

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER D: LICENSING ADMINISTRATION

PART 383
LICENSING COMPLIANCE MONITORING, COMPLAINTS AND ENFORCEMENT

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AUTHORITY: Authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children and Family Services Act [20 ILCS 505].

SOURCE: Adopted at 5 Ill. Reg. 14491, effective December 29, 1981; old Part repealed at 32 Ill. Reg., and new Part adopted at 32 Ill. Reg. 4332, effective March 17, 2008; amended at 36 Ill. Reg. 13039, effective August 15, 2012; amended at 42 Ill. Reg. 8197, effective June 1, 2018.

SUBPART A: GENERAL PROVISIONS

Section 383.10 Purpose

This Part describes:

- a) the Department and supervising agency's responsibility to monitor child care programs and facilities and to visit and examine child care programs and facilities to determine compliance with the Child Care Act of 1969 [225 ILCS 10] and licensing standards;
- b) requirements for the Department or supervising agency to receive complaints and conduct licensing complaint investigations;
- c) requirements for the Department or supervising agency to develop and implement a protective plan or corrective plan that assures the safety of children while a licensed program or facility corrects noted violations;
- d) review of licensing decisions;
- e) enforcement actions;
- f) the procedures for surrender of a license or permit; and
- g) the administrative hearing process through which a licensee or permit holder may obtain review of certain enforcement actions.

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Section 383.15 Definitions

"Administrative hearing" means a formal review of a decision by the Department to revoke or refuse to renew a license, or to refuse to issue a full license to the holder of a permit.

"Administrative order of closure" means a document issued by the Department that orders the immediate closure of a child care program or facility subject to licensure under the Child Care Act, whether the program or facility is licensed or unlicensed.

"Administrative Law Judge" means a licensed attorney who is assigned by the Director and is responsible to conduct administrative hearings and issue recommended decisions to the Director.

"Appellant" means the person or entity who requests an administrative hearing or on whose behalf an administrative hearing is requested.

"Authorized representative" means an attorney, or other person who has written authorization from the appellant, to assist, act and/or speak on the appellant's behalf in the informal review or administrative hearing process. The Department shall assist the appellant in making written authorization, upon request.

"Chief Administrative Law Judge" means the supervisor of the Administrative Law Judges and coordinator for the administrative hearing process.

"Child" means any person under 18 years of age. For purposes of admission to and residence in child care institutions, group homes and maternity centers, the term also means any person under 21 years of age who is referred by a parent or guardian, including an agency having legal responsibility for the person pursuant to the Juvenile Court Act of 1987. [225 ILCS 10/2.01]

"Child Care Act of 1969" or "Child Care Act" means 225 ILCS 10, the Illinois statute that provides the Department with the authorization and outline of requirements needed to license and monitor child care facilities and authorization to promulgate administrative rules consistent with the Act.

"Child care facility" means any person, group of persons, agency, association, organization, corporation, institution, center, or group, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility defined in the Child Care Act, established and maintained for the care of children. "Child care facility" includes a relative who is licensed as a foster family home under Section 4 of the Child Care Act. [225 ILCS 10/2.05]

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"Complaint" means any oral or written statement, notice or report made by any person or entity to Department staff or staff of a private supervising agency alleging that a licensed facility is in violation of the Child Care Act or licensing standards, or that an unlicensed child care facility is operating under conditions that require it to be licensed under the Child Care Act or administrative rules of the Department.

"Concurrent Investigation" means an allegation of abuse/neglect has been reported to have occurred within a licensed child care facility and the allegation has been accepted for investigation by the Department as a child protection report.

"Conditional license" means a non-renewable document issued by the Department after an informal review that authorizes a licensee to continue operating a licensed child care facility for a period of six months in compliance with a corrective plan, the Child Care Act and licensing standards, and requires the licensee to comply fully with all terms of the conditional license agreement.

"Corrective plan" means a written document approved by a licensing supervisor that lists substantiated violations of licensing standards and/or the Child Care Act, the actions to be taken by the licensee or permit holder to correct the substantiated violations, and the time frames for correcting the substantiated violations.

"Day" means a calendar day, unless otherwise specified in this Part.

"Department" means the Illinois Department of Children and Family Services.
[225 ILCS 10/2.02]

"Department representative" means an attorney licensed to practice in the State of Illinois who is assigned to represent the Department at an administrative hearing.

"Director" means the Director of the Department of Children and Family Services.

"Final administrative decision" means the Department's final decision, order or determination, rendered by the Director in a particular case, on an issue reviewed through an administrative hearing that affects the legal rights, duties or privileges of participants and that may be further reviewed by the circuit court under the Administrative Review Law [735 ILCS 5/Art. III].

"Full license" means a document issued by the Department that authorizes the applicant to operate a child care program or facility for either a 3 or 4 year time period in accordance with licensing standards and the Child Care Act. The term "full license" does not include a permit or a conditional license.

"Good Cause" denotes a sensible and reasoned approach to take certain action allowed by statute or administrative rule.

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"Indicated report" means any report of child abuse or neglect made to the Department pursuant to the Abused and Neglected Child Reporting Act [325 ILCS 5] for which it is determined, after an investigation, that credible evidence of the alleged abuse or neglect exists.

"Informal review" means a meeting conducted by the licensing administrator or designee to gather information regarding a permit holder's or licensee's noncompliance with the Child Care Act and licensing standards to determine whether further enforcement or other action shall be recommended.

"Initial application for license" means the first application for licensure submitted by the individual, corporation, or other legal entity, or an application for licensure submitted by the holder of a conditional licensee.

"License" means a document issued by the Department that authorizes the applicant to establish or operate a child care program or facility in accordance with applicable licensing standards and the Child Care Act.

"Licensee" means an individual, agency or organization that holds a license issued by the Department.

"Licensing administrator" means management-level staff of the Department who are assigned the direct supervision of licensing supervisors.

"Licensing complaint investigation" means an information gathering and assessment process initiated following receipt of a complaint and conducted by a licensing representative in order to determine compliance with the Child Care Act and licensing standards.

"Licensing representative" means Department or licensed child welfare agency staff, who, in accordance with Section 5(c) of the Child Care Act, have passed an examination demonstrating familiarity with the Child Care Act and with the appropriate standards and regulations of the Department and who are authorized by the Department or agency to examine child care programs and facilities applying for or issued a license.

"Licensing standards" means the administrative rules promulgated by the Department governing the licensing and operation of child care facilities.

"Licensing study" means the written assessment of an application for a child care program or facility license that includes, but is not limited to, on-site visits, interviews, background checks, character references, medical clearances, and the collection and review of other supporting documents to determine compliance with the Child Care Act and licensing standards.

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"Licensing supervisor" means Department or licensed child welfare (see 89 Ill. Adm. Code 401.310) or day care (see 89 Ill. Adm. Code 405.10) agency staff assigned the responsibility for direct supervision of licensing representatives.

"Monitoring visit" means an on-site visit to the program or facility by the licensing representative to determine continuing compliance with the Child Care Act and licensing standards.

"Parties" means the Department and a person or persons who have requested an administrative hearing. No person may join in an administrative hearing as a party unless that person has standing to request an administrative hearing on the same issues before the Administrative Law Judge.

"Permit" means a one-time only document issued by the Department in accordance with applicable licensing standards.

"Permit holder" means an individual, agency or organization that holds a permit issued by the Department.

"Permit period" means the time period designated in the licensing standards for a particular facility type during which an individual, agency or organization may operate a child care program or facility pursuant to a permit issued by the Department.

"Perpetrator" means a person who, as a result of a child protection investigation, has been determined by the Department to have caused child abuse or neglect.

"Preponderance of the evidence" means the greater weight of the evidence or evidence that renders a fact more likely than not.

"Program", as used in this Part, means a Youth Transitional Housing Program operating in a licensed child care facility in accordance with applicable standards defined in 89 Ill. Adm. Code 409 (Licensing Standards for Youth Transitional Housing Programs) and the Children and Family Services Act [20 ILCS 505], or in an unlicensed facility where the transitional living facility meets the requirements of 89 Ill. Adm. Code 409.

"Protective plan" means a written plan of action developed by a licensing representative or a child protective service worker, and approved by the licensing supervisor, that restricts contact between a licensee, employee, volunteer, household member, or another person in contact with children in a licensed facility and the children cared for in the facility.

"Refuse to issue full license" means the Department has refused to issue a full license at the end of a permit period.

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"Refuse to renew a license" means that, after submission of a license renewal application and a licensing study based upon that application, the Department refuses to extend the license for an additional term.

"Regional Licensing Administrator" means the Department's regional-level manager who supervises Department licensing supervisors.

"Request for an administrative hearing" means the written request by an appellant for an administrative hearing.

"Revocation of a license" means the Department has terminated the rights and privileges associated with a license or a permit.

"Stand-Alone Complaint" means an alleged violation of the licensing standards has been accepted for investigation, with no child protection investigation related to the licensed facility.

"Stipulation" means an agreement by the parties that certain facts are true and can be introduced into evidence without further proof.

"Substantiated violation" means evidence collected clearly shows the licensee was out of compliance with a specific Section of the administrative rule or statute.

