

102 CMR: OFFICE OF CHILD CARE SERVICES

102 CMR 1.00: ENFORCEMENT STANDARDS AND DEFINITIONS FOR LICENSURE OR APPROVAL

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1.01: Introduction

102 CMR 1.00 is adopted in accordance with M.G.L. c. 28A which stresses the commitment of state government to assure every child a fair and full opportunity to reach his or her full potential. 102 CMR 1.00 includes definitions and requirements that apply to all programs that the Office licenses or approves and delineate the Office's authority to take legal action as a result of a program or facility's non-compliance with the appropriate regulations.

1.02: Definitions

As used in 102 CMR 1.00, 3.00, 5.00, 7.00 and 8.00, the following words shall have the following meanings unless specifically defined therein or unless the context otherwise requires:

Abuse. The non-accidental commission of any act upon a child which causes or creates a substantial risk of serious physical or emotional injury or constitutes a sexual offense under the laws of the Commonwealth.

Applicant. The individual who has been designated as the person responsible for the administration of the program or facility and is the duly authorized agent of the person applying for licensure or approval.

Approval. A certification in writing, whether regular or provisional, issued by the Office to a department, agency, or institution of the Commonwealth or any political subdivision thereof which authorizes it to operate any program licensable by the Office of Child Care Services.

Commissioner. The Commissioner of the Office of Child Care Services.

Day. Calendar day unless otherwise specified.

Disability. With respect to an individual, disability means a permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of having such an impairment; or being regarded as having such an impairment.

License. Any certification in writing, whether regular or provisional, issued by the Office to any person other than a department, agency, or institution of the Commonwealth or any political subdivision thereof, which authorizes such person to operate any program licensable by the Office for Children.

Licensee. Any person holding a license or approval issued by the Office.

Neglect. The failure, either deliberately or through negligence or inability, to adequately care for, protect, or supervise children.

Office. The Office of Child Care Services.

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1.02: continued

Parent. Father or mother, guardian, or person or agency legally authorized to act on behalf of the child in place of, or in conjunction with, the father, mother, or guardian.

Person. Any individual, partnership, corporation, association, organization or trust, or any department, agency or institution of the federal government or of the Commonwealth or any political subdivision thereof.

51A Report. A report filed with the Department of Social Services pursuant to M.G.L. c. 119, § 51A alleging that a child may have been abused or neglected.

51B Report. A report of an investigation of a 51A complaint conducted by the Department of Social Services pursuant to M.G.L. c. 119, § 51B. A 51B report that is supported means that there is reasonable cause to believe that a child has been abused or neglected by a caretaker.

1.03: Licensure

(1) Non-Discrimination. The licensee shall not discriminate in providing services to children and their families on the basis of race, religion, cultural heritage, political beliefs, national origin, marital status, sexualorientation or disability. A statement that the program does not discriminate on these bases shall be made part of the written statement of purpose where required.

(2) Licensure or Approval Required. No person shall operate or purport to operate a program licensable by the Office of Child Care Services without a license or approval issued by the Office.

(3) Application. Any person who wishes to establish and maintain a program or facility shall file a written application with the Office in a manner, and on forms, provided by the Office.

(4) Renewal. Any person seeking to renew a license or approval shall file a written application for such renewal with the Office in a manner, and on forms, provided by the Office not less than 30 days prior to the date of expiration of his/her current license or approval. If a renewal application has been filed, a license or approval, or provisional license or approval, shall remain in effect until a determination is made by the Office on the status of the license.

(5) Application Fee. The application, where applicable, shall be accompanied by a check made payable to the Commonwealth of Massachusetts. A fee schedule may be obtained from the Office.

(6) Availability of Regulations The licensee shall have a copy of the regulations applicable to any license issued by the Office on the premises of the program and shall make it available to any person upon request.

(7) Transfer of License. A license or approval shall not be transferable from one licensee to another; from one program or facility to another; or from one owner to another.

(8) Posting of License. The provider shall post conspicuously any license issued by the Office.

1.04: Effective Dates and Severance

(1) Effective Date. The effective date of 102 CMR 1.00 through 8.00 *et seq.* is May 1, 1997.

(2) Licenses Issued Under Previous Standards. Any license, or approval, in effect immediately prior to the effective date of 102 CMR 1.00 through 8.00 *et seq.* shall remain in effect, unless suspended or revoked, until a new license or approval is issued or expressly refused under 102 CMR 1.00 through 8.00 *et seq.*

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1.04: continued

(3) Severance. If any provision contained in 102 CMR 1.00 through 8.00 *et seq.* or the application thereof to any person or circumstances is held invalid, the remainder 102 CMR 1.00 through 8.00 *et seq.* and the application of provisions in question to other persons not similarly situated, or to other circumstances, shall not be affected thereby.

