

**922 KAR 2:090. Child-care center licensure.**

RELATES TO: KRS Chapter 13B, 17.165, Chapter 157, 199.011(4), 199.892, 199.894(1), (3), 199.896, 199.898, 600.020(1), 620.030(3), 45 C.F.R. 98.2, 42 U.S.C. 601-619

STATUTORY AUTHORITY: KRS 194A.050(1), 199.896(2), (6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.896(2) authorizes the cabinet for Health and Family Services to promulgate administrative regulations to establish license fees and standards for a child-care center. KRS 199.896(6) requires the cabinet to establish an informal dispute resolution process. This administrative regulation establishes licensure standards for a child-care center and describes the informal dispute resolution process.

Section 1. Definitions.(1) "Cabinet" is defined by KRS 199.894(1).

(2) "Child" is defined by KRS 199.011(4).

(3) "Child-care center" is defined by KRS 199.894(3).

(4) "Developmentally appropriate" means suitable for the specific age range of the child.

(5) "Nontraditional hours" means the hours of:

(a) 6 p.m. through 6 a.m. Monday through Friday; or

(b) 6 p.m. on Friday until 6 a.m. on Monday.

(6) "Parent" is defined by 45 C.F.R. 98.2.

(7) "Secretary" is defined by KRS 199.011(1)

Section 2. Child-care Centers. The following child-care centers shall meet the requirements of this administrative regulation:

(1) A Type I child-care center. This child-care center shall be licensed to regularly provide child care services for:

(a) Four (4) or more children in a nonresidential setting; or

(b) Thirteen (13) or more children in a designated space separate from the primary residence of a licensee; and

(2) A Type II child-care center. This child-care center shall be primary residence of the licensee in which child care is regularly provided for seven (7), but not more than twelve (12), children including children related to the licensee.

Section 3. Exempt Child Care Settings. The following child-care settings shall be exempt from licensure requirements of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120:

(1) Summer camps certified by the cabinet as youth camps which serve school-age children;

(2) Kindergarten through grade 12 in private schools while school is in session;

(3) All programs regulated by the Kentucky Department of Education governed by KRS Chapter 157;

(4) Summer programs operated by a religious organization which a child attends no longer than two (2) weeks;

(5) Child care provided while parents are on the premises, other than the employment and educational site of parents;

(6) Child care programs operated by the armed services located on an armed forces base;

(7) Child care provided by educational programs that include parental involvement with the care of the child and the development of parenting skills;

(8) Facilities operated by a religious organization while religious services are being conducted; and

(9) A program providing instructional and educational programs:

(a) That operates for a maximum of twenty (20) hours per week; and (b) Which a child attends for no more than ten (10) hours per week.

Section 4. Application. (1) An applicant for a license shall submit to the cabinet a completed OIG-RCC-1, Application for a License to Operate a Child Care Center.

(2) The issuance or reapproval of a license shall be governed under the provisions of Sections 4 through 6 of this administrative regulation.

(3) If the applicant for licensure is a:

(a) Corporation or a limited liability company, the application shall include a current certificate of existence or authorization from the Secretary of State;

or

(b) Partnership, the application shall include a written statement from each partner that the partnership is current and viable.

(4) If the status of a corporation, partnership, or ownership of the child-care center changes, the new entity shall submit a completed OIG-RCC-1.

(5) If ownership of a child-care center changes and the cabinet approves licensure upon inspection of the child-care center under the new ownership, the effective date on the license shall be the date of the approved inspection under the new ownership.

Section 5. License Issuance. (1) A license shall not be issued unless each background check required by KRS 199.896(19) has been completed on behalf of an applicant for licensure.

(2) A director, employee, volunteer, or any person with supervisory or disciplinary control over or having direct contact with a child shall submit to a background check; and

(a) May be employed or work with a child on a probationary basis for up to ninety (90) calendar days, pending completion of a:

1. Child abuse or neglect check described in 922 KAR 1:470; and

2. Criminal records check required by KRS 199.896(19); and

(b) Shall not be left alone in the presence of a child if each required background check has not been completed.

(3) Upon completion of a child abuse or neglect check or criminal records check, described in subsection (2)(a) of this section, a licensee shall discharge immediately a director, employee, volunteer, or any person:

(a) Whose name is listed on the central registry established by 922 KAR 1:470; or

(b) Who has been convicted of a crime defined by KRS 17.165(1) through (3).

(4) An applicant who has been convicted of a nonviolent felony or misdemeanor shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences after conviction.