"Supervising agency" means the Department, licensed child welfare agency or licensed day care agency that recommended licensure of or supervises a licensed foster home or day care home.

"Supervisory review" means a meeting conducted by the licensing supervisor, that may also include the licensing representative, during which a licensee or permit holder may be heard and present additional information and/or provide an explanation related to the substantiated violations of the rule and/or Child Care Act.

"Surrender of a license or permit" means a voluntary act by a licensee or permit holder to relinquish a license or permit to operate a child care program or facility. Surrender of a license or permit relinquishes all rights and privileges associated with the license or permit.

"Surrender with cause" means a surrender of a license or permit that occurs after the Department has offered an informal review or issued an administrative order of closure, but before the Department has issued a notice of intent to revoke, refuse to renew, or refuse to issue a full license.

"Unlicensed child care facility" means a child care program or facility subject to licensure under the Child Care Act that is operating without a valid license or permit.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

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Section 383.20 Applicability

This Part applies to all agencies, child care facilities and programs subject to regulation under the Child Care Act. The Department is ultimately responsible for enforcing the Child Care Act. Non-Department supervising agencies are authorized to perform certain enforcement functions as identified in this Part.

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Section 383.25 Monitoring Visits to Licensed Facilities

- a) Licensing representatives of the Department or supervising agency shall visit the program or facility for the purpose of determining its continued compliance with the Child Care Act and licensing standards. Monitoring visits may be announced or unannounced during the hours of operation, whether or not children are currently present or in care.
- b) Monitoring visits for all licensed foster homes shall be conducted at least twice each calendar year by a representative of the supervising agency, and more frequently when conditions in the home warrant.
- c) All types of licensed child care facilities other than foster homes shall be monitored by an authorized licensing representative at least once annually and more frequently when conditions in the facility warrant. Foster homes shall be monitored by an authorized licensing representative at least semiannually.
- d) Any facility permit shall be monitored by an authorized licensing representative a minimum of once per month.
- e) The licensing representative shall document observations made during the monitoring visit. The licensing representative shall notify the licensee or permit holder, in writing, of any substantiated violations and required follow-up actions.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.30 Complaints Alleging Violation of the Child Care Act or Licensing Standards

- a) Complaints alleging violation of the Child Care Act or licensing standards related to the licensing or operation of child care programs or facilities may originate from any source. Complaints alleging licensing violations or that a program or facility is operating without a license may be accepted from anonymous or identified sources.

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- b) Staff of the Department and purchase of service agencies (see 89 Ill. Adm. Code 357) shall immediately make a licensing complaint when they observe or have knowledge of substantiated violations of the Child Care Act or licensing standards, including *the failure of individual staff at child care facilities or child welfare agencies to report suspected abuse or neglect of children within the child care facility as required by the Abused and Neglected Child Reporting Act* [225 ILCS 10/8.5].
- c) A licensing complaint shall be immediately directed to the supervising agency or to the Department's licensing unit serving the geographical area of the facility. A licensing complaint involving a home licensed to operate as both a foster home and a day care home shall be directed to both supervising agencies.
- d) When the Department receives a complaint involving a foster home, day care home, or a home that is licensed to operate as both a foster home and a day care home, the Department shall immediately notify the supervising agencies of the complaint.
- e) When a non-Department supervising agency receives a licensing complaint, that complaint shall be reported to the Department licensing representative who supervises the agency within 3 business days.
- f) Investigations Not Necessarily Required
 - 1) A licensing complaint investigation is not required when:
 - A) the alleged violation occurred more than 60 days before receipt of the complaint and is not of a continuing nature;
 - B) the complaint is anonymous and fails to allege violations that affect the health, safety, morals or welfare of the children being served; or
 - C) no violations of the Child Care Act or licensing standards are apparent from the complaint.
 - 2) However, the licensing supervisor may direct the licensing representative to conduct a monitoring visit at any time.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

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Section 383.35 Investigations of Complaints Concerning Licensed Facilities

- a) When a complaint alleges one or more violations of the Child Care Act or licensing standards involving a licensed child care program or facility, the supervising agency shall assign a licensing representative to investigate the allegations.
- b) The licensing representative shall begin a licensing complaint investigation within 2 business days after receipt of the complaint by the supervising agency licensing unit and shall complete the investigation within 30 days after receipt of the complaint. However, upon written notice to the licensee, the investigation may be extended for an additional 30 days.
- c) The licensing representative shall:
 - 1) interview the complainant, if known, and other persons who may have information relevant to the complaint. When failure of staff to report suspected abuse or neglect to a child is alleged or suspected, the licensing representative shall *ensure that the child care facility takes immediate action with the individual staff involved* and document the facility's actions. Immediate action may include, but is not limited to, requiring supervised access to children, re-assignment of staff, or additional staff education and/or training;
 - 2) obtain and review any relevant documentation;
 - 3) make one or more unannounced visits to the program or facility, during the hours of operation, to gather information and evidence relevant to the complaint, and to determine whether the program or facility is operating in accordance with the Child Care Act and licensing standards. When evidence supports one or more staff failed to report suspected abuse or neglect to a child within the child care facility, the licensing representative shall document those findings and make a determination *whether the failure to report suspected abuse and neglect was a single incident or part of a larger incident involving additional staff members who failed to report, or whether the failure to report suspected abuse and neglect is a system-wide problem within the child care facility or child welfare agency; and*
 - 4) complete and document the licensing complaint investigation on forms prescribed by the Department. [225 ILCS 10/8.5]
- d) At the conclusion of the licensing complaint investigation, the licensing representative shall make a determination and enter a finding of "substantiated" or "unsubstantiated" with regard to each allegation in the complaint and shall document these findings. The licensing representative shall also document any other substantiated violations observed during the investigation.

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- e) When a licensing complaint is taken for a stand-alone investigation of a licensed foster home, the licensing unit assigned shall be responsible for contacting and interviewing all caseworkers with children placed in the licensed home. All caseworkers with children in a licensed foster home that is being investigated for a licensing violation shall receive ongoing updates and receive the final outcome of the investigation related to that foster home.
- f) Within 5 business days after supervisory approval of the determination, the licensing representative shall notify the complainant, in writing, of whether the allegations in the complaint were substantiated or unsubstantiated.
- g) Within 5 business days after supervisory approval of the determination, the licensing representative shall notify the licensee or permit holder, in writing, of each finding noted in the complaint investigation and any required follow-up action.
- h) When a licensing complaint involves a home licensed to operate as both a foster home and a day care home, the licensing supervisors for both the foster home and day care home licensing units shall assign the complaint investigation to licensing representatives in their respective units and shall require the licensing representatives to coordinate their respective investigations.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.40 Re-examination of a Foster Family Home After an Indicated Child Abuse or Neglect Report

- a) *When a foster family home is the subject of an indicated report under the Abused and Neglected Child Reporting Act [325 ILCS 5], the Department must immediately conduct a re-examination of the foster family home to evaluate whether it continues to meet the minimum standards for licensure. The re-examination is separate and apart from the formal investigation of the report. The Department must establish a schedule for re-examination of the foster family home mentioned in the report at least once a year. [225 ILCS 10/4.3]*
- b) The supervising agency shall conduct an immediate re-examination of a licensed foster family home when:
 - 1) a child in substitute care or who resides in the home is the subject of an indicated report of child abuse or neglect and the licensee or another household member was identified as a perpetrator; or
 - 2) the licensee or any household member is identified as a perpetrator of an indicated report of abuse or neglect of any child.

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- c) When the re-examination is conducted by an agency other than the Department, the agency shall forward the results of the re-examination to the Department within 5 business days.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.45 Protective Plan

- a) A written protective plan shall be developed by the licensing representative and/or child protection investigator, and approved by the licensing and/or child protection supervisor, that restricts contact between the licensee or permit holder, a household member, volunteer or employee of the program or facility and children cared for in the program or facility when:
 - 1) a pending formal child protection investigation names the individual as an alleged perpetrator;
 - 2) when a complaint is investigated and/or monitoring visit occurs, the licensing representative shall document any substantiated violation that requires a protective plan to restrict contact between the children in care and the alleged perpetrator to assure the health, safety and best interests of the children while the licensee is provided an opportunity to correct the substantiated violation.
- b) Depending upon the severity of the allegations or substantiated violations, a protective plan shall either:
 - 1) prohibit the named individual from having any contact with the children in care; or
 - 2) require that all contact between the named individual and the children in care be supervised by an appropriate adult approved by the Department or supervising agency.
- c) A protective plan issued under subsection (a)(3) of this Section shall be reviewed by the licensing representative and supervisor a minimum of one time per week.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

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Section 383.50 Corrective Plan