1.05: Disqualifying Background Information

(1) Applicants and Family Day Care. Any applicant, licensee, provider, family day care approved assistant, family day care household member, and any person regularly on the premises when family day care children are present shall have a background free of conduct which, in the judgment of the Office, bears adversely upon applicant's or licensee's ability to care for children.

(a) Such conduct shall include, but not be limited to the following:

1. criminal charges or a criminal conviction included in a CORI (Criminal Offender Record Information) report as a result of behavior that, pursuant to written policy, OCCS has determined to impair the applicant's or licensee's ability to care for children;
2. engaging in, or having engaged in, any other conduct, criminal or otherwise, determined by the Office to impair the applicant's or licensee's ability to care for children;
3. engaging in, or having engaged in conduct which results in his/her child being adjudicated to be in need of care and protection;
4. allegations of abuse or neglect of a child, supported in a 51B report;
5. use of alcohol or drugs to an extent or in a manner that is determined by the Office to impair the applicant's or licensee's ability to care for children properly.

(b) An applicant shall not qualify to receive, retain, or have renewed a license if the background of the applicant, household member, or person who is regularly on the premises is not free from conduct which adversely bears on the provider's ability to care for children.

(c) Failure to disclose relevant criminal history may result in mandatory disqualification even if such crimes do not fall under the "Mandatory Disqualification" section of the OCCS CORI Policy.

(d) A family day care home shall not have any household member or persons who are regularly on the premises whose presence would, in the judgment of the Office, be detrimental to the health and welfare of day care children, or would impede or prevent the provision of adequate day care in the home.

(2) Employees of Group Day Care, School Age, Residential Programs and Agencies Offering Child Placement and Adoption Services.

(a) Each person employed by the licensee, who has the potential for unsupervised contact with children, shall have a background free of conduct which bears adversely upon his or her ability to provide for the safety and well-being of a child. The licensee shall determine, in accordance with OCCS policy, whether an employee's or potential employee's conduct, criminal or otherwise, shall disqualify that person from employment in the program. In making this determination the licensee shall consider the following:

1. Engaging in, or having engaged in conduct which results in his/her child being adjudicated to be in need of care and protection.
2. Use of alcohol or drugs to an extent or in a manner that is determined by the licensee to impair his/her ability to care for children properly.
3. Having engaged in conduct which results in criminal charges or a criminal conviction included in a CORI (Criminal Offender Record Information) report.
4. Engaging in, or having engaged in, any other conduct, criminal or otherwise, determined by the licensee, to impair the employee's ability to care for children.

(b) Each licensee shall ensure that employees shall not have the potential for unsupervised contact with children until the licensee determines that the requirements of 102 CMR 1.05(2)(a) are met.

1.06: Right to Visit

(1) Visits to Determine Compliance.

(a) Any employee of the Office, may, at any reasonable time, visit and inspect any facility or program operated by a person who is subject to licensure or approval by the Office in order to determine whether such facility or program is being operated in compliance with the law and with any OCCS regulations governing such programs.

(b) Any employee of the Office authorized by the Commissioner may make oral and written inquiries to determine whether a program or facility is being operated in compliance with designated regulations.

(2) Complaint Investigations.

(a) An employee of the Office, authorized by the Commissioner may visit and inspect any facility or program upon receipt of a complaint and allegations regarding compliance with any OCCS regulations governing such programs.

(b) Such visits will be conducted at any reasonable time in order to determine whether any child is in jeopardy and/or whether such facility or program is being operated in accordance with any OCCS regulations governing such programs.

(c) A person duly authorized by the Director may be accompanied by an employee of any department, agency or institution of the Commonwealth during the Office's investigation process if the Office and said department, agency or institution of the Commonwealth have agreed to conduct a joint investigation.

(3) Availability of Information. The applicant or licensee shall make available any information requested by the Office to determine compliance with any Office regulations governing such programs, by providing access to his/her facilities, records, staff and references. The provider, approved assistant, household members, and other persons who are regularly on the premises, and any staff members shall provide the Office with all information required in any Office regulations governing such programs.

(4) Visit Reports. Whenever the Office finds upon inspection or through information in its possession that a program or facility is not in compliance with any applicable licensing provisions of 102 CMR, the Office shall inform the licensee in a written visit report of the observations made and the regulation(s) which the licensee has violated, and may request a plan for compliance from the licensee to be submitted within a reasonable time as determined by the Office, but in no case longer than 30 days.

1.07: Enforcement and Compliance with Regulations

(1) Deficiency Correction Orders.

(a) Whenever the Office finds upon inspection or through information in its possession that a program or facility is not in compliance with the regulations, the Office may order the licensee to correct any non-compliances as specified in a deficiency correction order.

(b) The deficiency correction order shall include a statement of observations and indicate which regulation(s) the licensee has violated. The order may prescribe the method(s) of compliance with the regulations; and, the order shall prescribe the time period(s) for correction, which shall be reasonable, depending on the nature of the non-compliances cited and the time required for corrections.

