

**State of Utah**  
**Administrative Rule Analysis**  
Revised May 2023

| <b>NOTICE OF PROPOSED RULE</b>  |  |                                   |
|---|--|-----------------------------------|
| <b>TYPE OF FILING:</b> New  |  |                                   |
| <b>Title No. - Rule No. - Section No.</b>   |  |                                   |
| <b>Rule or Section Number:</b>  | <b>R380-600</b>  | <b>Filing ID: Office Use Only</b> |
| <b>Agency Information</b>   |  |                                   |
| <b>1. Department:</b>   | Health and Human Services  |                                   |
| <b>Agency:</b>  | Division of Licensing and Background Checks, Office of Licensing |                                   |
| <b>Room number:</b>   |  |                                   |
| <b>Building:</b>  | MASOB  |                                   |
| <b>Street address:</b>  | 195 North 1950 West  |                                   |
| <b>City, state and zip:</b>   | Salt Lake City, Utah 84116                                       |                                   |
| <b>Mailing address:</b>   | Same   |                                   |
| <b>City, state and zip:</b>   |  |                                   |
| <b>Contact persons:</b>   |  |                                   |
| <b>Name:</b>  | <b>Phone:</b>  | <b>Email:</b>                     |
| Simon Bolivar   | 801-803-4618   | sbolivar@utah.gov                 |
| Jonah Shaw  | 385-310-2389   | jshaw@utah.gov                    |
| Janice Weinman  | 385-321-5586   | jweinman@utah.gov                 |
| <b>Please address questions regarding information on this notice to the persons listed above.</b> |  |                                   |

| <b>General Information</b>                                  |   |  |
|---|---|--|
| <b>2. Rule or section catchline:</b>                        | <b>R380-600. Licensing General Provisions-Enforcement.</b>  |  |
| <b>3. Purpose of the new rule or reason for the change:</b> | The purpose of this rule is to streamline the enforcement used by the different programs in the division, and to have one single, more efficient process to address general provisions for Child Care, Health Facilities, and Human Services licensing.                   |  |
| <b>4. Summary of the new rule or change:</b>                | This is a new rule that combines the general provisions from Human Services contained in the administrative rule R501-1, from Health Facilities contained in rules R432-2 and R432-3, and the general enforcement language from the different Child Care Licensing rules. |  |

| <b>Fiscal Information</b>   |   |  |
|---|---|--|
| <b>5. Provide an estimate and written explanation of the aggregate anticipated cost or savings to:</b>  |   |  |
| <b>A) State budget:</b>   | Although this new rule is created for efficiency purposes, we do not anticipate any cost or savings to the state budget as this rule only clarifies pre-existing requirements and combines them into one single rule. |  |
| <b>B) Local governments:</b>  | This new rule is not expected to have a fiscal impact on local government revenues or expenditures. This new rule only clarifies pre-existing requirements and combines them into one single rule.                    |  |
| <b>C) Small businesses</b> ("small business" means a business employing 1-49 persons):  |   |  |
| This new rule will not have a fiscal impact on small businesses because it only clarifies pre-existing requirements and combines them into one single rule. |   |  |
| <b>D) Non-small businesses</b> ("non-small business" means a business employing 50 or more persons):  |   |  |

This new rule does not have a fiscal impact on non-small businesses, nor will a service be required of them to implement it.

**E) Persons other than small businesses, non-small businesses, state, or local government entities** ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

There will be no fiscal impacts on any other persons as a result of this new rule. This new rule does not introduce any new processes that will incur a cost or savings for affected persons because it is taken from already existing rules.

**F) Compliance costs for affected persons** (How much will it cost an impacted entity to adhere to this rule or its changes?):

This new rule does not introduce any new processes that will incur a cost or savings for affected persons.