- a) A corrective plan is required when a substantiated violation occurs and the substantiated violation can reasonably be expected to be corrected within 90 days. A corrective plan may be reviewed and extended in 30 day increments for good cause when approved by a licensing supervisor. When a violation is substantiated *for the failure of one or more staff at child care facilities or child welfare agencies to report suspected abuse or neglect*, the corrective plan shall include the use of *supervisory teams to review staff and facility understanding of their reporting requirements*. [225 ILCS 10/8.5]
- b) A corrective plan shall not be required when the supervising agency makes a determination that the substantiated violations cannot be corrected and documents why they cannot be corrected.
- c) A corrective plan is not required when the Department is issuing an administrative order of closure.
- d) Failure by the licensee or permit holder to submit or comply with a corrective plan may result in further enforcement action.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.55 Supervisory Review

- a) A supervisory review shall be offered upon request of the licensee or holder of a permit when there is a question related to the rationale for substantiating a violation and/or for any subsequent action related to the substantiated violation.
- b) A supervisory review shall occur at the earliest date all required parties can participate, but no more than 30 days from the date the request was received.
- c) A supervisory review shall not be conducted to review a criminal conviction that constitutes a bar to licensure pursuant to Section 4.2(b) of the Child Care Act.
- d) A supervisory review shall not be offered when the Department is in the process of issuing or has issued an administrative order of closure.
- e) The licensing supervisor shall consider all information received to make a determination to uphold a substantiated violation, modify plans to correct the substantiated violation, or overturn a violation as unsubstantiated, after the supervisory review has occurred. The determination will be based on the following criteria:

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- 1) whether the licensing representative obtained or documented sufficient evidence to substantiate the violation;
 - 2) whether the licensing representative correctly interpreted and/or applied the Child Care Act or licensing standards in substantiating the violation.
- f) The licensing supervisor shall prepare a written report summarizing the information presented at the supervisory review and make findings regarding each disputed substantiated violation. The report shall be provided to the licensee or permit holder by hand delivery or certified mail.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.60 Informal Review

- a) Informal reviews shall be offered to a licensee or holder of a permit who has a substantiated violation and the supervising agency's licensing administrator or manager has made a determination that reasonable efforts to correct the substantiated violation have been made and are documented by the licensing representative and supervisor without evidence of significant progress in correcting or maintaining corrections.
- b) Licensees and permit holders shall be notified via certified mail of the right to request an informal review when the supervising agency has documented reasonable efforts to correct the substantiated violations, with no significant gains, and has determined further action at the supervisory level would not result in the required corrections.
- c) An informal review shall only be conducted by a designated Department licensing administrator. A non-Department supervising agency shall refer all requests for informal reviews to the Department.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.65 Participants in an Informal Review

The following shall be invited to participate in the informal review:

- a) The designated Department licensing administrator shall conduct the informal review;
- b) The following shall participate in any informal review:
 - 1) The Department and/or private agency licensing representative;
 - 2) The licensing supervisor; and

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- 3) The licensee or permit holder and/or the licensee's or permit holder's attorney or authorized representative.
- c) Other persons identified by the Department, supervising private agency, or the licensee or permit holder with direct information related to the substantiated violations; and
- d) A person designated by the Department to document evidence provided at the informal review.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.70 Outcomes of the Informal Review

- a) The designated Department licensing administrator who conducted the informal review shall review all information and documentation presented and make one or more of the following findings:
 - 1) the licensee or permit holder has not cooperated with the licensing unit in correcting conditions, or has otherwise not complied with the provisions of the corrective or protective plan;
 - 2) the licensee or permit holder did not correct all substantiated violations, but factors beyond the control of the licensee or permit holder significantly contributed to the failure to do so and the Department is satisfied that the facility and responsible persons are currently acting in good faith and are committed to being in full compliance through a modified corrective or protective plan in order to meet licensing standards;
 - 3) the licensee or permit holder had cooperated with the licensing unit, but had not previously been offered a corrective or protective plan and it is appropriate to offer one; and/or
 - 4) a recommendation to initiate further enforcement action; and
 - 5) a recommendation to dismiss enforcement actions.
- b) The licensing administrator shall prepare a written report summarizing the information presented and rationale for his or her findings. The report shall be hand delivered to the licensee or permit holder or sent by certified mail.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

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Section 383.75 Grounds to Revoke, Refuse to Renew, or Refuse to Issue Full License

- a) The Department may initiate proceedings to revoke a license, to refuse to renew a license, or to refuse to issue full license to the holder of a permit in accordance with Sections 8 and 8.1 of the Child Care Act when grounds exist. (See Appendix A.)
- b) The Department shall initiate proceedings to revoke a license within 10 working days after issuing an administrative order of closure.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.80 Conditional License

- a) *The Department may issue a conditional license to any child care facility that currently is licensed under the Act. The conditional license shall be a nonrenewable license for a period of 6 months and the Department shall revoke any other license held by the conditionally licensed facility. Conditional licenses shall only be granted to facilities where no threat to the health, safety, morals or welfare of the children served exists. A complete listing of deficiencies and a corrective plan approved by the Department shall be in existence at the time a conditional license is issued. Failure by the facility to correct the deficiencies or meet all licensing standards at the end of the conditional license period shall result in immediate revocation of, or refusal to renew, the facility's license as provided in Section 8.1 of the Act. [225 ILCS 10/8.2]*
- b) The Department shall conduct an informal review to determine if the offer of a conditional license would be justifiable. At the time the conditional license is issued, the licensee shall surrender the current license to the Department in exchange for the Conditional License Agreement. A conditional license agreement shall be issued, concurrent with the licensee's revocation, refusal to renew or surrender of the license, with cause, to the Department.
- c) A conditional license shall be valid for six months and is not renewable or extendable.
- d) The licensee shall be in full compliance with the terms of the conditional license agreement by the end of the fifth month of the conditional license and shall remain in full compliance until the date of expiration of the conditional license.
- e) The licensee shall submit a complete initial application for licensure before the end of the third month of the conditional license in order for the application to be considered timely and sufficient.

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- f) Failure by the licensee to comply with the conditional license agreement may result in the issuance of an administrative order of closure or denial of a new license.
- g) When a licensee does not submit a timely and sufficient application pursuant to subsection (e), or if a new license was denied, the Department shall not accept an application for another new license from the licensee until at least one year has elapsed from the expiration date of the conditional license.
- h) The Department shall not issue a conditional license to the holder of a permit.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.85 Notice of Intent to Revoke, Refuse to Renew, or Refuse to Issue Full License

- a) The Department shall provide written notice to a licensee or permit holder regarding the intent to revoke the licensee's or permit holder's license, to refuse to renew the license, or to refuse to issue a full license to a permit holder. The notice shall be hand delivered with a certificate of delivery or sent by certified mail, return receipt requested, to the licensee or permit holder.
- b) The notice shall include:
 - 1) a concise and direct statement of factors that are the basis for the Department's action;
 - 2) the right of the licensee or permit holder to request an administrative hearing; and
 - 3) the statement that a written request for an administrative hearing be submitted to and received by the Administrative Hearings Unit within 10 days from the postmark date of the notice. The request for administrative hearing must be hand-delivered, mailed or faxed to:

DCFS Administrative Hearings Unit
406 East Monroe, Station 15
Springfield, Illinois 62701
Fax: 217/557-4652.

- c) When the Department has issued an administrative order of closure to a permit holder or licensee and a subsequent notice has been sent regarding the intent to revoke or refuse to renew the license or to refuse to issue a full license following a permit, the licensee or permit holder may request that a hearing be scheduled within 21 days.

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- d) If the licensee or permit holder does not request an administrative hearing within the time frame set forth in this Section, or if the Department determines, upon holding an administrative hearing pursuant to Subpart C, that the license should be revoked or the renewal or full license denied, then the license shall be revoked or the renewal or full license shall be denied.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.90 Surrender of a License or Permit

- a) A licensee or permit holder may voluntarily surrender a license or permit to the Department or supervising agency.
- b) A licensee may surrender his or her foster home, day care home, group day care home, or day care center license by so stating, orally or in writing, to the licensing representative or supervising agency. The supervising agency will document oral requests from licensees to surrender their license. The supervising agency shall make and document attempts to secure the surrender in writing. When licensees refuse to or otherwise avoid providing a written statement of their desire to surrender their license, the documented oral request shall be sufficient to accept surrender of the license, unless the licensee rescinds his or her request to surrender the license either orally or in writing.
- c) A surrender for a licensed program or facility other than a licensed foster home, day care home, group day care home, or day care center facility shall be executed on a form prescribed by the Department. The licensee shall verify, in writing, whether:
 - 1) the Department is investigating the licensee, the permit holder or the owners, operators or employees of the facility for any licensing complaint or report of suspected abuse or neglect involving the facility or actions while discharging duties at the facility;
 - 2) litigation is pending between the licensee or permit holder, the facility and the Department; or
 - 3) the licensee suspects that the facility or facilities supervised by it are under investigation by any agency of any state, their respective inspectors general, or any local, State or federal law enforcement agencies.
- d) Surrender of a license or permit terminates all rights and privileges associated with the license or permit. A surrendered license or permit shall not be renewed, reissued, reinstated or restored.