(2) Factors which shall be considered by the Office before imposing any sanction or fine or any action authorized under 102 CMR 1.07(4) include but are not limited to:

- (a) any non-compliance at the facility or program;
- (b) the risk the non-compliances present to the health, safety, and welfare of children;
- (c) the nature, scope, severity, degree, number, and frequency of the non-compliances;
- (d) the licensee's failure to correct the non-compliances;
- (e) any previous non-compliances; and
- (f) any previous enforcement action(s).

1.07: continued

(3) Sanctions and Fines

(a) Whenever the Office finds upon inspection or through information in its possession that a person operating a program or facility is not in compliance with any OCCS regulations governing such program, the Office may, in a notice of sanction, impose one or more sanctions which may include but need not be limited to:

1. ceasing the enrollment of new children;
2. reducing the number of children a program or component of a program is licensed to serve;
3. hiring of a consultant(s) to provide technical assistance and/or training;
4. hiring of additional staff on a temporary or permanent basis; requiring the licensee to fund a monitor selected by and accountable to the Office;
5. restricting an administrator's and/or staff person's access to children;
6. requiring that an agency withdraw its approval of an adoptive, foster or shelter home.

(b) Fines. The Office may levy a civil fine if it finds that an applicant or licensee has failed to comply with any plan for compliance or deficiency correction order issued by the Office provided that the plan or order included a statement notifying the licensee that failure to comply with all or part of the order may result in a civil fine levied in accordance with any OCCS regulations governing such programs.

1. Fines shall range from \$50 to \$250 for family day care, group day care, or school age child care programs; \$50 to \$1000 for any other program regulated by the OCCS.
2. Failure to comply with more than one order issued by the Office may result in the assessment of more than one fine.

(4) Probation, Suspension, Revocation, and Refusal to Issue or Renew Licenses and Approvals.

(a) Grounds. The Office may make probationary, suspend, refuse to renew, revoke, or refuse to issue a license or approval if it finds any of the following:

1. the applicant or licensee failed to comply with any applicable regulation, or any deficiency correction order, notice of sanction, suspension, agreement or terms of probation;
2. the applicant or licensee failed to pay a fine after either failing to appeal the assessment of a fine within the prescribed time or after a hearing where assessment of a fine was upheld;
3. the applicant or licensee submitted any misleading or false statement or report required under 102 CMR 1.00 through 8.00 *et seq.*;
4. the applicant or licensee refused to submit any report or make available any records required under 102 CMR 1.00 through 8.00 *et seq.*;
5. the applicant or licensee refused to admit, at a reasonable time, any employee of the Office authorized by the Commissioner to investigate or inspect, in accordance with 102 CMR 1.00; or
6. the applicant or licensee failed to obtain a license prior to opening a program or facility or prior to changing the location of a program or facility.

(b) Effect.

1. Upon revocation, refusal to renew, or suspension the licensee shall immediately return the license or approval to the Office and cease providing services.
2. An applicant or licensee shall not qualify for a license or approval from the Office for five years after a final agency decision to revoke or refuse to issue or renew a license or approval held by the applicant or licensee pursuant to M.G.L. c. 28A or other similar licensing law. Thereafter, an applicant or licensee shall be eligible only if he/she can demonstrate a significant change in circumstances.
3. The Office may, at its sole discretion, entertain an application for approval or licensure prior to the expiration of five years, if it determines that a significant change in circumstances has occurred. Such exercise of its discretion shall not be appealable.

1.07: continued

(5) Suspension in An Emergency.

(a) The Office may suspend any license or approval without a prior hearing if failure of the licensee to comply with any applicable regulation results in an emergency situation which endangers the life, health, or safety of children or staff present in the program or facility. The licensee shall be notified of any such suspension of a license or approval by written notice, hand delivered, or mailed to the licensee via first class mail, certified or registered, return receipt requested, or delivered by courier requiring a signed receipt. If a Notice of Claim for a hearing is delivered in hand or mailed to the Office via first class mail, certified or registered, return receipt requested, within five business days of the licensee's receipt of such notice, a hearing shall be held within ten business days of the receipt of such Notice of claim. The suspension shall remain in effect pending such a hearing.

(b) The sole issue at the hearing shall be whether the Office has reasonable cause to believe that the licensee's failure to comply with any applicable regulation resulted in an emergency situation which endangers the life, health, or safety of children or staff present in the program or facility. If a 51B report indicates that any abuse or neglect occurred in a family day care program or during participation in a family day care program related activity, it shall be *prima facie* evidence that an emergency exists.

(c) The licensee shall notify the parents or guardians of all children enrolled in the program or facility and all funding agencies of any such suspension of a license or approval within two business days of receipt of notice from the Office.