(5) If an applicant for licensure has had a prior certification, license, registration, or permit to operate denied or revoked, the cabinet shall grant the applicant a license if:

(a) A three (3) year period has expired from the:

1. Date of the prior denial or revocation;

2. Last day of legal remedies being exhausted; or

3. Administrative hearing decision; and
- (b) The applicant has:
  1. Demonstrated compliance with the provisions of this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896;
  2. Completed, since the time of the prior denial or revocation, sixty (60) hours of training in child development and child care practice, approved by the cabinet or its designee; and
  3. Not had an application, certification, license, registration, or permit denied, revoked, or suspended for one (1) of the reasons set forth in KRS 199.896(19) or Section 10(2) of this administrative regulation.
- (6) If a license is granted after the three (3) year period specified in paragraph (a) of this subsection, the licensee shall serve a two (2) year probationary period during which the child-care center shall be inspected on at least a quarterly basis.
  - (7) A license shall specify:
    - (a) A particular physical location;
    - (b) A designated sponsor or owner as operator;
    - (c) Age category of the children in care;
    - (d) The maximum number of children allowed under center supervision at one (1) time, including a child related to the licensee or an employee, based upon:
      1. Available space as determined by the State Fire Marshal's Office in conjunction with the cabinet;
      2. Adequacy of program;
      3. Equipment; and
      4. Staff;
      - (e) If provided, nontraditional hours;
      - (f) If provided, transportation; and
      - (g) A list of services to be provided by the child-care center.
  - (8) To qualify for and maintain a license, a child-care center shall:
    - (a) Provide written documentation from the local authority showing compliance with local zoning requirements;
    - (b) Be approved by the Office of the State Fire Marshal or designee;
    - (c) Have an approved water and sewage system in accordance with local, county, and state laws;
    - (d) Have adequate equipment, supplies, and staff to serve initial enrollment of children;
    - (e) Provide written proof of liability insurance coverage of at least \$100,000 per occurrence;
    - (f) Comply with provisions of this administrative regulation, 922 KAR 2:110, and 922 KAR 2:120;
    - (g) Cooperate with the state agency during an investigation of an alleged complaint, including an allegation of child abuse or neglect pursuant to KRS 620.030(3); and
    - (h) Have a director who meets the requirements listed in 922 KAR 2:110.
  - (9) A child-care center shall allow the cabinet or its designee and parent of an enrolled child unannounced access to the child-care center during the hours of operation.
  - (10) A license shall be issued and reappraised if the center has met the requirements contained in this administrative regulation, 922 KAR 2:110, 922 KAR 2:120, and KRS 199.896(3), (13), (15), (16), (18), and (19).
  - (11) A license shall not be sold or transferred.
  - (12) Changes to a child-care center as listed in 922 KAR 2:110, Section 6(4), (5), and (6) shall be:
    - (a) In writing to the cabinet or its designee; and
    - (b) Signed by each owner listed on the license.
  - (13) The cabinet or its designee shall not charge a fee for acting upon reported changes.
  - (14) The license shall be posted in a conspicuous place in the child-care center.
  - (15) A child-care center shall not begin operation without a license to operate from the cabinet.
  - (16) A child-care center operating without a license shall be subject to legal action.

Section 6. Fees. (1) A nonrefundable licensing fee of fifty (50) dollars shall be charged according to KRS 199.896(3).

(2) Licensing fees shall be:

- (a) Payable to the Kentucky State Treasurer;
- (b) Attached to the licensure application; and
- (c) Paid by:
  1. Cashiers check;
  2. Certified check; or
  3. Money order.

Section 7. Annual Reapproval.

- (1) A licensee seeking reapproval shall submit, one (1) month prior to license expiration, an OIG-RCC-2, Application for Renewal of a License to Operate a Child Care Center; and
- (2) Meet the requirements specified in Sections 4 through 6 of this administrative regulation.

Section 8. Statement of Deficiency and Corrective Action Plans. (1) If a center is found not to be in regulatory compliance, the cabinet or its designee shall complete a written statement of deficiency in accordance with KRS 199.896(5).

(2) Except for a violation posing an immediate threat as handled in accordance with KRS 199.896(5)(c), a child-care center shall submit a written corrective action plan to the cabinet or its designee within ten (10) calendar days of receipt of the statement of deficiency to eliminate or correct the regulatory violation.

(3) A corrective action plan shall include:

- (a) Specific action undertaken to correct a violation;
- (b) The date action was or shall be completed; and
- (c) Action utilized to assure ongoing compliance.

