DEPARTMENT OF HUMAN RESOURCES SOCIAL SERVICES DIVISION ADMINISTRATIVE CODE

CHAPTER 660-5-26
DAY CARE LICENSURE - CHILD CARE LICENSING AND PERFORMANCE STANDARDS FOR DAY CARE CENTERS AND NIGHTTIME CENTERS

660-5-26-.10 Corrective/Adverse Actions.

Corrective or adverse actions may be imposed by the Department when the licensee fails to meet and maintain standards prescribed by the Department. Corrective and adverse actions may include, but need not be limited to: deficiency reports; corrective action plans; probationary status; restrictions or modifications of the provisions of the license, permit, or approval; suspension of a license, permit, or approval; revocation of a license, permit, or approval.

Written notice of the corrective or adverse action shall be posted at each public entrance of the child care center.

None of these requirements are to be interpreted to allow a center to operate in violation of the standards or out of compliance with the standards.

(1) Types of Corrective Actions

(a) Deficiency Report. If an inspection, evaluation, or investigation indicates non-compliance with the standards (deficiency), a deficiency report shall be prepared by the Department. A deficiency report is prepared in conjunction with or subsequent to a visit to the center, or after investigation of a substantiated complaint regarding the center. In any visit to the center in which deficiencies are observed or noted, the licensing representative shall complete a deficiency report, and discuss the deficiencies observed or noted with the licensee or facility representative. A copy of the completed deficiency report shall be provided to the licensee or facility representative. No deficiency report shall be completed in conjunction with a pre-1icensing visit.

(b) Corrective Action.

1. If an inspection, evaluation, or investigation indicates continued or repeated non-compliance with the standards, or if areas of non-compliance indicated previously on a deficiency report are not corrected, a corrective action plan may be developed to allow the licensee to achieve compliance with the

standards while continuing to care for children. The corrective action plan shall include: a statement of each deficiency; a description of how the deficiency shall be corrected; the date by which corrections shall be completed; and the signature of the Department's representative and the licensee or facility representative.

2. During the corrective action period, the licensee shall correct each deficiency (area of noncompliance) and shall report the corrections to the Department. The length of time the corrective action plan remains in effect shall be determined based on the nature of the areas of noncompliance. If the licensee fails or refuses to comply with the standards and the terms of the corrective action plan, the Department may initiate adverse action such as probation or revocation of the license, permit, or approval.

3. Requests for changes to the provisions of the license such as increases in licensed capacity or changes in the ages of the children received for care, shall not be granted during the corrective action period.

(c) Restriction or Modification of the Provisions of the License, Permit, or Approval. The Department shall have the right to immediately suspend, limit, or restrict the license, permit, or approval of a child care center when conditions hazardous to the health and safety of the children exist, including but not limited to:

1. The right to restrict, limit, or suspend specific activities provided by the child day care/nighttime center, such as but not limited to: away-from-the-center activities; transportation of the children; swimming.

2. The right to restrict or limit the use of specific areas of the center, such as but not limited to: outdoor play areas; bathrooms; rooms/activity areas used by the children.

3. The right to reduce the licensed/permitted capacity of the center or to amend the ages of children to be served, due to restricted use of required space or bathroom facilities or lack of qualified staff to meet required staff-child ratios. (See Rule 660-5-26.04 for required ratios.)

(2) Types of Adverse Actions. If a facility is placed on adverse action, the facility’s participation in the State’s Quality Rating Improvement System will be revoked. Facilities

may resume participation in the Quality Rating Improvement System at the next licensing renewal if the facility is no longer on adverse action.

(a) Probationary Status.

1. If an inspection, evaluation, or investigation indicates non-compliance with the standards, or if conditions exist that could pose a hazard to the health and safety of the children in care, a period of probationary status may be instituted to allow the licensee to achieve compliance with the standards while continuing to care for children. At the beginning of the probationary period the licensee shall be provided with: a statement of each deficiency; a description of how the deficiency shall be corrected; the date by which corrections shall be completed; and the signature of the Department's representative and the licensee or facility representative.