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- e) Failure by a foster home, day care home or group day care home licensee or permit holder to submit a completed application for address change to the Department or supervising agency prior to, or within 14 days after, a change of residence shall be deemed a surrender of the foster home, day care home, or group day care home license or permit. The licensee may reapply at any time, but shall not provide child care until the new license is issued, unless that care is exempt from licensing, as defined in 89 Ill. Adm. Code 377 (Facilities and Programs Exempt from Licensure).
- f) A licensed child welfare or day care agency shall attach to the surrender a complete listing of the names and addresses of all licensed child care programs and facilities supervised by the agency, any pending license applications that have not yet been determined by the supervising agency, and any license exempt day care homes, relative care homes, independent living facilities, youth transitional housing programs, or other programs for children and youth operated by the agency.
- g) When a surrender of a license or permit occurs after the Department has offered an informal review or issued an administrative order of closure, but before the Department has issued a notice of intent to revoke, refuse to renew, or refuse to issue full license, the Department shall notify the licensee or permit holder, in writing, that the surrender shall be construed as a "surrender with cause".
- h) Surrender of a license or permit after the Department has issued a notice of intent to revoke, refuse to renew or refuse to issue a full license shall be deemed an abandonment of the licensee's or permit holder's right to seek review of the decision under Subpart C, and the license or permit shall be revoked or not renewed or a full license shall be denied after issuance of a permit.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.95 Acquiring a New License After Surrender With Cause

When the licensing record reflects that a license or permit was surrendered "with cause", the Department shall not accept an application for a new license from the licensee or permit holder until at least one year has elapsed from the date of the surrender.

Section 383.100 Investigations of Complaints Concerning Unlicensed Facilities

- a) *Whenever the Department is advised, or has reason to believe, that any person, group of persons or corporation is operating a child welfare agency or a child care facility without a license or permit, it shall make an investigation to ascertain the fact. If the Department is denied access, it shall request intervention of local, county or State law enforcement agencies to seek an appropriate court order or warrant to examine the premises. [225 ILCS 10/11]*

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- b) The licensing representative shall begin a licensing complaint investigation within 2 business days after receipt of the complaint by the Department's licensing unit and shall complete the investigation within 30 days after receipt of the complaint. However, upon written notice to the licensee, the investigation may be extended for an additional 30 days.
- c) The licensing representative shall:
 - 1) interview the person making the complaint, if known, and other persons who may have direct information relevant to the complaint;
 - 2) obtain and review any relevant documentation;
 - 3) make one or more unannounced visits to the program or facility, during the hours of operation, to gather information and evidence relevant to the complaint, and to determine whether the program or facility is being or has operated without a valid permit or license, or is exempt from licensure under the Child Care Act; and
 - 4) complete and document the licensing complaint investigation.
- d) At the conclusion of the licensing complaint investigation, the licensing representative shall determine whether the program or facility is subject to licensure by the Department and is operating without a valid permit or license, or is exempt from licensure under the Child Care Act, and shall document this finding.
- e) After supervisory approval of the determination, the Department shall notify the operator of the program or facility, in writing, of the finding. The licensing representative shall provide notice to the operator, by certified mail, when, by law, a license is required for the type of child care provided. The notice shall explain how to make an application for a license.
- f) After supervisory approval of the determination, the licensing representative shall notify the complainant, in writing, of whether the program or facility is operating without a valid permit or license, or is exempt from licensure under the Child Care Act.
- g) *If the Department finds that the child welfare agency or child care facility is being, or has been, operated without a license or permit, the Department shall report the results of its investigation to the Attorney General and to the appropriate State's Attorney for investigation and, if appropriate, prosecution.*
[225 ILCS 10/11]

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- h) If the operator continues to operate the program or facility and does not make efforts to obtain a license, the Department may issue an administrative order of closure when the Department makes a finding in accordance with Section 383.105. The Department shall report the matter to the Attorney General, and to the State's Attorney for the county in which the program or facility is located, for prosecution.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.105 Administrative Order of Closure

- a) *Whenever the Department expressly finds that the continued operation of a child care facility, including such facilities defined in Section 2.10 of the Child Care Act and unlicensed facilities, jeopardizes the health, safety, morals, or welfare of children served by the facility, the Department shall issue an order of closure directing that the operation of the facility terminate immediately, and, if applicable, shall initiate revocation proceedings under Section 9 of the Child Care Act within 10 working days. A facility closed under this Section may not operate during the pendency of any proceeding for the judicial review of the decision of the Department to issue an order of closure or to revoke or refuse to renew the license, except under court order. [225 ILCS 10/11.2]*
- b) All administrative orders of closure shall be issued in writing by the Director.
- c) An administrative order of closure shall be hand-delivered to the licensee or permit holder.

Section 383.110 Appeal After Issuance of an Administrative Order of Closure

- a) When the Department has issued a notice of intent to revoke, refuse to renew or refuse to issue a full license following an administrative order of closure, the licensee or permit holder may request that a hearing be scheduled within 21 days. The request shall be directed to the Department's Administrative Hearings Unit and shall specifically state that the Department has served an administrative order of closure on the program or facility and has served the requisite notice of intent on the licensee, and that a hearing date within 21 days is requested.
- b) Upon receipt of the request for a hearing, the Chief Administrative Law Judge shall verify with the Regional Licensing Administrator that an administrative order of closure and notice of intent were served. Upon verification, a hearing date shall be scheduled within 21 days after the date the appellant's written request for administrative hearing was received.

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- c) The Administrative Law Judge shall present a written opinion and recommendation to the Director within 21 days after the record of the administrative hearing is completed. Upon agreement of the parties, the time frame for completion of the written opinion and recommendation may be extended.
- d) The Director shall issue a final administrative decision within 7 days after receipt of the Administrative Law Judge's recommended decision.
- e) All other requirements in Subpart C of this Part not in conflict with the provisions in this Section shall apply to hearings after issuance of an administrative order of closure.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

SUBPART C: ADMINISTRATIVE HEARINGS

Section 383.115 Who May Request an Administrative Hearing

- a) A licensee or permit holder has the right to request an administrative hearing to review an enforcement action listed in Section 383.120 of this Part, personally or by:
 - 1) an authorized representative, including an attorney, authorized in writing by a party to assist in the administrative hearing process; or
 - 2) an individual legally authorized to act on behalf of the licensee or permit holder when the licensee or permit holder is incompetent, incapacitated, or otherwise unable to speak for him/herself. A certified copy of the court order authorizing the individual to act on behalf of the licensee or permit holder must be provided.
- b) If a licensee or permit holder has an authorized representative or an individual legally acting on his or her behalf, that representative or individual may exercise the rights of the licensee or permit holder in the administrative hearing process. These rights include the right to:
 - 1) review and copy record material;
 - 2) receive Department notices;
 - 3) speak in the administrative hearing process; and
 - 4) take any other actions permitted an appellant during the administrative hearing process.

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Section 383.120 What May Be Reviewed Through the Administrative Hearing Process

The following decisions may be reviewed through the administrative hearing process under this Part:

- a) revocation of a license;
- b) refuse to renew a license; and
- c) refuse to issue a full license to the holder of a permit.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.125 What May Not Be Reviewed Through the Administrative Hearing Process

The Chief Administrative Law Judge shall decide whether an issue is appropriate for the administrative hearing process pursuant to this Part. The following circumstances are not appropriate for the administrative hearing process under this Part:

- a) the Department has previously made a final administrative decision on the issue on appeal;
- b) the request for an administrative hearing is not related to a decision to revoke a license, refuse to renew a license, or refuse to issue a full license to the holder of a permit;
- c) a court has made a judicial decision on the issue sought to be reviewed through the administrative hearing process;
- d) denial of an initial license or a permit;
- e) a conflict related to the terms and conditions contained in a conditional license agreement;
- f) a conflict related to the terms and conditions contained in a corrective plan or protective plan;
- g) the licensee or permit holder has surrendered the license or permit;
- h) denial of a new license upon expiration of a conditional license; or
- i) the issue is reviewable under another administrative rule.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

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Section 383.130 Rights and Responsibilities to Request an Administrative Hearing

- a) The appellant shall file an appeal within 10 days after the postmark date of the notice of intent issued per Section 383.85.
- b) The notice of intent shall include instructions regarding what to do to request an administrative hearing.
- c) The notice of intent and appeal rights shall be provided in writing in the appellant's primary language.
- d) When requested, Department staff shall assist the licensee or permit holder in preparing a written request for an administrative hearing.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.135 Notices of Department Decisions

The following types of notices shall be hand delivered to the licensees, with a certificate of delivery, or sent to the licensees by certified mail, return receipt requested:

- a) the Department's notice of intent issued per Section 383.85;
- b) notice of an administrative hearing; and
- c) notice of the final administrative decision.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.140 The Role of the Chief Administrative Law Judge

- a) The Chief Administrative Law Judge may grant a request for an administrative hearing when:
 - 1) the original written request for an administrative hearing was received by the Chief Administrative Law Judge within 10 days after the postmark of the notice of intent issued per Section 383.85. The date of request for an administrative hearing is the postmark on the appellant's request for an administrative hearing; and
 - 2) the issue is within the jurisdiction of this Part as set forth in Section 383.120.

