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 the same as the term is defined in 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.

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

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

(10) "Covered Individual" means any of the following:

(a) an owner;

(b) a director;

(c) a member of the administration or governing body;

(d) an employee;

(e) a caregiver;

(f) a volunteer who has unsupervised access to any client or any client's records, except a parent or legal guardian of a child or vulnerable adult enrolled in the program having access to their own child or vulnerable adult;

(g) an individual age 12 years or older who resides in the facility; and

(h) anyone who has unsupervised access to any client or any client's records.

(11) "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 requiring treatment 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.

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

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

(14) "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.

(15) "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 Section 76-5b-202 and Subsection 76-5-111(2).

(16) "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.

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

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

(19) "Inspection Report" means the written official description of any rule, statute, or requirement where the provider may be found out of compliance, that 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.

(20) "Investigation" means an inspection to verify compliance with rule or statute.

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

(22) "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 the same as the term is defined in Sections 26B-6-201; 76-5-110; and 80-1-102.

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

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

(a) is listed on a license or certificate as the license or certificate holder;

(b) possesses the 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.

(25) "Penalty" means an action taken by the office to fine a licensee or certificate holder deny a license, or place a condition on, suspend, or revoke a license due to the program or facility's noncompliance with statute or administrative rule.

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

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

(28) "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 process for the office and the provider to work toward improved provider compliance and preventing further noncompliance.

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

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

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

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

(33) "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.

(34) "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.

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

(36) "Unsupervised Access" means being out of sight and hearing from an individual who has successfully passed the required division background check.

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

(38) "Warning" means a licensing action that warns the provider that a rule noncompliance shall be corrected within a specified amount of time.

R380-600-3. 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 that 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 fee for each category of program or facility application;

(c) except as described in Subsection 26B-2-120(12), a background clearance for each covered individual;

(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 in accordance with 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, issue a CMP, or place conditions 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 noncompliance 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 received a notice from the division that a covered individual in the program or facility is not eligible due to a division background check and that covered individual is still in 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 using the licensing provider portal.

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

(14) The license or certificate holder 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; or

(c) adequate square footage to determine capacity.

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

(16) 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 in the same manner as for annual licenses of the same license type;

(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; or

(g) the program or facility is a health care provider.

(17) Unless previously approved by the office to provide services before receiving a license or certificate 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) 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 who voluntarily relinquishes 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 any patients funds and valuables at the time of discharge.

(22) The provider may voluntarily relinquish their license or certificate except when the office has issued a notice of agency action revoking the license or certificate.

(23) Each license or certificate is not transferable.

(24) The provider shall post their current license or certificate, except in a foster home, on the premises in a place readily visible and accessible to the public.

(25) 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 license or certificate holder shall submit a complete program change 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 proceed with any changes or make them public 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 so that it expires on the same date as any other facility existing license; and

(d) if a foster child is placed in a foster home, the licensed foster parent shall 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) The applicant shall pay a new application fee if the applicant has not completed the application process 12 months after the date of initial application if the applicant desires to continue with the application process.

(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 an application fee for any program 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 for each license or certificate that is renewed at each program or facility site.

(6) The provider shall pay any applicable capacity fee based on the office approved client or bed capacity.

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

(8) A provider 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.

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

(10) 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.

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

(12) The division may grant an account credit or deny a refund request.

R380-600-6. Variances.

(1) 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.

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

(3) A license or certificate holder seeking a variance shall submit a written request to the office on an office approved variance request form.

(4) The license or certificate holder 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 office may schedule announced and unannounced inspections to follow statute, contract, and federal requirements according to each category.

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

(3) The provider shall cooperate with the office to monitor rule compliance and rule compliance maintenance anytime the program or facility is serving clients by giving to the office full access to:

(a) the building;

(b) clients;

(c) staff; and

(d) any program or facility records.

(4) The provider shall cooperate with the office 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) pay any applicable penalties and inspection fees; and

(c) maintain compliance with each applicable administrative rules, statute, or requirements.

(10) The office may require 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 any citations from any inspection and any substantiated noncompliance from a complaint investigation on the division website for no less than 36 months.

(12) The provider shall follow the office's directions when the office requires a plan of correction.

(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) When a critical incident occurs under the direct responsibility and supervision of the program or facility, the licensee or certificate holder shall:

(a) submit a report of the critical incident to the office in format required by the office within one business day of the critical incident occurrence;

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

(c) if the critical incident involves 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 member complies with each applicable rule, statute, or requirement; and

(c) comply with and ensure each staff member complies with the department Provider Code of Conduct as established in Rule R380-80.

(2) Based on the office findings or the findings of any office authorized agency, the office may:

(a) deny a new or renewal of a license or certificate;

(b) issue a warning;

(c) issue a citation;

(d) issue a CMP;

(e) require a plan of correction;

(f) suspend a license or certificate;

(g) set the conditions for and place the program or facility license or certificate on a conditional status;

(h) increase monitoring inspections;

(i) restrict or prohibit admissions; and

(j) revoke a license or certificate.

(3) When taking any agency action against a provider, the office may consider the provider's:

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

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

(c) unpaid fees or penalties;

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

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

(f) false or misleading information submitted to the office;

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

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

(i) failure to submit or make available to the department any documentation or report required to ensure compliance with the rules;

(j) actions to knowingly employ, be employed by, contract with or in any way relate to business with a person whose license has been revoked by the office within the previous five years;

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

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

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

(4) 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.

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

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) Any owner identified in a license or certificate revocation action may not be approved for a license or certification of any other program or facility overseen by the office for five years from the date the revocation was made effective.

(12) 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 it 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.

(13) 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.

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

(15) An applicant or provider may request:

(a) an action review of any office decision within ten 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.

A person who is providing services without a required license or certificate is subject to a civil money penalty, is guilty of a class A misdemeanor, and may be referred to the Attorney General and the County Attorney.

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