(d) Upon suspension, the licensee shall immediately return the license or approval to the Office and cease providing services.

(6) Follow-up to Enforcement Action.

(a) Upon the expiration of the time frame(s) prescribed in a plan for compliance, deficiency correction order, or notice of sanction, a duly authorized employee of the Office will determine compliance with such plan, order, or notice, by visiting the facility or program, reviewing documents, and/or verifying compliance through whatever other means the Office deems suitable.

(b) If a determination of non-compliance with such plan, order, or notice is made, the Office may request an additional plan, issue an additional deficiency correction order or notice of sanction; or, in addition to any of the actions listed above, levy a civil fine pursuant to 102 CMR 1.00; or make probationary, revoke, suspend, refuse to issue, or refuse to renew a license or approval.

(c) 102 CMR 1.00 in no way limits the Office's authority to visit any facility or program subject to licensure or approval by the Office to determine compliance with any regulation, nor does 102 CMR 1.00 limit the Office's authority to make probationary, suspend, revoke, or refuse to issue a license or approval.

(d) Following revocation, refusal to renew or suspension, a duly authorized employee of the Office will determine compliance by visiting the facility or program, reviewing documents, and/or verifying compliance through whatever other means the Office deems suitable.

1.08: Rights to Appeal

(1) Request for Administrative Reconsideration.

(a) Within seven days of receipt of a deficiency correction order or notice of a sanction, the licensee may file with the General Counsel a written request for administrative reconsideration. The request shall be limited to direct and specific reasons why the notice of sanction or any item in the deficiency correction order or any portion thereof should be rescinded or modified, and the approximate time(s) requested by the licensee to take corrective measures if any.

(b) Within 15 business days after receipt of a request for reconsideration, the General Counsel shall grant, deny, or otherwise act on such request.

(c) Filing a request for administrative reconsideration shall not alter the time required for compliance with the notice of sanction or deficiency correction order.

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(2) Request for a Formal Hearing.

(a) An applicant whose application for a license or approval the Office intends to deny, or a licensee whose approval or license the Office intends to make probationary, revoke, suspend, or refuse to renew, or whom the Office intends to fine, may request a hearing held pursuant to the Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.01 *et seq.* by filing a Notice of Claim for a hearing and an answer within 21 days of receipt of the Office's notice.

(b) The hearing officer shall enter a recommended decision. A final agency decision shall be issued by the Commissioner or his/her designee. Hearings shall be in accordance with the provisions of 801 CMR 1.01 *et seq.* Failure to request a hearing and file timely answers may be deemed a waiver of such right and a final agency decision may enter without further notice.

(3) Evidence at Hearings.

(a) A 51A or 51B report shall be admissible as evidence if it indicates that a child was abused or neglected:

1. by a licensee;
2. by a family day care provider, approved assistant, household member, or person regularly on the premises of the family day care home; or
3. by any staff member of a licensed facility or program; or
4. by any person regularly on the premises of a licensed facility or program; or
5. while in the care of a licensed facility or program.

(b) At any hearing involving abuse or neglect at a licensed facility or program, no child shall be required to testify. If necessary, caseworkers, parents or other adults who have talked to the child allegedly abused or neglected may testify in place of the child, and videotaped interviews with the child may be introduced. Such testimony shall be admissible at the hearing and a case based solely on such evidence shall not be subject to dismissal on the grounds that it relies in whole or in part on hearsay.

1.09: Notifications

(1) Notification by the Office.

(a) The Office shall inform state funding agencies, or any other agency specified by the Office, of the Office's intent to impose a sanction upon a licensee or to revoke, suspend, make probationary, or refuse to renew a license or approval and shall notify them in writing of any deficiency correction order, sanction, probationary status, suspension, revocation, or refusal to renew.

(b) When corrective action has been completed, or if a suspended license or approval is restored, state funding agencies, or any other agency specified by the Office, shall be informed.

(2) Notification by the Licensee.

(a) Every licensee shall post in a conspicuous place any current license or approval issued by the Office and any notice of hearing, notice of sanction, order, or decision issued by the Office that pertains to the program or facility. Such posting shall be in an area easily viewed by visitors and employees.

(b) The Office may require that written notice of any deficiency correction order, sanction, probationary status, suspension, revocation or refusal to renew be sent by the licensee to funding agencies, referral sources, and when appropriate, parents and any other agency specified by the Office. The Office may specify the content of such notice.

(c) The Office may require the licensee to obtain a signed acknowledgement of receipt of such notice on a form specified by the Office.

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(d) The Office may require the names, addresses, and telephone numbers of the parents of all children enrolled at the time of the regulatory action and during the previous five years.

(e) In Family Day Care cases, the Office may require the names of all providers for whom an approved assistant has worked.

REGULATORY AUTHORITY

102 CMR 1.00: M.G.L. c. 28A.