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- b) The Chief Administrative Law Judge may dismiss a request for an administrative hearing for the following reasons:
- 1) the appeal request is not reviewable because the Department has not provided written notice to the licensee or permit holder of intent to revoke a license, refuse to renew a license or refuse to issue a full license to a permit holder, as provided in Section 383.85;
 - 2) the request for administrative hearing was not submitted to the Chief Administrative Law Judge in writing within the time frame set out in Section 383.85;
 - 3) the appellant has withdrawn the request for an administrative hearing in writing; or
 - 4) the appellant has abandoned his or her request for an administrative hearing. Grounds for abandonment include:
 - A) failure by the appellant or the appellant's authorized representative, without good cause, to appear at a hearing or pre-hearing conference;
 - B) surrender of the license or permit after requesting an administrative hearing; or
 - C) failure by the appellant to notify the Chief Administrative Law Judge of a change of address and a notice of the administrative hearing, sent to the appellant's last known address, was returned as "undeliverable", "unclaimed", "refused", "moved" or "no forwarding address".
- c) A party seeking to vacate an order of abandonment shall file a motion within 14 days after notice of the entry of an order of abandonment or default, showing good cause why the party failed to appear or participate.
- d) The Chief Administrative Law Judge shall provide written notice of the decision to grant or deny the request for an administrative hearing within 30 days after receipt of the request for an administrative hearing. If the Chief Administrative Law Judge finds that the issue is not reviewable under this Subpart but can be appropriately heard through another appeal process, in accordance with 89 Ill. Adm. Code 435 (Administrative Appeals and Hearings), the Department shall forward the request to the proper hearing authority and notify the appellant of this action.

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- e) If a request for an administrative hearing is granted, the notice issued by the Chief Administrative Law Judge to the appellant shall provide:
- 1) a hearing date within 30 days after the date the appellant's written request for administrative hearing was received;
 - 2) a location for the hearing at a time and place reasonably convenient for all parties;
 - 3) If the appellant is a foster family home licensee, a statement that a telephonic hearing in lieu of an in-person hearing may be scheduled when the decision to revoke or refuse to renew a foster family home license is based solely upon an allegation that the licensee did not file a timely and/or complete application for renewal of the foster family home license. However, the notice of hearing shall state that the appellants (foster parents) have the right to request an "in person" hearing. The appellants may exercise their right by sending a written request for an "in person" hearing within 15 days after the date of the notice of hearing;
 - 4) a statement of the parties' rights during the administrative hearing process;
 - 5) the name and address of the licensee or permit holder, if not represented by counsel, or the name of the licensee and the name and address of the counsel, if represented by counsel;
 - 6) the name and business address of the Department representative for the administrative hearing;
 - 7) a citation to Section 9 of the Child Care Act that grants the Department the legal authority and jurisdiction to hold the hearing;
 - 8) a reference to the particular Sections of the statutes and administrative rules involved. This element may be satisfied by attaching a statement of charges;
 - 9) a short and plain statement of the matters that are the basis of the complaint. This element may be satisfied by attaching a statement of charges;
 - 10) the reasons that may be deemed an abandonment under Section 383.140 and the cause for the entry of a final administrative decision before hearing;
 - 11) the docket number assigned to the case;

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- 12) the name and mailing address of the Administrative Law Judge and any other parties, unless the names or addresses are confidential under the Abused and Neglected Child Reporting Act or Department of Children and Family Services Act, or other applicable statute; and
- 13) a statement of the action sought.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.145 Rights and Responsibilities in Administrative Hearings

- a) An appellant may bring a representative, including legal counsel, to the hearing. Expenses of a representative or of an appellant's witnesses shall be paid by the appellant.
- b) An appellant may request the licensing representative or other persons who may have information relevant to the issues in dispute to attend the hearing by asking the Chief Administrative Law Judge to issue appropriate subpoenas. Witness fees and travel expenses for persons other than Department or supervising agency employees are the responsibility of the party requesting the subpoena.
- c) Any motions from the appellant or the Department shall be filed with the Administrative Law Judge at least 10 calendar days before the hearing. Copies shall be sent to the Department's representative and the appellant.
- d) At the appellant's request, the Department shall provide an interpreter at no cost to the appellant if English is not the appellant's primary language or a sign interpreter if the appellant is hearing impaired.
- e) Both the appellant and the Department have the right to examine and copy documents and other information to be used by either party and to receive a list of witnesses to be called by either party at the hearing by requesting them at least 10 calendar days before the hearing. The Administrative Law Judge may prohibit the introduction of the requested evidence if not provided within the time frame.
- f) At any time prior to the commencement of the administrative hearing, the Department may amend the statement of charges to include subsequent acts or omissions in violation of the Child Care Act or licensing standards of which the Department has provided the appellant notice.
- g) At any time prior to the entry of a final administrative order, the appellant may withdraw the request for an administrative hearing and accept the Department's decision to revoke, refuse to renew or refuse to issue a full license, or may abandon the right to an administrative hearing by surrendering the license.

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- h) During the administrative hearing, the appellant and the Department have the right to:
 - 1) present and question witnesses;
 - 2) present any information relevant to the issues;
 - 3) question or disprove any information, including an opportunity to question opposing witnesses; and
 - 4) dispose of any disputed issue by stipulation, agreed settlement, consent order, or default any time prior to the conclusion of the administrative hearing.
- i) The Department:
 - 1) carries the burden of proof of justifying the decision to revoke a license, refuse to renew a license, or refuse to issue a full license to a permit holder; and
 - 2) must prove that a preponderance of the evidence supports the decision.

Section 383.150 The Administrative Law Judge

- a) Assignment of the Administrative Law Judge

The Chief Administrative Law Judge shall assign an Administrative Law Judge to conduct the administrative hearing. The Administrative Law Judge shall:

- 1) be an attorney licensed to practice law in the State of Illinois;
- 2) possess knowledge and information acquired through training and/or experience relevant to the field of child and family welfare law, including familiarity with Department rules, procedures and functions;
- 3) not have been involved in the decision to take the action being reviewed or have rendered legal advice to the decision maker on the issue; and
- 4) not have a personal or professional interest that interferes with exercising objectivity or have any bias against the parties or issues reviewed. An adverse ruling, in and of itself, shall not constitute bias or conflict of interest.

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b) Functions of the Administrative Law Judge

The Administrative Law Judge shall have all authority allowed under the Illinois Administrative Procedure Act [5 ILCS 100]. This authority shall include, but is not limited to, the following:

- 1) conduct a fair, impartial and formal hearing in which the strict rules of evidence do not apply;
- 2) provide for the recording of the hearing;
- 3) inform participants of their individual rights and their responsibilities;
- 4) conduct preliminary and prehearing telephone conferences, if necessary, between the parties and/or their representatives to provide information about the procedural aspects of the hearing, narrow the issues and discuss possible stipulations and contested points of law, in order to expedite the actual hearing;
- 5) take necessary steps to develop a full and fair record that contains all relevant facts. The Administrative Law Judge shall admit any evidence having probative value that is relevant and material to the facts in issue, subject to objections only as to the weight to be given such evidence;
- 6) administer an oath or an affirmation to all witnesses;
- 7) quash or modify subpoenas for good cause, including, but not limited to, relevance, scope, materiality and emotional harm or trauma to the subpoenaed witness;
- 8) preserve all documents and evidence for the record;
- 9) ask questions of any witnesses called to testify;
- 10) for good cause shown, permit a witness to testify at the hearing by telephone;
- 11) rule upon evidentiary issues and contested issues of law at the hearing or take matters under advisement pending issuance of the written opinion and recommendation;
- 12) order the removal of any person from the hearing room who is creating a disturbance, whether by physical actions, profanity or other conduct that disrupts the hearing;

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- 13) identify the issues, consider all relevant facts and receive or request any additional information necessary to decide the matter in dispute, including, but not limited to, the submission of briefs, memoranda of law, affidavits or post hearing briefs; and
- 14) present a written opinion and recommendation to the Director within 30 calendar days after the record of the administrative hearing is completed, unless an extension is granted by the Chief Administrative Law Judge. The report shall include a recommended decision on whether there is a preponderance of evidence, based on information considered at the hearing contained in the administrative record, to support the Department's decision to revoke a license, refuse to renew a license, or refuse to issue a full license to a permit holder. The opinion shall contain findings of fact, conclusions of law and a recommendation.

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

Section 383.155 Final Administrative Decision

- a) Making the Final Administrative Decision

The Director shall receive the recommended decision from the Administrative Law Judge and shall agree, disagree, or modify the recommended decision based upon a preponderance of evidence standard. The Director's decision is the final administrative decision of the Department. If the decision requires corrective action by the Department, the Director shall appoint a Department staff person who shall be responsible for assuring compliance with the decision.

- b) Notice of the Availability of Judicial Review

The Department shall include a notice to the appellant as part of the final administrative decision. This notice shall include the name of the person responsible for compliance, if applicable, and shall advise the appellant that, under the provisions of the Administrative Review Law [735 ILCS 5/Art. III], the appellant may seek judicial review of the Department's decisions if it is unfavorable to him or her, within the statutory time frame.

