

R430. Health, Health Systems Improvement, Child Care Licensing.

R430-1. General Licensing, Certificate, and Enforcement Provisions, Child Care Facilities.

R430-1-1. Authority and Purpose.

This rule is adopted pursuant to Title 26, Chapter 39. It defines the general procedures and requirements that a person must follow to obtain and maintain a license or certificate to provide child care.

R430-1-2. Definitions.

- (1) "Department" means the Utah Department of Health.

R430-1-3. Initial Application and License or Certificate Issuance or Denial.

- (1) An applicant for a license or certificate shall submit to the Department a complete application, which shall include all required documentation listed on the application, on a form furnished by the Department.
- (2) Each applicant shall comply with all regulations, ordinances, and codes of the city and county in which the facility is located. The applicant shall obtain and submit to the Department the following clearances as part of the application:
 - (a) a certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes;
 - (b) a satisfactory report by the local health department for facilities providing food service; and
 - (c) a current local business license if required.
- (3) The applicant shall submit background clearance documents as required in R430-6.
- (4) The applicant shall submit with the completed application a non-refundable application fee as established in accordance with Subsection 26-39-301(1)(c).
- (5) The applicant shall submit documentation of attendance at the Department's new provider orientation.
- (6) The Department shall render a decision on an initial license or certificate application within 60 days of receipt of a complete application.
- (7) The applicant must pay fees and reapply for a license or certificate if the applicant does not complete the application process, including all necessary submissions and inspections, within six months of first submitting any portion of an application.
- (8) The Department may deny an application for a license or certificate if, within the five years prior to the date of the application, the applicant:
 - (a) held a license or certificate which was:
 - (i) closed under an immediate closure as specified in subsection R430-1-10 ;
 - (ii) revoked;
 - (iii) closed as a result of a settlement agreement resulting from a notice of intent to revoke or a notice of revocation; or
 - (iv) voluntarily closed after an inspection of the facility resulted in findings of rule violations that would have resulted in a notice of intent to revoke or a notice of revocation had the facility not voluntarily closed.
 - (b) has unpaid fees or civil money penalties owed to the Department.
- (9) Pursuant to R501-12-4(8)(h), a provider may not be licensed to provide child care in a facility that is also licensed to provide foster care, proctor care, or another licensed human service program.

R430-1-4. License or Certificate Expiration and Renewal.

- (1) Each license or certificate expires at midnight on the day designated on the license or certificate as the expiration date, unless previously revoked by the Department, or voluntarily closed by the licensee or certificate holder.
- (2) At least 30 days prior to the expiration of the current license or certificate, the licensee or certificate holder shall submit a completed application, applicable fees and, for facilities providing food service, a satisfactory report by the local health department.
- (3) A licensee or certified provider who fails to renew his or her license by the expiration date may have an additional 30 days to complete the renewal if he or she pays a late fee.
- (4) The Department shall not renew a license or certificate for a child care facility that discontinues child care services.

R430-1-5. Change in License or Certificate.

- (1) A licensee whose ownership or controlling interest will change must submit to the Department, at least 30 days prior to the proposed change in ownership, an initial license or certificate application.
- (2) A change in ownership that requires action under subsection (1) includes any change that:
 - (a) transfers the business enterprise to another person or entity;
 - (b) is a merger with another business entity if the directors or principals in the merged entity differs by 49 percent or more from the directors or principals of the original licensee; or
 - (c) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 49 percent or more from the board of the original licensee.
- (3) The licensee or certificate holder shall submit to the Department a completed application to amend or modify an existing license at least 30 days before any of the following proposed or anticipated changes:
 - (a) an increase or decrease of licensed or certified capacity, including when remodeling of the facility changes the amount of usable indoor or outdoor space where care is provided;
 - (b) a change in the name of the facility;
 - (c) a change in the regulation category of the facility;
 - (d) a change in the center director; or
 - (e) a change in the name of the licensee or certificate holder.
- (4) An increase of capacity may require payment of an additional fee. This fee is the difference in the fee for the existing and proposed capacities.
- (5) The Department may issue an amended license or certificate when the Department verifies that the applicant and facility are in compliance with all applicable rules. The expiration date of the amended license or certificate remains the same as the prior license or certificate.

R430-1-6. License or Certificate Capacity, Transferability, and Posting.

- (1) The number of children in care at any given time shall not exceed the capacity identified on the license or certificate.
- (2) A license or certificate is not assignable or transferable.
- (3) The licensee or certificate holder shall post the license or certificate on the facility premises in a place readily visible and accessible to the public.

R430-1-7. Compliance Assurance.