(4) The cabinet or its designee shall review the plan and notify the child-care center within thirty (30) calendar days of receipt of the plan, in writing, of the decision to:

- (a) Accept the plan;
  - (b) Not accept the plan; or
  - (c) Deny, suspend, or revoke the child-care center's license, in accordance with Section 10 of this administrative regulation.
- (5) A notice of unacceptability shall state the specific reasons the plan is unacceptable.
- (6) A child-care center notified of the unacceptability of its plan shall:

- (a) Within ten (10) calendar days of notification, submit an amended plan; or
- (b) Have its license revoked or denied for failure to submit an acceptable amended plan in accordance with KRS 199.896(4).
- (7) Following two (2) unacceptable plans of correction, in a forty-five (45) calendar day period, the cabinet may deny or revoke an application for licensure or license.
- (8) A statement of deficiency that poses an immediate threat to the health, safety, or welfare of a child shall be corrected within five (5) working days of notification in accordance with KRS 199.896(5)(c).

Section 9. Intermediate Sanctions. (1) If the cabinet determines that a child-care center is in violation of this administrative regulation, 922 KAR 2:110, or 922 KAR 2:120, the cabinet may, based on the severity of the violation:

- (a) Require the provider to participate in additional training;
- (b) Increase the frequency of monitoring by cabinet staff;
- (c) Enter into an agreement with the provider detailing the requirements for remedying a violation and achieving compliance; or
- (d) Notify or require the provider to notify a parent of a child who may be affected by the situation for which an intermediate sanction has been imposed.
- (2) An intermediate sanction shall result in a suspension or revocation of the license if a child-care center:
  - (a) Fails to meet a condition of the intermediate sanction; or
  - (b) Violates a requirement of an intermediate sanction.

Section 10. Basis for Denial, Suspension or Revocation. (1) The cabinet shall deny, suspend, or revoke a license in accordance with KRS 199.896(4) and (19) if the applicant for licensure, director, employee, or a person who has supervisory authority over, or direct contact with, a child fails to meet the requirements of this administrative regulation or those of 922 KAR 2:110 or 922 KAR 2:120.

(2) For the purposes of KRS 199.896(19), an applicant who has been found by the cabinet to have abused or neglected a child shall mean an individual who is listed on the central registry described in 922 KAR 1:470.

(3) A child abuse or neglect check required by KRS 199.896(19) shall be conducted:

- (a) One (1) time; and
- (b) Within ninety (90) calendar days of initial employment.

(4) A director, employee, volunteer, any person with supervisory or disciplinary control over, or having direct contact with, a child shall report to the licensee if:

- (a) Convicted of a violent crime or sex crime defined by KRS 17.165(1) through (3);
- (b) The subject of a cabinet child abuse or neglect investigation; or
- (c) Found by the cabinet or a court to have abused or neglected a child.

(5) Each licensee shall report to the cabinet or its designee if the licensee, director, employee, volunteer, or another person who submitted to a background check meets a criterion of subsection (4) of this section.

(6) Emergency action shall be taken in accordance with KRS 199.896(4).

(7) Public information shall be provided in accordance with KRS 199.896(10) and (11), and 199.898(2)(d) and (e).

(8) The cabinet may deny an applicant for a license if:

- (a) The applicant has been previously denied or revoked;
- (b) Denial or revocation proceedings were initiated and the licensee voluntarily relinquished the license;
- (c) An appeal of a denial or revocation is pending;
- (d) The applicant previously failed to comply with the requirements of KRS 199.896, 922 KAR 2:110, 922 KAR 2:120, or this administrative regulation;

or

(e) The applicant is the parent, spouse, sibling, or child of a previous licensee whose license was denied or revoked as described in paragraphs (a) through (d) of this subsection, and the previous licensee will be involved in the child-care center in any capacity.

(9) A child-care center's license shall be revoked if:

- (a) A representative of the center interferes with a cabinet representative's ability to perform an official duty; or
- (b) A cabinet representative or parent is denied access to:
  1. A child; or
  2. The child-care center.

(10) The cabinet or its designee shall suspend the license if regulatory violations are found that pose an immediate threat to the health, safety, and welfare of the children in care as described in KRS 199.896(4).

Section 11. Failure to Pay Civil Monetary Penalty. After sixty (60) calendar days of completing the administrative appeal process, a license shall be denied or revoked when a child-care center fails to:

- (1) Pay the civil monetary penalty levied against the center; or
- (2) Make arrangements to pay a civil monetary penalty and comply with the arrangement.

Section 12. Right of Appeal. (1) If an application has been denied or a licensee receives notice of suspension or revocation, the cabinet shall inform the applicant for licensure or licensee by written notification of the right to appeal the notice of adverse action in accordance with KRS Chapter 13B and 199.896(7).

(2) An adverse action may be appealed by filing form OIG-RCC-3, Request for Appeal, for a hearing. The request shall:

- (a) Be submitted to the Secretary of the cabinet or designee within twenty (20) calendar days of receipt of the notice of adverse action; and
- (b) Specify if an applicant for licensure or licensee requests an opportunity to informally dispute the notice of adverse action.