- c) Who Receives Copies of the Final Administrative Decision

The appellant or authorized representative, the Department or supervising agency licensing representative and licensing supervisor, the Central Office of Licensing, the Department's representative, the Administrative Law Judge, and the Chief Administrative Law Judge shall receive a copy of the final administrative decision.

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Section 383.160 Records of Administrative Hearings

The Chief Administrative Law Judge shall maintain the permanent record of the administrative hearing and the final administrative decision. All hearing decisions shall be available for public inspection during regular business hours. However, confidential information shall be deleted in conformance with 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department), and State and federal laws and rules and regulations on confidentiality.

SUBPART D: SEVERABILITY OF THIS PART

Section 383.165 Severability of This Part

If any court of competent jurisdiction finds that any Section, clause, phrase, or provision of this Part is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portions of this Part.

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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

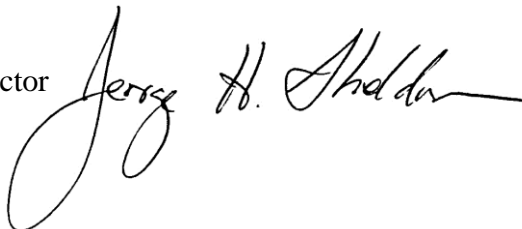
POLICY GUIDE 2016.08

Procedures 300 Reports of Child Abuse and Neglect
Rule 300 Reports of Child Abuse and Neglect
Rule 383 Licensing Enforcement

DATE: June 15, 2016

TO: SCR Child Welfare Specialists, Supervisors and Administrators; Child Protection Specialists, Supervisors and Administrators; AHU Administrative Law Judges and Administrators; Licensing Representatives, Supervisors and Administrators

FROM: George H. Sheldon, Director



EFFECTIVE: Immediately

I. PURPOSE

The purpose of this Policy Guide is to provide instruction to SCR, Child Protection, AHU and Licensing staff for the implementation of changes in policy and procedure, as required by recent changes to ANCRA (PA 99-0350). The instructions in this Policy Guide and other recent changes to ANCRA (PA 99-0350) will be incorporated into **Rule and Procedures 300, Appendix B The Allegations System, and Rule 383, Licensing Enforcement.**

This Policy Guide is effective immediately.

II. PRIMARY USERS

Primary users are SCR Child Welfare Specialists and Supervisors, Child Protection Specialists and Supervisors, Administrative Law Judges and Licensing Representatives and Supervisors.

III. BACKGROUND

This policy sets forth the principles and procedures for reporting and investigating specific types of incidents of abuse and neglect in the lives of youth/adult residents that DCFS provides services and supports to and/or who are placed with an agency, as defined in Section 3 of the Abused and Neglected Child Reporting Act:

(325 ILCS 5/3) (from Ch. 23, par. 2053)

"Agency" means a child care facility licensed under Section 2.05 or Section 2.06 of the Child Care Act of 1969 and includes a transitional living program that accepts children and adult residents for placement who are in the guardianship of the Department.



(225 ILCS 10/2.05) (from Ch. 23, par. 2212.05)

Sec. 2.05. "Facility for child care" or "child care facility" means any person, group of persons, agency, association, organization, corporation, institution, center, or group, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in this Act, established and maintained for the care of children. "Child care facility" includes a relative, as defined in Section 2.17 of this Act, who is licensed as a foster family home under Section 4 of this Act.

(Source: P.A. 98-804, eff. 1-1-15.)

Sec. 2.06. "Child care institution" means a child care facility where more than 7 children are received and maintained for the purpose of providing them with care or training or both. The term "child care institution" includes residential schools, primarily serving ambulatory handicapped children, and those operating a full calendar year, but does not include:

(a) Any State-operated institution for child care established by legislative action;

(b) Any juvenile detention or shelter care home established and operated by any county or child protection district established under the "Child Protection Act";

(c) Any institution, home, place or facility operating under a license pursuant to the Nursing Home Care Act, the Specialized Mental Health Rehabilitation Act of 2013, the ID/DD Community Care Act, or the MC/DD Act;

(d) Any bona fide boarding school in which children are primarily taught branches of education corresponding to those taught in public schools, grades one through 12, or taught in public elementary schools, high schools, or both elementary and high schools, and which operates on a regular academic school year basis; or

(e) Any facility licensed as a "group home" as defined in this Act.

IV OVERVIEW

Public Act 99-0350 amends, among other Acts, Section 5/3 of the Abused and Neglected Child Reporting Act [325 ILCS 5/3] with respect to the definition of "Agency," "Abused Child," and "Blatant Disregard." The Department shall initiate immediate changes to practice, with subsequent changes to be placed in rule and procedure, for the implementation of the following requirements that provide for the reporting and investigation of incidents of abuse and neglect that occur in agency settings as a result of systemic problems within the agency or when the perpetrator of abuse or neglect cannot be identified.

- With respect to "blatant disregard," to address the failure of an agency to implement practices and maintain an environment and conditions that ensure the health, physical well-being or welfare of a child or adult resident; and

- The implementation of criteria and standards for the acceptance and investigation of reports of abuse or neglect committed by an agency, as “agency” is defined in Section 3 of ANCRA, or person working for an agency who is responsible for the welfare of a child or adult resident.

Accepting reports and conducting investigations of Neglect by Agency include, but are not limited to, the following situations:

- An incident or situation where the agency is providing services to a ward of the court and/or under the guardianship of DCFS;
- An incident or situation can occur whether or not the alleged victim is physically at a site owned, leased or operated by the agency;
- An incident or situation where agency personnel (staff, interns, contractors, consultants, and/or volunteers) are, or should have been, physically present and providing services at that point in time;
- Any situation involving physical conditions at a site provided by the agency, even in the absence of agency personnel;
- A report shall not be determined to be indicated or unfounded solely because a subject of a report resigns his/her position during the investigation; and
- A concurrent final finding determination may be made that indicates both an individual perpetrator and a systemic agency problem for having caused or contributed to the incident of harm.

V. INSTRUCTIONS

SCR

When assessing a potential report that includes information that may qualify for **Allegation #86**, hotline staff shall determine whether the information provided by the caller meets the standard of the associated harm and of “blatant disregard,” as codified in Rule and set forth in DCFS procedure. Specifically, hotline staff must determine whether the information provided by the reporter indicates that agency environment and conditions expose a child or adult resident to harm, risk of harm or a lack of necessary care, including but not limited to, adequate supervision, food, clothing and shelter and that the harm the child or adult resident has been subjected to is injurious to the extent agency staff culpability is mitigated by systemic problems, such as inadequate staffing, management, training or supervision. Also included in this allegation are incidents of harm when the perpetrator cannot be identified.

Hotline staff should evaluate the caller’s information for applicable Circumstances and Factors To Be Considered, as set forth in DCFS Rule and Procedure. Reports that include **Allegation #86** shall be processed, completed and transmitted according to current procedures.

Child Protection

Once a Child Protection Specialist determines a report that includes **Allegation #86** was made in good faith, the Child Protection Specialist shall continue the investigation by applying the criteria and fulfilling the requirements of the allegation, as well as current investigatory procedures and practice, in order to reach a final finding determination.

Allegation of Harm #86 NEGLECT BY AGENCY

a) Definition

Neglect by Agency

Neglect by Agency means the failure of an agency to implement practices that ensure the health, physical well-being or welfare of the children or adult residents residing in the facility, and/or there are conditions at the agency that expose children or adult residents to harm, risk of harm or a lack of other necessary care, including but not limited to, adequate supervision, food, clothing and shelter; or a child or adult resident is subjected to an environment that is injurious to the extent staff culpability for abuse or neglect is mitigated by systemic problems, such as inadequate staffing, management, training or supervision of staff; and/or an incident of abuse or neglect against a child or adult resident where the perpetrator of such harm cannot be identified.

b) Taking a Report

- 1) A service recipient/youth has been exposed to harm or risk of harm due to the blatant disregard of caregiver responsibilities by the agency responsible for the youth's welfare. (NEGLECT)

c) Investigating a Report

- 1) Required Contacts:

All contacts and attempted contacts must be documented in a contact note within 48 hours.

- A) Interview the CEO/Executive Director of the agency.
- B) A waiver of any of the above requirements must be approved by the Child Protection Supervisor and may require approval by the Area Administrator. Details of the request and the Supervisor's decision must be documented in a supervisory note.

2) Required Activities:

All investigative activities must be documented in a contact or case note within 48 hours.

A) Consultation with the Area Administrator must occur prior to closing the investigation.

3) Documentation Required

A) There is evidence that documents that a youth has been exposed to harm or risk of harm.

B) A waiver of any of the above requirements must be approved by the Child Protection Supervisor and may require approval by the Area Administrator. Details of the request and the Supervisor's decision must be documented in a supervisory note.

4) Assessment of Factors and Evidence to Determine a Finding

A) Documentation of a detailed analysis of all inculpatory and exculpatory evidence has been reviewed and considered and any conflicting evidence has been resolved to the extent possible.

B) The Child Protection Specialist and Child Protection Supervisor shall have a formal supervisory conference to assess all inculpatory and exculpatory evidence obtained during the course of the investigation in order to reach an investigative finding. The supervisory consultation must be documented in a supervisory note.