**G) Regulatory Impact Summary Table** (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

**Regulatory Impact Table**

| <b>Fiscal Cost</b>           | <b>FY2024</b> | <b>FY2025</b> | <b>FY2026</b> |
|------------------------------|---------------|---------------|---------------|
| State Government             | \$0           | \$0           | \$0           |
| Local Governments            | \$0           | \$0           | \$0           |
| Small Businesses             | \$0           | \$0           | \$0           |
| Non-Small Businesses         | \$0           | \$0           | \$0           |
| Other Persons                | \$0           | \$0           | \$0           |
| <b>Total Fiscal Cost</b>     | <b>\$0</b>    | <b>\$0</b>    | <b>\$0</b>    |
| <b>Fiscal Benefits</b>       | <b>FY2024</b> | <b>FY2025</b> | <b>FY2026</b> |
| State Government             | \$0           | \$0           | \$0           |
| Local Governments            | \$0           | \$0           | \$0           |
| Small Businesses             | \$0           | \$0           | \$0           |
| Non-Small Businesses         | \$0           | \$0           | \$0           |
| Other Persons                | \$0           | \$0           | \$0           |
| <b>Total Fiscal Benefits</b> | <b>\$0</b>    | <b>\$0</b>    | <b>\$0</b>    |
| <b>Net Fiscal Benefits</b>   | <b>\$0</b>    | <b>\$0</b>    | <b>\$0</b>    |

**H) Department head comments on fiscal impact and approval of regulatory impact analysis:**

The Executive Director of The Department of Health and Human Services, Tracy Gruber, has reviewed and approved this regulatory impact analysis.

#### Citation Information

**6. Provide citations to the statutory authority for the rule. If there is also a federal requirement for the rule, provide a citation to that requirement:**

|           |                               |  |
|-----------|-------------------------------|--|
| 26B-1-202 | Ex 2: Subsection 63G-3-403(3) |  |
|           |                               |  |
|           |                               |  |

#### Incorporations by Reference Information

**7. Incorporations by Reference** (if this rule incorporates more than two items by reference, please include additional tables):

**A) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

|   |  |
|---|--|
| <b>Official Title of Materials Incorporated<br/>(from title page)</b> |  |
| <b>Publisher</b>  |  |
| <b>Issue Date</b>   |  |
| <b>Issue or Version</b>   |  |

**B) This rule adds, updates, or removes the following title of materials incorporated by references** (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

|   |  |
|---|--|
| <b>Official Title of Materials Incorporated</b> |  |
|---|--|

|                          |  |
|--------------------------|--|
| <b>(from title page)</b> |  |
| <b>Publisher</b>         |  |
| <b>Issue Date</b>        |  |
| <b>Issue or Version</b>  |  |

#### Public Notice Information

**8. The public may submit written or oral comments to the agency identified in box 1.** (The public may also request a hearing by submitting a written request to the agency. See Section 63G-3-302 and Rule R15-1 for more information.)

**A) Comments will be accepted until:**

**B) A public hearing (optional) will be held:**

|                           |                            |   |
|---------------------------|----------------------------|---|
| <b>Date</b> (mm/dd/yyyy): | <b>Time</b> (hh:mm AM/PM): | <b>Place</b> (physical address or URL): |
|                           |                            |   |
|                           |                            |   |

**To the agency:** If more space is needed for a physical address or URL, refer readers to Box 4 in General Information. If more than two hearings will take place, continue to add rows.

**9. This rule change MAY become effective on:**

NOTE: The date above is the date the agency anticipates making the rule or its changes effective. It is NOT the effective date.

#### Agency Authorization Information

**To the agency:** Information requested on this form is required by Sections 63G-3-301, 63G-3-302, 63G-3-303, and 63G-3-402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin* and delaying the first possible effective date.

**Agency head or designee and title:**  **Date:**

#### R380. Health and Human Services, Administration.

#### R380-600. Licensing General Provisions-Enforcement.

#### R380-600-1. Authority and Purpose.

This rule is enacted and enforced in accordance with Sections 26B-2-104, 26B-2-202 and 26B-2-402. The purpose of this rule is to provide consolidated procedures and enforcements for the licensing entities within the Division of Licensing and Background Checks.