(3) If an applicant for licensure or a licensee files an OIG-RCC-3 for a hearing, the cabinet shall:

- (a) Appoint a hearing officer; and
- (b) Proceed pursuant to KRS 13B.050.

(4) If an applicant for licensure or a licensee files a request for a hearing and a request for an informal dispute resolution, the cabinet shall:

- (a) Abate the formal hearing pending completion of the informal dispute resolution process; and
- (b) Proceed to informal dispute resolution.

Section 13. Informal Dispute Resolution.

(1) A request for informal dispute resolution shall:

- (a) Accompany the request for a hearing;
- (b) Identify the licensure deficiency in dispute;
- (c) Specify the reason the applicant for licensure or licensee disagrees with the deficiency; and
- (d) Include documentation that disputes the deficiency.

- (2) Upon receipt of the written request for informal dispute resolution, the regional program manager or designee shall:
- (a) Review documentation submitted by the applicant for licensure or licensee; and
  - (b) If requested, schedule a first-level informal dispute resolution meeting with the applicant for licensure or licensee.
- (3) The first-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.
- (4) The first-level informal dispute resolution meeting shall be conducted by:
- (a) The regional program manager or designee; and
  - (b) A child care surveyor who did not participate in the survey resulting in the disputed deficiency.
- (5) Within ten (10) calendar days of completion of the first-level informal dispute resolution meeting or request, the regional program manager or designee shall:
- (a) Issue a decision by written notification to the return address specified in the request for informal dispute resolution;
  - (b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
  - (c) Specify whether the adverse action has been rescinded.
- (6) An applicant or a licensee may appeal a decision issued by the regional program manager or designee by:
- (a) Proceeding with a hearing according to KRS 13B.050; or
  - (b) Filing a written request for a second-level informal dispute resolution to the Director of the Division of Regulated Child Care or designee within ten (10) calendar days of receipt of the first level decision. The request shall specify whether the applicant for licensure or licensee requests a meeting with cabinet staff.
- (7) Upon receipt of the written request for second-level informal dispute resolution, the Director of the Division of Regulated Child Care or designee shall:
- (a) Review the decision issued from the first-level informal dispute resolution;
  - (b) Review the documentation described in subsection (1)(d) of this section; and
  - (c) If requested, schedule a second-level informal dispute resolution meeting with the applicant for licensure or licensee.
- (8) The second-level informal dispute resolution meeting shall be held within ten (10) calendar days of receipt of the request by the cabinet, unless both parties agree in writing to an extension of time.
- (9) Within ten (10) calendar days of completion of the second-level informal dispute resolution meeting or request, the Director of the Division of Regulated Child Care or designee shall:
- (a) Issue a decision by written notification to the return address specified in the request for second-level informal dispute resolution;
  - (b) If a change is made to the statement of deficiencies, issue an amended statement of deficiencies; and
  - (c) Specify whether the adverse action has been rescinded.
- (10) If a second-level informal review is requested in lieu of a first-level informal dispute resolution meeting, the Director of the Division of Regulated Child Care or designee shall comply with the provisions of subsection (9)(a) through (c) of this section within ten (10) calendar days of receipt of the request for second-level informal dispute resolution.
- (11) If an applicant for licensure or licensee is satisfied with the decision issued during informal dispute resolution, the request for a hearing shall be withdrawn.
- (12) If an applicant for licensure or licensee is not satisfied with the decision issued from the second-level informal dispute resolution, the hearing previously held in abeyance shall be conducted in accordance with KRS Chapter 13B concerning the deficiencies that were reviewed in the informal review process.
- (13) A request for informal dispute resolution shall not:
- (a) Limit, modify, or suspend enforcement action against the applicant for licensure or licensee; or
  - (b) Delay submission of a written plan of correction.
- (14) Emergency action taken in accordance with Section 10(6) of this administrative regulation shall conform to the requirements of KRS 199.896(4). The informal dispute resolution process shall not restrict the cabinet's ability to issue an emergency order to stop, prevent, or avoid an immediate threat to public health, safety, or welfare under KRS 13B.125(2) and 199.896(4).

#### Section 14. Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) "OIG-RCC-1, Application for a License to Operate a Child Care Center", edition 12/07;
  - (b) "OIG-RCC-2, Application for Renewal of a License to Operate a Child Care Center", edition 12/07; and
  - (c) "OIG-RCC-3, Request for Appeal", edition 12/07.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Inspector General's Office, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (20 Ky.R. 251; Am. 555; 805; eff. 10-13-93; Recodified from 905 KAR 2:090, 7-8-99; 26 Ky.R. 1261; 1577; eff. 2-1-2000; 27 Ky.R. 1639; 2178; eff. 2-1-2001; 28 Ky.R. 2107; 2614; eff. 6-14-2002; 34 Ky.R. 1243; 2156; eff. 3-19-08.)