- (1) The Department shall conduct an annual announced and an annual unannounced inspection of each licensed or certified facility to:
 - (a) determine compliance with rules; and
 - (b) verify compliance with variance conditions, if applicable.
- (2) If allegations of rule violations are reported to the Department, the Department shall conduct a complaint investigation as specified in Utah Code, 26-39-501.
- (3) If the Department finds that a rule violation has occurred, the Department shall issue a Statement of Findings to the provider. The Statement of Findings shall include:
 - (a) the specific rule(s) violated;
 - (b) a description of the violation with the facts which constitute the violation; and
 - (c) the date by which the finding of noncompliance must be corrected.
- (4) The Department may conduct follow-up inspections as needed to verify correction of noncompliance.
- (5) Information regarding cited findings and substantiated complaints shall be available to the public on the Department's website.

R430-1-8. Conditional Status.

- (1) The Department may place a license or certificate on a conditional status for the following causes:
 - (a) chronic, ongoing noncompliance with rules; or
 - (b) a single serious rule violation which places children's health or safety in immediate jeopardy;
- (2) The Department shall establish the length of the conditional status and set the conditions that the licensee or certificate holder must satisfy to remove the conditional status.
- (3) During the period of the conditional license or certificate the Department shall conduct increased monitoring of the facility to ensure compliance with the rules.

R430-1-9. Revocation.

- (1) The Department may revoke a license or certificate if the licensee or certificate holder:
 - (a) fails to meet the conditions of a license or certificate on conditional status;
 - (b) violates the Child Care Licensing Act;
 - (c) provides false or misleading information to the Department;
 - (d) refuses to allow authorized representatives of the Department access to the facility to ascertain compliance with rules;
 - (e) refuses to submit or make available to the Department any written documentation required to verify compliance with rules;
 - (f) commits one or more serious rule violations which result in death or serious harm to a child, or which place children at risk of death or serious harm; or
 - (g) has committed acts that would exclude a person from being licensed or certified under R430-6.
- (2) Within 10 working days after receipt of notice of revocation, the licensee or certificate holder must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the notice of revocation.

R430-1-10. Immediate Closure.

- (1) The Department may order the immediate closure of a facility if conditions create a clear and present danger to children in care and require immediate action to protect their health or safety.
- (2) Within 10 working days after receipt of an immediate closure, the licensee or certificate holder must provide the Department with the names and mailing addresses of parents or legal guardians of each child cared for at the facility so the Department can notify the parents and guardians of the notice of immediate closure.

R430-1-11. Death or Serious Injury of a Child in Care.

The Department may order a provider to temporarily suspend child care services and/or prohibit new enrollments if the Department learns of the death or serious injury of a child in care, pending a review by the Child Fatality Review Committee or receipt of a medical report determining the probable cause of the death or injury.

R430-1-12. Variances.

- (1) If an applicant, licensee, or certificate holder cannot comply with a rule but can meet the intent of the rule in another way, he or she may apply for a variance to that rule.
- (2) An applicant, licensee, or certificate holder requesting a variance shall submit a completed variance request form to the Department.
- (3) If needed, the Department may require additional information before acting on the request.
- (4) The Department shall act upon each request for a variance within 60 days of the receipt of the completed request and all additional information required by the Department.
- (5) If the Department approves the request, the licensee or certificate holder shall keep a copy of the approved variance on file in the facility and make it publicly available.
- (6) The Department may grant variances for up to 12 months.
- (7) The Department may impose health and safety requirements as a condition of granting a variance.
- (8) The Department may revoke a variance if:
 - (a) the licensee or certificate holder is not meeting the intent of the varied rule by the documented alternative means;
 - (b) the licensee or certificate holder fails to comply with the conditions of the variance; or
 - (c) a change in statute, rule, or case law affects the justification for the variance.
- (9) The Department shall not issue a variance to the background screening requirements of Utah Code, 26-39-404 and administrative rule R430-6.

R430-1-13. Operating without a License.

- (1) If a person is providing care for more than four unrelated children without the appropriate license or certificate, the Department may:
 - (a) issue a cease and desist order; or
 - (b) allow the person to continue operation if:
 - (i) the person was unaware of the need for a license or certificate;
 - (ii) conditions do not create a clear and present danger to the children in care; and
 - (iii) the person agrees to apply for the appropriate license or certificate within 30 calendar days of notification by the Department.
- (2) If a person providing care without the appropriate license or certificate agrees to apply for a license or certificate as specified above in Subsection (1)(b)(iii) but does not submit the required application within 30 days, the Department shall issue a cease and desist order.

R430-1-14. Penalties.

- (1) A violation of any rule is punishable by administrative civil money penalty of up to \$5,000 per day as provided in Utah Code Section 26-39-601.
- (2) Assessment of any civil money penalty does not preclude the Department from also taking action to deny, place on conditional status, revoke, immediately close, or refuse to renew a license or certificate.
- (3) Assessment of any administrative civil money penalty under this section does not preclude injunctive or other equitable remedies.

R430-1-15. Informal Discussions.

Independent of any administrative proceeding, an applicant, licensee, or certificate holder may request, within 30 days, to discuss a Department decision with Department staff.

KEY: child care facilities

Date of Enactment or Last Substantive Amendment: May 1, 2012

Notice of Continuation:

Authorizing, and Implemented or Interpreted Law: 26-39; 26-21-12; 26-21-13