#### R380-600-2. Definitions.

(1) "Abuse" means any form of abuse defined under Sections 26B-6-201, 80-1-102, and R512-80-2.

(2) "Action Review" means informal levels of discussion available to providers to engage the division administration to review an action taken on their license or certificate before requesting an appeal.

(3) "Applicant" means the legally responsible individual or individuals, or business seeking to obtain a valid new or renewal license or certificate from the Office.

(4) "Category" means the type of license or certificate needed for the services offered by the provider.

(5) "Certificate" means a residential child care certificate in accordance with Section 26B-2-404.

(6) "Certified" means an approval to operate in compliance with local or federal requirements or regulations completed by the office or on behalf of the office for another local or federal agency.

(7) "Citation" means a notice for serious or repeat rule noncompliance. A citation is displayed on the division website as public record because of the serious or repetitive nature of the noncompliance.

(8) "Client" means an individual receiving the services from the provider.

(9) "CMP" means civil money penalty that is a fine charged by the office for repeat citations or when an initial instance of noncompliance results in, or is likely to result in, harm to clients.

(10) "Critical Incident" means an event out of the range of normal experience including any of the following:

(a) an allegation or confirmation of abuse, neglect, or exploitation;

(b) a loss or impairment of the function of a bodily member, organ, or mental faculty or significant disfigurement;

(c) a death related to an adverse event;

(d) a death of a minor;

(e) a medication error resulting in a telephone call to or a consultation with a poison control center, an emergency department visit, an urgent care visit, or hospitalization;

(f) an allegation or confirmation of waste, fraud or abuse of Medicaid funds;

(g) any medical emergency beyond basic first aid;

(h) a missing client;

(i) any significant criminal activity;

(j) any property damage or infestation that jeopardizes services; or

(k) any prohibited practice as described in Section 26B-2-123 including misuse or unauthorized use of restrictive interventions, seclusion, or body cavity search.

(11) "Department" means the Department of Health and Human Services.

(12) "Division" means the Division of Licensing and Background Checks in the Department of Health and Human Services.

(13) "Emotional Mistreatment" means verbal or non-verbal conduct that results in a client suffering significant mental anguish, emotional distress, fear, humiliation, or degradation. Emotional mistreatment includes demeaning, threatening, terrorizing, alienating, isolating, intimidating, or harassing a client.

(14) "Exploitation" includes:

(a) the use of a client's property, labor, or resources without the client's consent or in a manner that is contrary to the client's best interests, or for the gain of some person other than the client, including spending a client's funds for the benefit of another;

(b) using the labor of a client without paying the client a fair wage or without providing the client with just or equivalent non-monetary compensation, where such use is inconsistent with therapeutic practices;

(c) engaging or involving a client in any sexual conduct; or

(d) sexual abuse of a minor as described in Section 76-5b-201 or vulnerable adult as described in Sections 76-5b-202 and Subsection 76-5-111(2).

(15) "Fraud" means a false or deceptive statement, act, or omission that causes, or attempts to cause, property or financial damages, or for personal gain. Fraud also means any offenses identified as fraud in Title 76, Chapter 6, Offenses Against Property.

(16) "Harm" means financial, physical, or emotional pain, damage, injury, or fraud.

(17) "Inspection" means an announced or unannounced visit of the provider's site to monitor compliance.

(18) "Inspection Report" means the written official description of any rule, statute, or requirement found out of compliance, which may include facts supporting the noncompliance, risk levels, corrective actions, and corrective time frames the office, or an office approved agency sends the provider once an inspection, survey, or investigation has been completed.

(19) "Investigation" means an inspection to verify compliance from a complaint or an incident.

(20) "Mistreatment" means conduct that results in emotional or physical harm.

(21) "Neglect" means abandonment or the failure to provide necessary care, including nutrition, education, clothing, shelter, sleep, bedding, supervision, health care, hygiene, treatment, or protection from harm. Neglect also means any form of neglect defined under Sections 26B-6-201; 76-5-110; and 80-1-102.

