

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF HUMAN SERVICES  
COMMUNITY AND FIELD SERVICES DIVISION**

**CHAPTER 1240-4-5  
PROCEDURES AFFECTING LICENSES OF CHILD CARE AGENCIES**

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**1240-4-5-.01 PURPOSE AND SCOPE.**

- (1) These rules shall apply to all child care agencies licensed by the Department of Human Services pursuant to TCA §§ 71-3-501 et seq. and to all proceedings held before the Child Care Agency Board of Review established pursuant to §§ 71-3-501 et seq. Any conflict between these rules and those governing specific classes of child care agencies shall be resolved by reference to these rules.
- (2) These rules establish procedures for the application and issuance of licenses for child care agencies; the placement on probation of a child care agency by the Department of Human Services; the imposition of a civil penalty by the Department of Human Services against a licensee of a child care agency, the summary suspension of licenses of child care agencies and the denial, revocation, or restriction of licenses by the Department of licenses of child care agencies licensed by the Department of Human Services pursuant to TCA §§ 71-3-501 et seq.
- (3) All persons or entities operating a child-care center, a family-child care home, a group child care home, a drop-in center as defined by TCA § 71-3-501 and the rules of the Department of Human Services must be licensed by the Department as provided by TCA 71-3-501 et seq. and the rules of the Department unless otherwise exempted by TCA § 71-3-503 and the rules of the Department.

**Authority:** TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq., Acts 2000, ch. 981, §§ 1-4 and 14. **Administrative History:** Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.

**1240-4-5-.02 DEFINITIONS.**

- (1) Applicant- The person or entity seeking an initial annual license or the issuance or renewal of any annual or extended license from the Department of Human Services.
- (2) Application-The form for, and the process of, applying for a license from the Department of Human Services.
- (3) Application for Renewal-Application for a new license during the existence of a currently valid license.
- (4) Child care agency -The person or entity providing child care as defined by the licensing law in TCA § 71-3-501 et seq. and the rules of the Department of Human Services.
- (5) Child Care Agency Board of Review, Board of Review or Board -The entity established by TCA §§ 71-3-510 and 37-5-515 to hear the appeals of the denial, revocation, or the restriction or limitation, other than summary suspensions, of licenses for child care agencies issued by the Departments of Children's Services and Human Services, and which adjudicates civil penalties imposed by the Department of Human Services against a child care agency under its jurisdiction.

(Rule 1240-4-5-.02, continued)

- (6) Civil Penalty-A financial sanction imposed by the Department against a child care agency that has violated a licensing regulation.
- (7) Commissioner-Executive head of the Tennessee Department of Human Services.
- (8) Denial-The decision of the Department not to issue or renew a license.
- (9) Department-The Tennessee Department of Human Services.
- (10) Extended license-A license issued for two (2) or three (3) years rather than annually. It is issued following completion of at least one (1) year as a licensee and is issued for two (2) or three (3) years. It is based upon the Department's determination that a child care agency has demonstrated that its methods of child care and its adherence to licensing laws and regulations are clearly appropriate to justify an extended licensing period.
- (11) Hearing Official-The administrative law judge or hearing officer assigned to conduct summary suspension hearings or for Child Care Agency Board of Review hearings as may be permitted by law.
- (12) Law-The statutory or regulatory provisions affecting the operation of a child care agency.
- (13) License- A permit issued by the Department to a child care agency, authorizing the licensee to provide child care in accordance with provisions of the license, the law, and the regulations of the Department of Human Services. Issuance of a license is not an endorsement of child care methods or of an agency's operational philosophy.
- (14) Licensee-The person, agency, group, or entity to whom or to which a license to operate a child care agency is issued by the Department of Human Services.
- (15) Reapplication-Application for a new license following denial or revocation of a license.
- (16) Restricted license-A license which, either at the time of issuance, or during the license's existence, is reduced in its operational authority by the Department so that the child care agency's ability to provide certain child care related services are limited because the Department has determined that one or more areas of the agency's operations are not in compliance with child care laws or regulations or the agency's operations are, or have posed, a risk to the health, safety or welfare of children in the agency's care or the agency's operations pose the potential of such risk. A restricted license may also be imposed by the Child Care Agency Board of Review as part of its review of the licensing status of a child care agency in the same manner and for the same reasons as such a license is issued or imposed by the Department. A restricted license may be appealed to the Child Care Agency Board of Review.
- (17) Revocation-The permanent removal of an existing license.
- (18) Suspension-The temporary removal of a license for violation of licensing laws or regulations immediately affecting the health, safety, or welfare of children in a child care agency.
- (19) Temporary license:
  - (a) A permit issued by the Department to a new child care agency allowing and authorizing the temporary licensee to begin child care operations while the agency attempts to attain full compliance with all other applicable regulations.
  - (b) The temporary license is valid, unless suspended, for one hundred twenty (120) days or until the application for an annual license is finally determined, and is issued upon application or reapplication by the applicant only if the staff and facility do not present any apparent hazards to the children that may be in care and only if the facility has received fire safety and

(Rule 1240-4-5-.02, continued)

environmental sanitation approval and if the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the licensing laws and regulations.