2. During the probationary period, the licensee shall correct each deficiency (area of noncompliance) and shall report the corrections to the Department. The length of the period of probationary status shall be determined based on the nature of the areas of noncompliance. The maximum period shall be six (6) months. At the end of the probationary period, the center’s license shall be returned to active status if the center is in compliance with the standards. If the licensee fails or refuses to comply with the standards during the probationary period, the Department may initiate revocation of the license, permit, or approval

3. Requests for changes to the provisions of the license such as increases in licensed capacity or changes in the ages of the children received for care, shall not be granted during the period of probationary status.

(b) Revocation of a License. The Department may revoke or refuse to renew the license of the child care facility or refuse to issue a full license to the holder of a six-month permit should the operator(s):

1. Consistently fail to maintain standards prescribed and published by the Department;

2. Violate the provisions of the license or permit issued;

3. Furnish or make any misleading or any false statements or reports 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 child care facility for licensing purposes; provided, however, that the Department shall not revoke or refuse to renew a license in such case unless it has made written demand on the person, firm or corporation operating the facility requesting such report or reports and such person, firm or corporation fails or refuses to submit such records for a period of ten days;

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 purpose of investigation;

7. Fail to provide, maintain, equip and keep in safe and sanitary condition the 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 such facility;

8. Refuse to display its license or permit; or

9. 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, learning experience and other essentials in the proper care, rearing and training of children.

If the Department makes the decision to revoke or refuse to renew the license, approval or six-month permit, a pre-revocation hearing shall be held. The purpose of the pre-revocation hearing is to provide adequate notice of the intended revocation and provide sufficient opportunity for the licensee/permit or approval holder to show why the action should not be taken.

(c) Suspension of a License, Permit, or Approval. In accordance with the Code of Alabama 1975, the Department has the authority to immediately suspend without notice the license, six-month permit, or approval, if an inspection by the Department of a licensed, permitted, or approved child care facility discloses any condition, deficiency, dereliction, or abuse, which is, or could be,

hazardous to the health, safety, or physical, moral, or mental well-being of the children in the care of the child care facility being inspected. In this event, the child care facility shall not operate during the pendency of any proceeding for a fair hearing or judicial review, except under court order. The suspension may remain in effect for a period of no longer than 120 days and shall not be renewable. The license, permit, or approval shall not be suspended for the same or a substantially similar emergency within one calendar year from its first suspension unless the emergency could not have been reasonably foreseen during the initial 120 day period that such emergency would continue or would likely reoccur during the next nine months. When such summary suspension is ordered, a formal suspension or revocation proceeding shall also be promptly instituted and acted upon.

(d) Penalty for Unlicensed Facilities.

1. If the Department representative determines, through investigation, that any person, group of persons, or corporation is, or has been, operating a child care facility without a license, six-month permit, or approval, the results of the investigation shall be reported to the Attorney General and to the appropriate District Attorney for prosecution. (See Code of Ala. 1975.)

2. Any person, group of persons, association or corporation who conducts, operates or acts as a child care facility without a license, or a six-month permit or an approval... is in violation of the provisions of Title 38, Chapter 7, Code of Ala. 1975... or any person, etc., who violates any other provision of said Chapter...shall be guilty of a misdemeanor...and shall be fined not less than $100 nor more than $1000 or be imprisoned in the county jail not longer than one year or both. (See Code of Ala. 1975, nor more than $1000 or be imprisoned in the county jail not longer than one year or both. (See Code of Ala. 1975.)

(e) Refusal to Permit Inspections

1. A person commits the crime of refusing to permit inspection of property that is owned, possessed or otherwise subject to his/her control if a public servant is legally authorized to inspect such property and an attempt is being made to exercise that authority and he/she:

(i) refuses to produce the property for a reasonable inspection; or

(ii) refuses to permit a reasonable inspection.

2. For the purposes of this section, "legally authorized inspection" includes any lawful search, sampling, testing or other examination of property, in connection with the regulation of the defendant's business or occupation, that is authorized by law.

3. Refusing to permit inspection is a Class C misdemeanor (fine of not more than $500.00 or imprisonment in county jail for not more than three months).

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Statutory Authority: Code of Ala. 1975, as amended (hereinafter referred to as Code), §§38-7-1 through 38-7-18, §§41-22-19, §§38-2-6(10), (12), (13), (15), §§26-14-3, §§26-14-4.
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