(22) "Office" means the Office of Licensing within the Department of Health and Human Services, Division of Licensing and Background Checks.

(23) "Owner" means any person, or entity that:

(a) is listed on a license or certificate;

(b) possesses the exclusive right to hold, use benefit from, enjoy, convey, transfer, and otherwise dispose of a program or facility;

(c) retains the rights, participates in, or is ultimately responsible for operations and business decisions of a program or facility; or

(d) operates or has engaged the services of others to operate the program or facility.

(24) "Penalty" means an action taken by the office to fine, deny, place a condition on, suspend, or revoke a license due to the program or facility's noncompliance with statute or administrative rule. Penalty includes civil money penalties. A penalty does not include a warning or plan of correction.

(25) "Person" means an individual, agency, association, partnership, corporation, business entity, or governmental entity.

(26) "Physical mistreatment" means conduct that results in pain, injury, or death.

(27) "Plan of Correction" means, except for the Center for Medicare and Medicaid Services (CMS) plan of correction as defined in 42 CFR 488.401, a temporary period for the office and the provider to work toward improved provider compliance and preventing further noncompliance.

(28) "Program or facility" means the settings, activities, services, procedures, and premises used by the provider to operate their license or certificate.

(29) "Provider" means the license or certificate holder, or the legally responsible individual or individuals providing services regulated by the department.

(30) "Regular business hours" are the hours that the program or facility is available to the public or providing services to clients.

(31) "Risk Levels" means likelihood and severity of harm between low, moderate, high, and extreme that may result if a rule is out of compliance.

(32) "Seclusion" means, except for medically approved quarantine, the involuntary confinement of an individual in an area:

(a) away from the individual's peers; and

(b) in a manner that physically prevents the individual from leaving the room or area.

(33) "Significant criminal activity" means any unlawful activity by or against the program or facility's clients or on duty staff that poses a serious threat to the program or facility's clients or on duty staff's health, safety, or well-being including:

(a) any criminal activity that involves law enforcement;

(b) illegal physical or sexual misconduct or assault;

(c) riot;

(d) suspected fraud; or

(e) suspected exploitation.

(34) "Strip search" means requiring a client to undress down to undergarments or complete nudity in view of another person.

(35) "Variance" means any deviation from administrative rule authorized in writing by the office.

(36) "Warning" means a licensing action that warns the provider that a rule noncompliance must be corrected within a specified amount of time. Warnings are documented by the office but are not displayed on the division website as public record.

### **R432-600-3. New and Renewal Licensing Procedures.**

(1) An applicant or provider may not accept any fee, enter into any agreement to provide a client service, or provide any client service until a license or certificate is approved by the office.

(2) Each applicant and provider shall comply with any applicable administrative rule, statute, zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency will be or is located.

(3) An applicant or a provider shall permit the office to have immediate, unrestricted access to:

(a) each site subject to licensing or certification;

(b) any unaltered on and off-site program or facility and client records; and

(c) each staff and client.

(4) An applicant shall notify the office in writing of any changes to the application, including withdrawal of the application.

(5) An applicant seeking an initial or renewal license or certificate to operate a program or facility shall submit:

(a) a complete application as provided by the office;

(b) any required fees for each category of program or facility applied for;

(c) except as described in Subsection 26B-2-120(12), a background clearance for each person 12 years old and older associated with the provider;

(d) any policy and procedure, or updates if already submitted, as required by the office;

(e) name and contact information for each responsible decision-maker, including any owner or program or facility director;

(f) documentation that verifies the applicant's compliance with, or exemption from, fire and business license requirement; and

(g) as applicable for healthcare facilities, architectural plans and a description of the functional program or facility.

(6) A provider may not implement a policy that requires office approval without that office approval.

(7) The provider shall submit:

(a) a renewal request and applicable fees at least 30 days before the expiration of their license or certificate;

(b) a renewal request and applicable late fees within 30 days after the expiration of their license or certificate; or

(c) a new application for a new license or certificate and applicable fees if the provider lets their license or certificate expire and 30 days have passed since their license or certificate expired.

