

290-2-6-.05 Criminal History Background Checks, Licenses and Exemptions.

(1) Criminal History Background Checks for Owners Required. Prior to approving any license for a new center and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application so as to permit the department to obtain criminal history background information on the owner.

(a) An owner may not be required to submit a records check application if it is determined that the owner does not do any of the following:

1. Maintains an office at the location where services are provided to children;
2. Resides at a location where services are provided to children;
3. Has direct access to residents receiving care; or
4. Provides direct personal supervision of personnel by being immediately available to provide assistance and direction during the time services are being provided to children.

(b) In lieu of a records check application, an owner may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the owner has received a satisfactory criminal history background check determination.

(2) A children's transition care center license shall not be issued, and any license issued shall be revoked where it has been determined that the owner has a criminal record involving any of the following covered crimes, as outlined in O.C.G.A. Sec. 49-2-14.1 *et seq.*:

- (a) A violation of Code Section 16-5-1, relating to murder and felony murder;
- (b) A violation of Code Section 16-5-21, relating to aggravated assault;
- (c) A violation of Code Section 16-5-24, relating to aggravated battery;
- (d) A violation of Code Section 16-5-70, relating to cruelty to children;
- (e) A violation of Code Section 16-5-100, relating to cruelty to a person 65 years of age or older;
- (f) A violation of Code Section 16-6-1, relating to rape;
- (g) A violation of Code Section 16-6-2, relating to aggravated sodomy;
- (h) A violation of Code Section 16-6-4, relating to child molestation;
- (i) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;
- (j) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other centers;
- (k) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;
- (l) A violation of Code Section 16-8-41, relating to armed robbery;
- (m) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person; or
- (n) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.

(3) An owner with a valid children's transition care center license who is determined to have a criminal record for any of the crimes listed in Rule .05(2)(a)-(n) above, shall not have the license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the Georgia Administrative Procedure Act.

(a) An owner with a valid children's transition care center license who acquires a criminal record as defined in Rule .05(2)(a)-(n) above subsequent to the effective date of these rules shall disclose the criminal record to the department.

(b) If at any time the department has reason to believe an owner holding a valid license has a criminal record for any of the crimes listed in Rule .05(2)(a)-(n) above, the department shall require the owner to submit a records check application immediately for determination of whether a revocation action is necessary. Prior to the revocation of the license becoming final, the owner is entitled to an administrative hearing unless the owner has not begun providing services under the license. Where services are not currently being provided under the license, the decision of the administrative hearing officer must precede the initiation of services.

(4) Criminal History Background Checks for Director and Employees Required. Prior to serving as a director of a licensed center, a person shall submit a records check application and receive a satisfactory determination.

(a) A person with an unsatisfactory criminal history background check determination may not serve as a director of a licensed children's transition care center if it is determined that such person has a criminal record involving any of the following covered crimes:

1. Any felony under Georgia law;
2. A violation of Code Section O.C.G.A. Sec. 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph;
3. A violation of Code Section O.C.G.A. Sec. 16-5-23, relating to simple battery; where the victim is a minor;
4. A violation of Code Section O.C.G.A. Sec. 16-6-1 *et seq.*, relating to sexual offenses, excluding the offenses of bigamy or marrying a bigamist;
5. A violation of Code Section O.C.G.A. Sec. 16-21-1, relating to contributing to the delinquency of a minor;
6. Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.

(b) Prior to serving as an employee other than a director of a licensed center, a person must submit a preliminary record check application and receive a satisfactory determination. Provided however, should there be an unsatisfactory determination, the person must submit to a fingerprint record check and get a satisfactory determination or be determined eligible to be employed by the center as a result of an administrative hearing.

(c) A person with an unsatisfactory background check determination may not serve as an employee of a licensed children's transition care center if it is determined that such person has a criminal record involving any of the covered crimes outlined in Rule .05(2)(a)1.-6. above.

(d) In lieu of a records check application, a director or employee may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the above personnel have received a satisfactory records check determination or a satisfactory preliminary records check determination.

(5) Criminal History Background Checks for Foster Parents Required. No center that provides care in foster homes shall place a child in a foster home unless the foster

parent(s) of the home and other adult persons that reside in the home or provide care to children placed in the home have obtained criminal records checks as required by law.

(6) No child shall continue to be placed in such foster care home unless the foster parent(s) also subsequently receive a satisfactory fingerprint records check determination.

(7) Licenses. No person, partnership, association, corporation or entity shall operate a children's transition care center in the state without first obtaining a license to operate the center by demonstrating compliance with the necessary requirements set forth in these rules.