- (c) If, at the end of the one hundred twenty (120) day period, evidence is provided by the applicant that such child care agency is suitable and properly managed and that the agency is in compliance with the rules governing the applicable class of child care agency, the Department will issue an annual license to the child care agency unless the Department determines that a restricted license should be issued.

**Authority:** TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Acts 2000, ch. 981, §§ 1-3, 10 and 14.  
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### 1240-4-5-.03 LICENSING PROCESS.

- (1) Licensing Criteria.
- (a) A license for the operation of a child care agency is issued and its continued approval is based upon the following general criteria:
1. The safety, welfare and best interests of the children in the care of the agency;
  2. The capability, training and character of the persons providing or supervising the care to the children;
  3. The quality of the methods of care and instruction provided for the children;
  4. The suitability of the facilities provided for the care of the children; and
  5. The adequacy of the methods of administration and the management of the child care agency, the agency's personnel policies, and the financing of the agency.
- (b) Failure to attain or maintain the criteria in subparagraph (a) either alone, or in conjunction with failure to attain or maintain compliance with any other regulations governing the specific class of child care agency, may be the basis for refusal to grant a license, or for placing the child care agency on probation, or for suspension, denial or revocation of the agency's license.
- (2) The Department shall assist applicants or licensees in meeting the child care standards of the Department unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the children in the agency's care and that regulatory action affecting the agency's license is warranted. It is the responsibility of the applicant/licensee to comply with all regulations of the Department of Human Services and those regulations of any other federal, state or local regulatory agency which are necessary for the proper operation of a child care business and to demonstrate to the Department a good faith commitment to attaining and maintaining compliance with all applicable licensing standards. All costs and expenses arising from or related to meeting the child care standards of the Department shall be borne entirely by the applicant or licensee; provided, however, the Department may, in its discretion, provide from available funds technical assistance to child care agencies, and for the training of child caregivers and directors.
- (3) If a licensee is denied the renewal of a license, or if a license is revoked or suspended, or if any applicant for a license cannot meet the standards, then the Department shall offer reasonable assistance to the parent, guardian or custodian of the child in planning for the placement of such children in licensed child care agencies or other suitable care.

(Rule 1240-4-5-.03, continued)

- (4) Application for New License or for Renewal of an Existing License.
  - (a) Application for a license to operate a child care agency shall be made in writing to the Department in such manner as the Department determines and shall be accompanied by the appropriate fee set forth in the fee schedule in paragraph (15).
  - (b) Application for and Granting of the Renewal of a License.
    1. Application for renewal of any existing license shall be made before the date of expiration of the existing license. The application shall be filed by the applicant in the office of the Department having responsibility for providing service to the area in which the child care agency is located.
    2. A renewal application shall be deemed timely received if postmarked before the date of expiration of the existing license. Failure to timely file an application for renewal of an existing license shall preclude further operation of the child care agency on and after the expiration date of the license, and failure to timely re-apply for renewal under the provisions of 1240-4-5-.06(7) shall preclude further operation of the child care agency after the expiration of any time period permitted therein.
    3. A licensee seeking renewal of a license must demonstrate satisfactory compliance with all health and safety requirements applicable to its operations and any other applicable licensing laws and rules of the Department to obtain renewal of the license.
- (5) Temporary License.
  - (a) If the Department determines that the applicant for a license, which is not the renewal of an existing license, has presented satisfactory evidence that the facility which is proposed for the care of children has received fire safety and environmental safety approval, that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the licensing law and regulations, the Department shall issue a temporary license to the applicant. No temporary license will be issued until, at a minimum, fire safety and environmental safety inspections have been conducted and the applicant has received approval from the appropriate agencies.
  - (b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted temporary license which limits the agency's authority in one or more areas of operation.
  - (c) The purpose of the temporary license is to permit the license applicant to demonstrate to the Department that it has complied with all licensing laws and regulations applicable to its classification prior to the issuance of an initial annual license.
  - (d) Within one hundred twenty (120) days of the issuance of the temporary license, the Department shall determine if the applicant has complied with all regulations governing the classification of child care agency for which the application was made.
- (6) Annual License.
  - (a) If the Department determines that the applicant for any license has complied with all licensing regulations for the classification of child care agency for which application was made, the Department shall issue an annual license, or shall, if appropriate issue a restricted annual license as provided in subparagraph (b).