(8) A residential treatment program or facility provider applying for an initial license shall submit proof that the program or facility served notice of intent to operate as described in Section 26B-2-117.

(9) A new applicant shall submit a new initial application and applicable fees if they have not successfully completed the application process six months from the date of the initial application.

(10) The office may deny the initial or renewal application or place a penalty on a renewal license or certificate if:

(a) the provider failed to achieve or maintain compliance with any applicable statute, rule, or ordinance;

(b) the applicant or provider has a compliance history that shows a pattern of non-compliance with applicable statutes, rules, or ordinances;

(c) the applicant or provider gives false or misleading information to the office;

(d) the office reasonably determines that the applicant or provider is not likely to operate in compliance with any applicable statute, rule, or ordinance;

(e) the applicant or provider receives a notice from the department that an individual involved in the program or facility is not eligible due to a department background check and that individual is still associated with the program or facility;

(f) the office finds a program or facility director, owner, or any individual involved in the program or facility's billing process on the office of Inspector General's List of Excluded Individuals and Entities; or

(g) the office finds that an applicant or provider maintains association with any individual with a license revoked by the office if the application is submitted within five years from the time of the revocation.

(11) The office may deny renewal of a license or certificate for an applicant or provider that is no longer providing the services that require them to have a license or certificate or if they have not provided any services for the past 24 months.

(12) A provider approved by the office to certify their own program or facility sites shall register each certified site as instructed by the office.

(13) A denied applicant may not reapply for a minimum of a three-month period beginning on the date of denial.

(14) The provider shall adhere to any individualized parameter on a program or facility license or certificate to promote the health, safety, and welfare of any client. Parameters may include:

(a) an age restriction;

(b) an admission or placement restriction;

(c) adequate square footage to determine capacity; and

(d) any other parameter specific to an individual site or program or facility.

(15) The provider shall resolve with the office any outstanding balances, conditions, or noncompliance status on any license or certificate before a license or certificate can be granted by the office for any associated new site.

(16) Except health care facilities that are licensed for two years, a provider may apply for a two-year license if:

(a) the provider is not a residential or foster care program or facility;

(b) the program or facility is in good standing with the office for the two consecutive license periods issued by the office immediately before the date of application;

(c) the provider understands that required inspections will be conducted the same as for annual licenses;

(d) the office reasonably determines that the provider is likely to maintain good standing for a two-year period;

(e) the provider submits twice the annual fee required for each category of license sought; and

(f) there are no other statutory restrictions that will disqualify the license type for a two-year license.

(17) Unless previously approved by the office for special circumstances, a provider shall submit an application, any required fees, and obtain a new or a renewed license or certificate before providing any services that require a license or certificate.

(18) A license or certificate expires at midnight on the last day of the same month the license or certificate was issued, one year after its effective date, except when the license or certificate has been:

(a) revoked by the office before expiration;

(b) extended by the office beyond the date of expiration;

(c) relinquished by the provider;

(d) received a shortened expiration time frame as requested by the provider; or

(e) for a license only, issued as a two-year license.

(19) A two-year license expires at midnight on the last day of the same month the license was issued, two years after the effective date on the license.

(20) A provider may request an extension of up to 90 days if:

(a) any applicable fees are paid;

(b) any noncompliance issues are resolved to the satisfaction of the office;

(c) the provider submits a written request for an extension to the office; and

(d) the provider understands that an extended license will reduce the dates for the subsequent renewal license to start on the date compliance is achieved and end on the original license renewal date.

(21) A provider wishing to voluntarily relinquish a license or certificate shall:

(a) notify the office and the patients or their next of kin or legal guardian, as applicable, at least 30 days before the effective date of closure;

(b) ensure safe keeping of records; and

(c) as applicable, return all patients funds and valuables at the time of discharge.

(22) The office may not accept voluntary relinquishment of a license if a notice of agency action revoking the license has been initiated.

