Providers should keep records on health status, special needs, physical conditions, etc., on all children.
- Provider may have a uniform policy requiring payment for children's absences, regardless of reason - then non-payment for any reason may be grounds for termination.

#### Role of Licensing

- To educate providers - to make them aware of the ADA law and their responsibilities.
- To assure licensing does not cause providers to be in violation of ADA.

## SUMMARY OF ADA PROVISIONS

The Americans with Disabilities Act (ADA) is a federal law passed by Congress. It contains three parts, called Titles. The entire Act is published in the United States Code at 42 U.S.C. §§ 12101 - 12213.

Title I      42 U.S.C. §§ 12111 - 12117 :    **EMPLOYMENT**

Title II      42 U.S.C. §§ 12131 - 12165 :    **GOVERNMENTAL SERVICES**

Title III     42 U.S.C. §§ 12181 - 12189 :    **PUBLIC ACCOMMODATIONS**

Miscellaneous Provisions    42 U.S.C. §§ 12201 - 12213

Purpose and Definitions      42 U.S.C. §§ 12010 - 12102

Private (as opposed to governmentally owned) daycare centers are governed by Title III of the ADA in the operation of the center. Daycare Centers are also covered by the Delaware Equal Accommodations Act (6 Del. C. Ch. 45) and those centers that receive federal funding are also covered by Section 504 of the Rehabilitation Act of 1973.