(a) No licensed children's transition care center shall provide care to more than six (6) children per residence and no more than 16 children per campus.

(b) A licensed children's transition care center must provide transitional care as described in these rules for the facilitation of transition of children to a home or other appropriate setting and for the reunion of families.

(c) In addition to transition care services, a licensed center may provide respite care services, registered nursing or licensed practical nursing care, medical day care services, weekend camps and diagnostic studies typically done in the home setting.

(d) Centers operated as a part of a local church ministry or religious nonprofit school or a nonprofit religious charitable organization may request to be commissioned in lieu of licensed. All provisions of these rules shall apply to centers that request to be commissioned, and for the purposes of these rules, the term license shall have the same meaning as commission.

(e) A license may be issued, upon presentation of evidence satisfactory to the department, that the center is in compliance with applicable statutes and these rules. The license is valid for the period of time specified by the department, unless voluntarily surrendered by the holder, reduced to a restricted or temporary license or suspended or revoked by the department.

(8) Temporary License. The department may in its discretion issue a temporary license if the health and safety of the children to be served by the center will not be endangered. A temporary license will be valid for a specified period not to exceed one (1) year and may be issued in the following instances:

(a) If a center complies with these rules but has not yet enrolled children; or

(b) If a center is not in full compliance with these rules but has demonstrated satisfactory evidence that it is making progress toward meeting these rules and has submitted an acceptable plan of correction.

(c) If the department finds that any children's transition care center applicant does not meet rules and regulations prescribed by the department but is attempting to meet such rules and regulations, the department may, in its discretion, issue a temporary license or commission to such children's transition care center, but such temporary license or commission shall not be issued for more than a one-year period.

1. Upon presentation of satisfactory evidence that such center is making progress toward meeting prescribed rules and regulations of the department, the department may, in its discretion, reissue such temporary license or commission for one additional period not to exceed one year.

2. As an alternative to a temporary license or commission, the department, in its discretion, may issue a restricted license or commission which states the restrictions on its face.

(9) Restricted License. The department may in its discretion issue a restricted license in lieu of a temporary or regular license. The restricted license may be granted either in connection with the initial application process for a license or as a result of a subsequent determination made by the department concerning compliance with these rules. The restriction shall appear on the face of the license and shall restrict a center from providing care or services which are beyond the capability of the licensee to provide. The restriction may include but is not limited to the number and/or age of the children served by the center.

(10) Qualifications Requirement. In order to obtain or retain a license, the director of the center and its employees must be qualified, as defined in these rules, to administer or work in a center. The department may presume that the director and employees are qualified, subject to satisfactory determinations on the criminal history background checks. However, the department may require additional reasonable verification of the qualifications of the director and employees either at the time of application for a license or at any time during the license period whenever the department has reason to believe that a director or employee is not qualified under these rules to administer or work in a center.

(11) License is Nontransferable. A license to operate a center is not transferable in any way. Each license shall be returned to the department immediately upon the suspension, revocation or restriction of the license or upon the termination, sale or change in ownership of the center.

(12) Renewal of License. A license will be renewed upon a determination by the department that the center presents satisfactory evidence of meeting the requirements set forth in these rules.

(13) Exemptions. Anyone operating or desiring to provide a service believed to be exempt from licensure shall apply to the department for exemption. The exemptions granted by the department are exemptions from licensure, and do not affect the authority of local, regional or state health department officials, the state fire marshal or local fire prevention officials to inspect facilities. These rules shall not apply to the following kinds of programs providing care to children:

(a) Child welfare agencies and other facilities and centers wherein children and youths are detained which are operated by any department or agency of state, county, or municipal government.

(b) Any bona fide boarding school whose primary purpose of admission is education, provided that such facility in order to claim exemption shall operate under a published academic educational curriculum which meets the requirements of the State Department of Education, shall have classroom facilities which are not used for residential living and shall not have been granted nor have assumed legal custody of children attending the facility.

(c) Facilities owned and operated by the state or federal government.

Authority O.C.G.A. Secs. 49-5-8, 49-5-12, 49-5-14.1. **History.** Original Rule entitled "Daily Care and Program" adopted. F. Apr. 22, 1976; eff. May 12, 1976. **Repealed:** F. June 30, 1994; eff. Aug. 1, 1994, as specified by the Agency. **Amended:** New Rule entitled "Criminal History Background Checks, Licenses and Exemptions" adopted. F. Jan. 27, 2009; eff. Feb. 16, 2009.