(23) Each license or certificate is the property of the office and not transferable, and the provider shall post it, except in a foster home, on the premises in a place readily visible and accessible to the public.

(24) The office may deny renewal of a license or certificate for a program or facility who is no longer providing services.

#### **R380-600-4. Program or Facility Changes.**

(1) A provider shall submit a complete office changes application to amend an existing license at least 30 days before any of the following changes:

(a) an increase or decrease of capacity, including any change to the amount of space used to provide services;

(b) a change in the name of the program or facility;

(c) the move of an administrative site where no clients are served; or

(d) a change that transfers less than 50% ownership or controlling interest to a new owner.

(2) A provider may not proceed with any changes or make them public until after approval by the office.

(3) A provider shall submit a complete office application for a new license and fees at least 30 days before any of the following changes:

(a) a change of location;

(b) a change in the population served;

(c) a change in the regulation type of the program or facility;

(d) an additional license category; or

(e) a change that transfers 50% or more ownership or controlling interest to a new owner.

(4) For a change that requires a new license or certificate, the provider shall adhere to the following conditions:

(a) no new clients may be served until a new license or certificate is issued;

(b) the status of the previous license or certificate will continue;

(c) the application fee for any additional license category will be prorated to make sure it expires on the same date as any other facility existing license; and

(d) if a foster child is placed in a foster home, it is the responsibility of the licensed foster parent to ensure the health and safety of the foster child during the transition to licensure or certification at the new site.

### **R380-600-5. Fees.**

(1) Except for a foster home or division of the department, the applicant shall pay any required application fees before the office performs any on-site visit or document review.

(2) If a license or certificate is not granted by the office, the application fee expires 12 months after the date of application.

(3) The applicant shall pay an initial application fee for each category of program or facility offered at each program or facility site.

(4) The applicant shall pay the respective application fee for any change request that requires the office to perform an onsite inspection and complete a comprehensive compliance review.

(5) The provider shall pay a renewal license or certificate fee and any applicable capacity fee, calculated based on the maximum approved client capacity, for each license or certificate that is renewed at each program or facility site.

(6) The provider shall pay any fines and fees owed to the office before a new or renewal license or certificate is issued.

(7) A license with more than one building, unit, or suite located at a single site may choose between the following methods of assessing a fee and issuing a license:

- (a) each category of license includes each on-site building, unit, or suite; or
- (b) each category of license is issued separately for each individual on-site building, unit, or suite.

(8) The provider shall pay the office fees for any monitoring inspection and, if required by the office for extreme noncompliance, the costs of placing a licenser to monitor provider's compliance or a temporary manager to ensure the health and safety of the population served.

(9) The provider shall pay the office an additional follow-up inspection fee each time the office has to conduct an additional follow-up inspection for lack of compliance with the same rule.

(10) The provider shall pay any applicable fees within the time frames prescribed by the division.

(11) The division may grant an account credit or deny a refund request since any fee paid to the division is non-refundable.

### **R380-600-6. Variances.**

(1) The provider may not deviate from any administrative rule before receiving written approval signed by the office director or the director's designee.

(2) The office director, or the director's designee, may grant a variance after determining that a variance is not likely to:

- (a) compromise client health and safety; or
- (b) provide an opportunity for abuse, neglect, exploitation, harm, mistreatment, or fraud.

(3) A provider seeking a variance shall submit a written request to the office on an office approved variance request form.

(4) The provider shall submit a variance request at least 30 days before the proposed start date unless the provider documents a need to expedite the request.

(5) The provider shall sign the approved variance and comply with the terms of the written variance, including any conditions or modifications contained within the approved written variance.

(6) If the variance is still needed, the provider shall request renewal for a variance 30 days before the variance expires.

### **R380-600-7. Inspection and investigation Process.**

(1) The department may schedule announced and unannounced inspections to follow statute, contract, and federal requirements according to each category.

