



# Family Home Child Care Providers: Know Your Rights When State Licensors and Investigators Come to Your Home!

As a family home child care provider you may have questions about what to do when State employees come to your door. This brochure will help to educate you on your rights and what you can do to protect your rights.

## Is there a difference between a Department of Early Learning (DEL) inspection and a DSHS Department of Fraud Investigators (DFI) investigation?

Yes. DEL inspects your home to make sure it is safe and meets the licensing requirements. Your license may be suspended or revoked if you refuse to allow the DEL inspector to inspect your home.

By comparison, DSHS Fraud Investigators (DFI) may visit your home to investigate a crime or whether an overpayment has occurred. You should receive a written notice by mail before they investigate. In order to enter your home to ask questions or take records, DFI investigators need a search warrant, court order, or your permission.

## What training do DFI investigators have?

DFI investigators do not normally receive training in child care licensing rules. Many are former

police officers who have experience investigating crimes and gathering evidence for court. The DFI investigators are instructed that if you tell them they do not have permission to enter your home, they must leave. DFI investigators often work with other law enforcement authorities, such as county sheriff's offices, prosecutors, and, in some instances, with immigration agents.

## When are DFI investigations started?

DFI investigations begin when: (1) DEL requests an investigation; or, (2) a complaint is received from the public. These investigations can be started for many reasons. Some of the most common are for billing fraud, overpayments, a child is injured, or use of false information to obtain a license. At the time this brochure was written, DEL was only requesting DFI to investigate if the overpayment exceeded \$5,000. DFI is allowed to investigate complaints involving any amount of money when it receives a complaint from the public.

## Does the State have a right to take my original business records?

Unless the State has a court order signed by a judge or you give them permission, the State only has the right to review your records, not to take them. As part of any review, the State could bring a portable copier and make copies of your originals.

For example, you need authorizations for emergency medical care in the child's file. DEL licensors may want to review these records, but they do not need to take the originals. DFI investigators may ask to remove your original child attendance from the home. However, you are not required to permit removal unless the investigators have a court order or you give consent.

## I have just received a Home Entry Letter. What does this mean?

A home entry letter is a notice that you will be investigated by DFI investigators very soon. DFI is required to send the letter to you at least 5 days, but not more than 35 days, before an investigator comes to your home. If you are concerned about meeting with investigators, you should contact an attorney right away to discuss your rights. Remember, you do not have to speak with DFI investigators. You may contact your licensor to ask why your home is being investigated, and to ask whether DEL needs to inspect your home or child care records.

## Must I allow a DFI investigator to come into my home? May I ask him/her to come back later?

You have the right to deny the investigator permission to enter your home. You also have the right to ask the investigator to return at a more convenient time. If you allow the investigator to enter your home and his or her visit becomes inconvenient or uncomfortable, you have the right to ask the investigator to leave. The investigator must leave promptly when you request.

If a DEL licensor comes to your home with a DFI investigator and asks to inspect or enter your home, you may permit the licensor to enter and say the DFI investigator may not enter.

You **do not** have a choice if the investigator has a search warrant or court order to enter your home. You do have the right to be provided with a copy of the warrant or court order. If your home is entered by search warrant or court order, you may wish to contact an attorney. Also, you do not have to answer any questions and should consult an attorney before doing so.

## If I do allow a DFI investigator to enter my home, can I control where they go?

Yes. An investigator can only inspect or copy your family home child care records in a reasonable location within the licensed space chosen by you,

during your business hours. This means that the investigator cannot inspect your documents after your business is closed for the day. This also means that unless you give permission, an investigator may only go to areas accessible to children and may not enter private areas of your home.

**What should I do if a DFI investigator or police officer comes to my home with a search warrant or court order?**

Police officers serve search warrants and may serve court orders. DFI investigators may wish to enter your home to assist the police officer. You should call an attorney immediately and read the search warrant or court order to your attorney. Search warrants and court orders are reviewed and signed by a judge to give investigators the right to enter your home and potentially remove evidence, including original documents. If investigators have an order signed by a judge, you must allow them to enter and to conduct their search. The warrant or order may restrict entry to certain rooms or areas of the house or specify the evidence to be located, so read it carefully with your attorney. You **do not** have to answer any questions if your home is searched.

**Why does the state need my original child care records?**

If the State believes that you have overbilled for your childcare services, been involved in other fraudulent activities, or believes a child in your care has been harmed, it may want to confiscate your original childcare records to prove this. The State may also bring criminal charges against you, in which case the original records will be used as evidence against you in court.

**I have given permission to take my original records. What happens to my originals and when do I get them back?**

If you give permission to DFI to take your original records, the investigator will ask you to sign a form that proves that you gave permission. The form should contain a list of all the documents. Review the list carefully to make sure it accurately lists which records will be removed.

You have the right to ask for a copy of all the original records taken. The investigator must mail copies to you within 14 days after removal. Your original records must be returned within 60 days unless the investigator is allowed by warrant or court order to keep the originals, or you give them permission to keep the originals.

**Must I answer DFI investigator questions about my immigration status or my Social Security number?**

No. You always have the right to refuse to answer questions and consult with an attorney. If a DFI investigator asks about your immigration status or your Social Security number, you should refuse to answer any questions until you speak with an attorney. DFI investigators should not inquire into immigration or Social Security matters of spouses or children who are not employees. It is important to remember that the use of a social security number that is not your own is a crime, and so if any family member used another's social security number, you should speak to an attorney without answering the investigator's questions. You must show DEL an original social security card or your Employer Identification Number to obtain a family home child care license. DFI investigators will get this number from DEL's file before visiting your home.

**What do I do if I am questioned by Immigration Agents about my immigration status (including whether I am a U.S. citizen, where I was born, where I live, where I am from, etc.)?**

The advice is the same as above. You **do not** have to answer these questions if you do not want to.

The best advice is to say you need to speak with an immigration lawyer as immigration law is very complex.

**I feel I am being discriminated against. What should I do?**

You have the right to file a complaint with the Civil Rights Division of the U.S. Department of Justice (website, <http://www.usdoj.gov/crt/>), the Washington State Human Rights Commission (website, <http://www.hum.wa.gov/complaintProcess/>), or the DSHS (website <http://www1.dshs.wa.gov/pdf/Publications/22-171.pdf>). You may wish to consult with an attorney before filing a complaint.

**I still have more questions, where can I get answers?**

At Columbia Legal Services' website, [www.columbialegal.org](http://www.columbialegal.org), you will find information that was sent to all family home child care providers in Washington, plus other resources that may be helpful in understanding these issues. The information on the website is in Russian, Vietnamese, and Somali. Childcare providers may also find helpful the Service Employees International Union (SEIU) website, [www.seiu.org/](http://www.seiu.org/).

Additional information on this subject and many other civil legal issues affecting Washington residents may be found at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). If you are low-income, you may speak with an attorney or paralegal by calling the CLEAR hotline at 1-888-201-1014. If you are 60 or older, you may call CLEAR senior at 1-888-387-7111, regardless of income.

*Authored by Maria Mena, Columbia Legal Services, July 2008*