Child Protection and Licensing Concurrent Investigations

The Child Protection Specialist shall immediately notify the local DCFS Licensing Representative of the investigation. A concurrent licensing complaint investigation shall be performed for all Department and private agency foster homes, day care homes and all other licensed facilities named in reports of alleged incidents of abuse or neglect. For all reports that include **Allegation #86**, current practice and procedures apply for conducting concurrent Child Protection and Licensing investigations. For instruction and information concerning concurrent Child Protection and Licensing investigations, staff should reference **Procedures 300.110, Special Types of Reports and Procedures 383.37, Additional Requirements for Concurrent Investigations.**

Licensing/Monitoring

For a report with an indicated **Allegation #86, Neglect by Agency**, DCFS Licensing shall apply the current practice and procedure for requiring the indicated facility to develop and implement a Corrective Plan for the agency conditions that led to the indicated report and violation of licensing standards. The Corrective Plan shall identify any systemic problem that led to the indicated final finding determination and include suggested corrective measures.

Corrective Plans must be approved by the Licensing Supervisor and monitored by the Licensing Representative. In reviewing the continued qualifications of a facility for an operating license, the Department shall evaluate the facility's compliance with any Corrective Plan resulting from an indicated report or licensing investigation and take appropriate enforcement action for repeated failure to correct identified problems, in accordance with applicable state law and regulation. Such enforcement action may include, but not be limited to, revoking a license; refusing to renew a license; or refusing to issue a full license, subsequent to a permit. All licensees and permit holders are afforded due process rights through AHU for any action taken.

Administrative Hearings

An individual or agency that has been indicated as a perpetrator and who has received notice of the indicated final finding determination made against them has the right to challenge the decision by requesting an appeal of the indicated finding.

To begin the appeal process, the perpetrator or appropriate officer/administrator/owner of the agency shall request in writing on the form provided that the Department review its decision. The request must be mailed or faxed to the address or fax number designated in the written notice within 60 days after notification of the completion of the investigation, as determined by the date of the notification sent by the Department.

Special Note: It is possible for an appellant/agency to have concurrent hearings to appeal a licensing enforcement action and an indicated report for child abuse or neglect. When common issues of fact or law are raised in more than one appeal, the Chief Administrative Law Judge may consolidate the appeals into a single group hearing.

VI. QUESTIONS

Questions regarding this Policy Guide may be directed to the Office of Child and Family Policy at 217-524-1983 or via Outlook at OCFP – Mailbox. Non Outlook users may e-mail questions to cfpolicy@idcfs.state.il.us.

VII. FILING INSTRUCTIONS

This Policy Guide should be filed immediately after **Rule and Procedures 300, Appendix B and Rule 383, Subpart C**.

LICENSING ENFORCEMENT
June 1, 2018 – PT 2018.09

APPENDIX A: Statutory Grounds to Revoke or Refuse to Renew a License

a) *Revocation or Refusal to Renew Licenses; Grounds.*

The Department may revoke or refuse to renew the license of any child care facility or child welfare agency or refuse to issue a full license to the holder of a permit should the licensee or holder of a permit:

- 1) *fail to maintain standards prescribed in Title 89, Chapter III, subchapter e: Requirements for Licensure;*
- 2) *violate any of the provisions of the license issued;*
- 3) *furnish or make a misleading or any false statement or report to the Department;*
- 4) *refuse to submit to the Department any reports or refuse to make available to the Department any records required by the Department in making investigation of the facility for licensing purposes;*
- 5) *fail or refuse to submit to an investigation by the Department;*
- 6) *fail or refuse to admit authorized representatives of the Department at any reasonable time for the purposes of investigation;*
- 7) *fail to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child care as required under standards prescribed by the Department, or as otherwise required by any law, regulation or ordinance applicable to the location of the facility;*
- 8) *refuse to display its license or permit;*
- 9) *be the subject of an indicated report under Section 3 of the Abused and Neglected Child Reporting Act [325 ILCS 5] or fail to discharge or sever affiliation with the child care facility of an employee or volunteer at the facility with direct contact with children who is the subject of an indicated report under Section 3 of that Act;*
- 10) *fail to comply with the provisions of Section 7.1 of the Child Care Act;*
- 11) *fail to exercise reasonable care in the hiring, training and supervision of facility personnel;*
- 12) *fail to report suspected abuse or neglect of children within the facility, as required by the Abused and Neglected Child Reporting Act;*

LICENSING ENFORCEMENT

June 1, 2018 – PT 2018.09

- 13) *fail to comply with Section 7.4(c-5) of the Child Care Act;*
- 14) *fail to comply with Section 5.1 or 5.2 of the Child Care Act; or*
- 15) *be identified in an investigation by the Department as an addict or alcoholic, as defined in the Alcoholism and Other Drug Abuse and Dependency Act [20 ILCS 301], or be a person whom the Department knows has abused alcohol or drugs, and has not successfully participated in treatment, self-help groups or other suitable activities, and the Department determines that because of such abuse the licensee, holder of the permit, or any other person directly responsible for the care and welfare of the children served, does not comply with standards relating to character, suitability or other qualifications established under Section 7 of the Child Care Act. [225 ILCS 10/8]*

b) *Further Grounds for Revocation or Refusal to Renew Licenses.*

The Department shall revoke or refuse to renew the license of any child care facility or refuse to issue a full license to the holder of a permit should the licensee or holder of a permit:

- 1) *fail to correct any condition that jeopardizes the health, safety, morals, or welfare of children served by the facility;*
- 2) *fail to correct any condition or occurrence relating to the operation or maintenance of the facility comprising a violation under Section 8 of the Child Care Act; or*
- 3) *fail to maintain financial resources adequate for the satisfactory care of children served in regard to upkeep of premises, and provisions for personal care, medical services, clothing, education and other essentials in the proper care, rearing and training of children. [225 ILCS 10/8.1]*

(Source: Amended at 42 Ill. Reg. 8197, effective June 1, 2018)

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APPENDIX B: Resource Reference List

- a) Laws of the State of Illinois
 - 1) Abused and Neglected Child Reporting Act [325 ILCS 5]
 - 2) Administrative Review Law [735 ILCS 5/Art. III]
 - 3) Child Care Act of 1969 [225 ILCS 10]
 - 4) Children and Family Services Act [20 ILCS 505]
 - 5) Illinois Administrative Procedure Act [5 ILCS 100]
 - 6) Juvenile Court Act of 1987 [705 ILCS 405]

- b) Administrative Rules of the Illinois Department of Children and Family Services
 - 1) 89 Ill. Adm. Code 300 (Reports of Child Abuse and Neglect)
 - 2) 89 Ill. Adm. Code 331 (Unusual Incidents)
 - 3) 89 Ill. Adm. Code 357 (Purchase of Service)
 - 4) 89 Ill. Adm. Code 401 (Licensing Standards for Child Welfare Agencies)
 - 5) 89 Ill. Adm. Code 405 (Licensing Standards for Day Care Agencies)
 - 6) 89 Ill. Adm. Code 409 (Licensing Standards for Youth Transitional Housing Programs)
 - 7) 89 Ill. Adm. Code 431 (Confidentiality of Personal Information of Persons Served by the Department)
 - 8) 89 Ill. Adm. Code 435 (Administrative Appeals and Hearings)

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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

POLICY GUIDE 2017.09

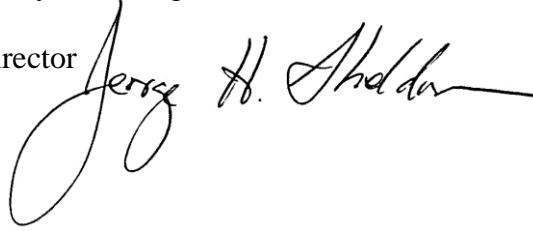
Rules 383/ Rules 402/ Rules 431

QUALITY OF CARE CONCERNS APPLICANT

DATE: June 14, 2017

TO: DCFS and Private Agency Licensing Staff

FROM: George H. Sheldon, Director



EFFECTIVE: Immediately

I. PURPOSE

This purpose of this Policy Guide is to inform staff of several amendments in Illinois law affecting foster care licensing practice made in **Public Act 099-779**. In the coming months DCFS will propose amendments to **Rules 383, Licensing Enforcement; Rules 402, Licensing Standards for Foster Family Homes; and Rules 431, Confidentiality of Personal Information of Persons Served by the Department.**

II. PRIMARY USERS

The primary users of this Policy Guide are Department and POS licensing staff who provide foster care licensing services as well as foster parents and ancillary staff who are involved with providing supports and training to foster parents.

III. SUMMARY OF LEGISLATIVE CHANGES

Public Act 099-779, effective January 1, 2017, amended Section 35.1 of the Children and Family Service Act, Sections (4), (6) and (7) of the Child Care Act of 1969 as amended and adds Section 2.22 (a) to the Child Care Act of 1969.