(2) The office may adopt an inspection conducted by another local or federal agency, or by the department staff on behalf of another local or federal agency and uphold their findings as part of the provider's compliance history.

(3) The provider shall cooperate with the office may not restrict the office's access to the building, clients, staff or any program or facility records during regular business hours to conduct any inspections as necessary to monitor compliance, investigate alleged noncompliance or incidents, monitor corrective actions, monitor contracted certification inspections, monitor federal surveys, or to gather information for new or renewal of licensing or certification.

(4) The provider shall cooperate with the department by promptly responding to any request for information necessary to demonstrate rule compliance before, during, and after inspections.

(5) The provider shall make available and permit reproduction of program or facility records and documents by, or on behalf of, the department as necessary to ascertain compliance with applicable laws, rules, and federal regulations.

(6) The provider shall ensure that the integrity of the office's information gathering process is not compromised by withholding or manipulating information or influencing any specific response of staff or clients.

(7) The provider shall allow the office to access any program or facility record or staff at an administrative or certified location that is not located at the licensed site.

(8) Except for when an inspection is conducted by another local or federal agency, or by the department staff on behalf of another local or federal agency, the office shall serve a written inspection report to the provider once the inspection process is complete and approved by division management.

(9) If the provider is out of compliance with any applicable administrative rules, statute, or requirements, the provider shall:

- (a) come into compliance within the required correction time frames as stated in the respective inspection report;
- (b) allow for department or office approved agency access to conduct any required follow-ups;
- (c) as applicable, pay any penalties and inspection fees; and
- (d) maintain compliance with all applicable administrative rules, statute, or requirements.

(10) The office may request immediate compliance with any administrative rule that is found out of compliance and that represents an imminent risk to any client.

(11) Once an inspection is completed and the inspection report is produced by the office, the office shall post all citations from any inspection and any substantiated noncompliance from a complaint investigation on the division website and keep them posted for at least 36 months.

(12) The provider shall follow the office's directions if the office determines that the deficiencies in the administration of the program or facility require the office to intervene with additional preventive actions including a plan of correction or technical assistance to possibly avoid an additional penalty.

(13) Except for certified facilities following a CMS plan of correction, the office may allow the provider to have one plan of correction in a 36-month period.

(14) The office may require additional inspections as part of the plan of correction.

(15) The office may investigate any complaint or incident that suggest noncompliance with any rules or statute, except for:

(a) an anonymous complaint against a provider within Child Care Licensing; or

(b) a complaint against a provider within Child Care Licensing that alleges an issue that happened six or more weeks before the complaint is received.

(16) Each license or certificate holder shall report any critical incident that occurs under the direct responsibility and supervision of the program or facility on a format provided by the office, as follows:

(a) report to the office within one business day;

(b) notify the legal guardian of the involved client within a 24-hour period from the time of the incident;

(c) if the critical incident involves a client of the department, including any client in the custody of the department or under contract with the department, notify the involved department division immediately; and

(d) collect, maintain, and submit original witness statements and supporting documentation, including video footage if available, regarding each critical incident to the office upon request.

#### **R380-600-8. Rule Compliance, Penalties, Agency Action Reviews, and Appeals.**

(1) The provider shall:

(a) comply and maintain compliance with each applicable rule, statute, or requirement;

(b) ensure each staff and any other individual functioning within the program or facility complies with each applicable rule, statute, or requirement; and

(c) comply with and ensure each staff and any other individual functioning within the program complies with the department Provider Code of Conduct as defined in administrative rule R380-80.

