

NONCOMPLIANCE WITH LICENSING REQUIREMENTS

10/01/02

4. Only care for children who are related to the provider.

If the Regulatory Services Section Licensing Consultant finds there are children in the illegal arrangement who are receiving subsidy services the consultant will notify the county department of social services.

B. Regulated Facilities

When DCD receives a complaint about a child care facility, the complaint is referred to the appropriate Regulatory Services Section Licensing Consultant assigned to the area in which the facility is located. The Regulatory Services Section Licensing Consultant will investigate the complaint, determine whether to substantiate it, and work with the provider to address noncompliance items determined during the investigation. The Regulatory Services Section Licensing Consultant may need to involve other agencies in the investigation.

IV. PENALTIES FOR NONCOMPLIANCE

Generally, when violations of child care requirements are found, the Regulatory Services Section Licensing Consultant allows the program a reasonable time to make corrections. There are several types of [administrative actions](#) and civil penalties that may be imposed on a program that does not meet the requirements.

NOTE: The following penalties described in this section also apply to religious-sponsored child care programs operating under G. S. 110-106. While these programs receive a Notice of Compliance instead of a license, DCD may impose any of these administrative actions for noncompliance with the licensing regulations that apply to them.

A. Administrative Actions

1. A **Written Reprimand**, the least severe of the administrative actions, may be issued when a licensing requirement is violated, but it is unlikely to happen again. A corrective action plan is not included and follow-up visits are not required.
2. A **Written Warning** may be issued for a substantiation of child abuse/neglect and/or violations of child care requirements. Accompanying the warning is a corrective action plan which is developed to correct problems that were identified. For example, a staff member who improperly disciplined a child may be required to complete a course on appropriate behavior management techniques.

The issuance of a written warning requires at least one on-site visit by a representative of DCD after the written warning is issued. If the corrective action plan is not completed, DCD may assess a civil

NONCOMPLIANCE WITH LICENSING REQUIREMENTS

10/01/02

penalty and/or issue a more restrictive action up to Revocation of the License.

3. A **Provisional License** is issued if DCD determines that violations of child care requirements are willful, continual, or hazardous to the health and safety of the children. This license may remain in provisional status for up to one (1) year, and must be posted in a prominent place in the facility for parents to view. Unless the action is appealed, the regular license must be returned to DCD. Compliance with a corrective action plan is required. The Provisional License and the letter which explains the reasons and conditions for its issuance must be posted in a prominent place in the facility for parents to view. If the action is appealed, the documents are not posted until final disposition of the appeal.
4. A **Probationary License** is issued for a period of time not to exceed one (1) year when a substantiation of child abuse or neglect occurs and/or when violations of child care requirements have been willful, continual, or hazardous to the health and safety of the children. Unless the action is appealed, the regular license must be returned to DCD. Compliance with a corrective action plan is required. The Probationary License and the letter which explains the reasons and conditions for its issuance must be posted in a prominent place in the facility for parents to view. If the action is appealed, the documents are not posted until final disposition of the appeal.
5. A **Special Provisional License** is issued for a more serious substantiation of child abuse or child neglect. Unless the action is appealed, the regular license must be returned to DCD. The Special Provisional License is issued for up to six (6) months. During the special provisional period, unannounced visits are made to the child care program by the Regulatory Services Section Licensing or Abuse and Neglect Consultant. At the end of the special provisional period, the program is reevaluated to determine if all child care requirements are in compliance.

The Special Provisional License may stipulate that the facility shall not enroll any new children during the special provisional period. A corrective action plan is always included. The Special Provisional License and the letter which explains the reasons and conditions for its issuance must be posted in a prominent place in the facility for parents to view. If the action is appealed, the documents are not posted until final disposition of the appeal.

6. A **Suspension of the License** may be imposed on a program when the operator/provider has not shown a reasonable effort to meet and maintain compliance with the child care requirements. The facility's

NONCOMPLIANCE WITH LICENSING REQUIREMENTS

10/01/02

license may be suspended for up to 45 days, during which time the program must return its license and cease operation. If the program is awarded a stay, pending appeal of the suspension, the suspension order must be posted in a prominent place in the facility for parents to view until a final decision is reached.

7. A **Summary Suspension and Injunctive Relief** of a license may occur when conditions warrant emergency action to protect the health, safety or welfare of children in a child care arrangement. The operator must surrender the license on the effective date of the order and must immediately close the facility until a hearing is held to determine the final administrative action, unless the operator is successful in getting a judge to stay the action.

Injunctive relief may be sought in the district court of the county in which a child care facility is located against the continuing operation of that child care facility when:

- a. Conditions threaten serious harm to children;
 - b. When a final order to deny or revoke a permit has been violated; or
 - c. When an arrangement is operating without a permit.
8. A **Revocation of the License** is the most severe action that may be imposed upon a facility. Revocation may be ordered when DCD and its Review Team agree that the child care requirements have been willfully or continuously violated, or violation of the requirements has put the health and safety of the children in jeopardy. Consideration may also be given to the efforts of the operator/provider to correct the violations. If an operator applies for a new license within 12 months of a revocation, DCD may deny the application based on the operator's compliance history.

B. Civil Penalties for Noncompliance

In addition to administrative actions, DCD also has the authority to levy **civil penalties** of up to \$1000 per violation. Civil penalties may be levied against any operator/provider who, after receiving written notice by DCD, fails to correct violations of the child care requirements. The amount of the civil penalty is based upon the direct effect or potential effect the violation had upon the children's health and safety.

C. Denial of License

DCD can deny approval for renewal of the license or reissuance of a new one when:

NONCOMPLIANCE WITH LICENSING REQUIREMENTS

10/01/02

- a. A provider does not achieve full compliance with child care requirements after a six (6) month Temporary License is issued; or
- b. Based on the compliance history of the person applying for a license when the person held a previous license that was denied, revoked or summarily suspended.

D. Appeals

Any administrative action or civil penalty may be appealed. There are several levels of appeals, including judicial review. In most cases, the child care provider may continue operating the child care facility throughout the appeal process. Operation of the facility cannot continue when the action is a summary suspension or injunction unless a judge grants a stay.

V. IMPACT OF ADMINISTRATIVE ACTIONS ON SUBSIDIZED CHILD CARE

Subsidy payments can continue to be made to providers that have received one of the administrative actions described above with the exception of revocation, summary suspension, or denial of license. The local purchasing agency shall not make subsidy payments to a provider who is no longer going to have a license to operate, whether the action is a denial, revocation, or summary suspension by DCD. If under appeal, the maximum limit that subsidy payment may be made is 45 days from the date on the notice and new children cannot be enrolled in the facility during the 45 days or appeal process. For further details about the process for notifying parents and providers of the termination of subsidy payments when this occurs, see [Chapter 20: Payment Policies](#).