IV. RELEASE OF LICENSING RECORDS TO GUARDIAN AD LITEM (GAL) or ATTORNEY

Upon written request of the Guardian Ad Litem (GAL), or attorney appointed to represent a youth in care, pursuant to Article II of the Juvenile Court Act of 1987 the requested information in a licensing record shall be submitted to the GAL or attorney, including licensing complaints and investigations regarding a foster home in which the youth is placed or in which the Department plans to place the youth. Information that cannot be disclosed per state or federal law shall be redacted, prior to submission to the requesting GAL or attorney appointed to represent the youth in care.



The Guardian Ad Litem or attorney appointed to represent a youth in care may make a written request for licensing records of the child's caregiver or past caregivers or a future caregiver with whom DCFS plans to place the child. Written requests for records are to be sent to: the A&I Licensing Supervisor for POS Agencies or the Licensing Unit for DCFS. The Department shall have up to 15 business days or sooner to provide the licensing file, or specific information in the licensing file, to the Guardian Ad Litem or attorney. Information to be redacted in a licensing file shall include the list of information on the **CFS 600-3C, Redaction Checklist for Investigative Files Involving Department Youth in Care Represented by the Cook County Public Guardian**. The **CFS 600-3C** also includes the legislation from which these disclosures are prohibited.

V. **QUALITY OF CARE CONCERNS APPLICANT**

A Quality of Care Concerns Applicant is an applicant for a foster care license or renewal of a foster care license where the applicant or any person living in the applicant's household has had a license:

- A. Revoked or refused to renew
- B. Surrendered for cause
- C. Expired or surrendered while either an abuse or neglect investigation or licensing investigation was pending or an involuntary hold was placed on the home.
- D. the applicant has been the subject of allegations of abuse or neglect
- E. Has an indicated report of abuse or neglect
- F. Has been the subject of involuntary holds that were placed on the home for the health, safety and well-being of a child or children in care
- G. Has been involved in substantiated licensing complaints which were not corrected and resulted in enforcement action against the facility license

A Quality of Care Concerns Applicant must submit a preliminary application if the license has been:

- 1. Revoked or refused to renew,
- 2. Surrendered for cause, or
- 3. Expired or surrendered when certain types of placement holds were in effect or during a pending licensing or child abuse or neglect investigation was pending.

The foster home may not reapply for a license before the expiration of 5 years following the Department's action or following the expiration or surrender of the license.

VI. PRELIMINARY APPLICATION FOR QUALITY OF CARE CONCERNS APPLICANT

A. Preliminary Application for Licensure

Individuals meeting the definition of Quality of Care Concerns Applicant must submit a **CFS-597-1, Preliminary Application for Licensure**. The preliminary application must include:

- A list of all youth in care fostered in their home that were subsequently removed from their home due to other outcomes than a return home to a parent or legal guardian. Also required are the circumstances that led to their removal.
- A list of all youth currently under 18 years of age who were in their care as foster children and were subsequently provided permanency in the home as an adopted youth or a youth for whom they received legal guardianship, but no longer reside in the home. The assessment requires that the reasons why the child or children are no longer residing in the home.

If the Quality of Care Concerns Applicant chooses to they may also submit:

- A documented statement from the preliminary applicant(s) as to why the concerns are not valid, or how concerns have been satisfactorily addressed and remediation has occurred.
- Affirmative documentation that demonstrates the quality of care applicant does not pose a risk to a child's physical/emotional health and well-being. Quality of Care Concerns Applicants may provide documentation of successful completion of additional education, training or corrective action.

A **CFS 542, Initial Inquiry**, form shall be completed by licensing staff for each individual making an inquiry into becoming licensed as a foster home provider, to determine if the individual meets the definition of a quality of care applicant.

When the individual has a quality of care concern involving a revocation, refusal to renew or surrender with cause where fewer than 5 years has passed, the individual making the inquiry shall be informed of the new language in statute that prevents them from applying at this time.

B. Department shall verify and review information in the Preliminary Application:

The licensing representative shall document the review and assessment on the **CFS-597-2, Licensing Representative/Supervisor Assessment and Recommendation**, based upon review of the following documents:

- Prior licensing complaints
- Prior child abuse/neglect investigations
- Prior involuntary holds

POS Agencies shall submit Quality of Care Concerns Applicant recommendations to the A&I Licensing Supervisor for review and approval.

The licensing supervisor or A&I supervisor shall review the completed assessment and recommendation from the licensing representative and direct the licensing representative to send out the **CFS- 597-3, Quality of Care Concerns Preliminary Application Decision**.

The Department shall obtain consultation from its Clinical Division as appropriate and prescribed by Department Rule and Procedures.

C. Potential outcome to a complete Preliminary Application

The Department may issue a foster family license to a Quality of Care Concerns Applicant if the Department is satisfied that the foster family home does not pose a risk to children and that the foster family home will be able to meet the physical and emotional needs of children. The Department must carefully review all relevant documents and obtain consultation from the Department's Clinical Division to make one of the following determinations:

- Deny the preliminary application based upon quality of care concerns (this prevents the individual from eligibility to apply for licensure)
- Approve the preliminary application based upon the quality of care concerns having been assessed and remediated and applicant has been determined able to meet the physical and emotional needs of a child
- Provide tentative approval of a preliminary application, contingent upon receipt of additional information or assessment
- Approve preliminary application based upon results of assessment and recommendation to limit placement to a specific child or children in the home

D. Department Written Response to a complete Preliminary Application

When the preliminary application is approved, the Department shall provide written notice to the quality of care applicant by the **CFS-597-3, Quality of Care Concerns Preliminary Application Decision** that they may now apply for foster home licensure through the same established requirements and methods used for other applicants seeking foster home licensure.

When the preliminary application is denied, the Department shall provide written notice to the individual as to why the preliminary application was denied, per the assessment required in the Children & Family Services Act.

VI. QUESTIONS

Questions regarding this Policy Guide may be directed to the Office of Child and Family Policy at 217-524-1983 or via Outlook at OCFP – Mailbox. Non Outlook users may e-mail questions to cfpolicy@idcfs.state.il.us.

VII. FORMS

The following forms are available on templates and can be ordered in the usual manner:

CFS 542, Initial Inquiry (revised)

CFS-597-1, Foster Care: Quality of Care Concerns Applicant Preliminary Application for Licensure (new)

CFS-597-2, Foster Care: Quality of Care Concerns Applicant Licensing Representative/Supervisor Assessment and Recommendation (new)

CFS-597-3, Quality of Care Concerns Preliminary Application Decision (new)

VIII. FILING INSTRUCTIONS

File this Policy Guide immediately following **Rule 383, Licensing Enforcement; Rule 402, Licensing Standards for Foster Family Homes; and Rule 431, Confidentiality of Persons Served by the Department.**

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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

POLICY GUIDE 2015.04

INTAKE HOLDS ON CHILD CARE AGENCIES AND INSTITUTIONS

DATE: February 9, 2015

TO: DCFS and POS Child Welfare and Licensing Staff and Supervisors

FROM: Cynthia L. Tate, Ph.D., Interim Director 

EFFECTIVE: Immediately

I. PURPOSE

The purpose of this Policy Guide is to inform Department and Purchase of Services (POS) Child Welfare and Licensing staff and Supervisors of the Department's policy concerning "holds" on a licensed child care agency or institution's intake.

II. PRIMARY USERS

The primary users of this policy guide are DCFS and POS Child Welfare and Licensing Staff and Supervisors.

III. BACKGROUND

The Department currently places intake "holds" on licensed child welfare agencies and institution when implementing corrective and protective plans in accordance with residential contract program plans and other policy governing corrective and protective plans. This Policy Guide further explains residential intake "holds" and anticipates rulemaking that will formalize the process.

IV. SUMMARY

The Department may place a "hold" on the agency's intake when an agency's performance, failure to adhere to the Department's licensing standards, or a significant singular event (e.g., physical or mental abuse, death, or something of similar significance) poses a substantial risk of harm to children or youth in care. No additional children or youth will be placed in the facility and the population may be clinically reassessed to determine the appropriateness of existing children's continued placement. The primary purpose of the intake "hold" is to allow the agency to identify and implement the necessary corrective actions and demonstrate the sustainability of the corrections.

- Except as noted below, any intake “hold” will be applied initially for 60 days, unless reason for the “hold” poses no immediate risk of harm to the children in care. The “hold” may be extended past 60 days if sustained corrective actions are not observed and/or subsequent instances of the same or similar reasons that led to the “hold” to occur.
- During the “hold” all Department and POS staff will be allowed unfettered access to the physical plant, files, agency staff, and children to observe progress toward corrective actions, quality improvement and safety.
- Any “hold” may be removed during or after the initial 60 day period when the DCFS Agency & Institution manager determines that the agency has fully implemented all corrective actions and quality improvements and children can safely be cared for within the facility.

The Department will propose amendments to appropriate rules to comport with this Policy Guide. Licensing staff shall immediately implement the new standards.

V. QUESTIONS

Questions regarding this Policy Guide may be directed to the Office of Child and Family Policy at 217-524-1983 or via Outlook at OCFP – Mailbox. Non Outlook users may e-mail questions to cfpolicy@idcfs.state.il.us.

VI. FILING INSTRUCTIONS

File this Policy Guide immediately following Rules 383, Licensing Enforcement.