(2) The office may deny a new or renewal of a license or certificate, issue a warning, issue a citation, issue a CMP, require a plan of correction, suspend a license or certificate, set the conditions for and place the program or facility license or certificate on a conditional status, increase monitoring, restrict or prohibit admissions, or revoke a license or certificate based on the office findings or the findings of any office authorized agency if the provider:

(a) is out of compliance with applicable rules, statutes, or requirements;

(b) is in chronic, ongoing noncompliance with applicable rules, statutes, or requirements;

(c) has unpaid fees or penalties;

(d) has a serious noncompliance that places any client's health and safety at immediate risk of harm;

(e) fails to meet the conditions while the program or facility is on a conditional status;

(f) provides false or misleading information to the department;

(g) intentionally alters any document provided to or issued by the department;

(h) fails to allow authorized representatives from the department access to the program or facility to ensure compliance with the rules;

(i) fails to submit or make available to the office any documentation required to ensure compliance with the rules;

(j) knowingly employs, is employed by, contracts with or in any way related to business, associates with a person whose license has been revoked by the office within the previous five years;

(k) commits a serious noncompliance that results in the death or serious harm to a client, or that places the client at risk of death or serious harm;

(l) has committed an illegal act that would exclude a person from having a license; or

(m) needs to be investigated by the office as an emergency temporary measure, until compliance or noncompliance is properly substantiated by the office.

(3) Any official office action on any provider, except for a foster home, is considered public record, and the office shall make it available to the public including posting citations, substantiated complaint allegations, and other penalties on the division website for at least 36 months.

(4) The office may choose to amend any penalty or action taken against a provider at any point during the action process.

(5) If a rule noncompliance resulted in a CMP and there is a repeat instance of the same rule noncompliance within a 36-month period, the provider shall pay double the amount of the original CMP and, for each subsequent noncompliance of the same rule issued, double the amount of the previous CMP not to exceed \$10,000.

(6) The provider shall demonstrate compliance with each noncompliant rule according to the timelines established in the inspection report produced by the office to avoid any further penalties.

(7) If the office suspends the license of a foster parent, the foster parent may retain any current placements if the placing

department entity approves to allow the foster child to remain in the current placement during the time of suspension.

(8) Except as authorized by the office in writing, a program or facility that has had its license or certificate suspended or revoked shall:

(a) not accept new clients;

(b) only provide any service necessary to maintain client health and safety during the client's transition out of the program or facility;

(c) develop and comply with a plan to transition each client out of the program or facility and into an equivalent, safe, currently licensed program or facility or into the custody of the client's legal guardian; and

(d) maintain program or facility staffing to maintain the health and safety needs of each client while an appeal of the suspension or revocation is pending or until each client is removed from the program.

(9) Unless otherwise stated on the conditions set by a conditional license, the office may conduct increased monitoring inspections for a facility on a conditional status until the facility demonstrates substantial compliance.

(10) Any owner identified in a license or certificate revocation action may not employ, be employed by, contract with or in any way related to business, associate with any other program or facility overseen by the office for five years from the date the revocation was made effective.

(11) If the office places a program or facility on a conditional license, issues a suspension or a revocation, the provider shall, within five days of receiving the notice:

(a) post the notice on-site where is easily viewable by the public;

(b) notify each client, guardian, and prospective client of the notice;

(c) post a copy of the notice on the program or facility website, if the program or facility has a website; and

(d) keep the notice posted for as long as the office notice is in effect.

(12) If an appeal of a revocation, suspension or conditional status that restricts admissions is pending, a provider may not accept any new clients without prior written authorization from the office.

(13) The office may, in addition to any other actions, refer any noncompliance concerns to any other local and federal agency and seek criminal penalties.

(14) An applicant or provider may request:

(a) an action review of any office decision within 10 working days of being informed in writing of the decision by submitting a request to the office through the licensing provider portal; or

(b) an appeal of any office decision within 15 working days of being informed in writing of the decision by following the department appeal process.

#### **R380-600-9. Unlicensed Program or Facilities.**

(1) To avoid civil money penalties, a possible class A misdemeanor, and to be referred to the Attorney General and the County Attorney, a person who is providing services that require a license or certificate shall:

(a) Apply to the office to receive a license or certificate according to the office required process and time frame; or

(b) stop providing unlicensed services.

**KEY: licensing, human services, health care facility, child care**

**Date of Last Change: September 2023**

**Authorizing, and Implemented or Interpreted Law: 26B-2-104, 26B-2-202, 26B-2-402**