(Rule 1240-4-5-.03, continued)

- (b) If the Department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted annual license which limits the agency's authority in one or more areas of operation.
- (7) License Information.
  - (a) Based upon information provided in the license application or as may be requested by the Department, the license shall describe the ownership of the child care agency, the person who is charged with the day-to-day management of the child care agency, and, if the agency is owned by a person other than the director, or if the agency is under the ownership or direction or control of any person or entity who is not also the on-site director or manager of the agency, the license shall also state the corporate or other name of the controlling person or entity, its address and telephone number where the parents, guardians or custodians may have contact regarding the agency's operations.
  - (b) If the child care agency is operated by a public or private non-profit entity and is subject to the control or direction of a board of directors or other oversight authority, the license shall list the name, address and telephone number of the chairman of the board or other executive head of such controlling body.
- (8) Posting of License.

The licensee shall post the license in a clearly visible location as determined by the Department so that parents or other persons visiting the agency can readily view the license and all the information on the license.
- (9) Before and After School Services.
  - (a) In order for a child care agency to offer before or after school services, the Department will issue a license bearing a notation that the agency is authorized to provide such services.
  - (b) An agency is not authorized to offer such services unless the license bears such a notation.
- (10) In granting a license, the Department may limit the total number of children who may be enrolled at the agency regardless of the agency's physical capacity or the size of its staff.
- (11) License Status Following Application or Appeal.
  - (a) If the Department fails to issue or deny an annual license within one hundred twenty (120) days of the granting of the temporary license, the temporary license shall continue in effect, unless suspended as provided in 1240-4-5-.04(5), until such determination is made.
  - (b) If an annual license is denied following the issuance of a temporary license, and if a timely appeal is made of the denial of the annual license, the temporary license shall remain in effect, unless suspended as provided in 1240-4-5-.04(5), until the Child Care Agency Board of Review renders a decision regarding the denial of the annual license.
- (12) If a temporary or annual license is denied, or an annual license is restricted, the applicant may appeal the denial or restriction as provided in §§ 71-3-509 and 71-3-510 and other applicable laws and rules governing the Child Care Agency Board of Review.
- (13) Extended Licenses.
  - (a) Following the expiration of a least one (1) annual license, the Department may issue an extended license to a licensee who seeks renewal of an existing license if the Department

(Rule 1240-4-5-.03, continued)

determines that the licensee has demonstrated that its methods of child care and its adherence to licensing laws and regulations are clearly appropriate to justify an extended licensing period. An extended license may not be granted as the first license immediately following any temporary license.

- (b) No extended license shall exceed three (3) years duration.
  - (c) At the time renewal of the extended license is sought, or at any other time during the licensing period, the Department may reduce the period of the extended license to a shorter period if it determines that the licensee has failed to demonstrate continued adherence to the requirements for the issuance of the extended license. The licensee may appeal such action as provided in TCA §§ 71-3-509 and 71-3-510 and other applicable laws and rules governing the Child Care Agency Board of Review.
  - (d) The issuance of an extended license shall not be construed in any manner to prevent the Department from suspending or revoking the license, or placing an agency on probation, or imposing a civil penalty, if it determines that such action is appropriate.
- (14) Transfers of Licenses.

- (a) Except as provided in this chapter, no license for a child care agency shall be transferable from one location to another or from one licensee/operator to another, and the transfer by sale or lease, or in any other manner, of the operation of the agency to any other person or entity shall void the existing license immediately and any pending appeal involving the status of the license, and the agency shall be required to close immediately. If the transferee has made application for, and is granted, a temporary license prior to the transfer of ownership or control of the child care agency, the agency may continue operation under the direction of the new licensee. The new licensee in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.
- (b) Notice of Termination to Buyer/Lessee/Transferee
  - 1. Except for transfers subject to the provisions of subparagraph (d), at least thirty (30) days before the sale, lease, or transfer by any other means, of a child care agency, the licensee/owner/management of the child care agency shall notify in writing the buyer, lessee or other prospective transferee of the child care agency that the license of the child care agency is not transferable and that upon the effective date of the transfer, the license of the child care agency will automatically terminate and of the need to seek a temporary license from the Department for continued operation of the child care agency.
  - 2. The licensee/owner/management of the child care agency shall notify in writing the Department at the same time the notice required by part 1 is sent and shall clearly identify the date of the transfer and the identity of the prospective buyer/lessee/transferee.
- (c) If the Department determines that any person or entity has transferred nominal control of an agency to any persons or entities who are determined by the Department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the licensing law or regulations or to otherwise attempt to circumvent the licensing law or regulations or any prior licensing actions instituted by the Department, the Department may deny the issuance of any license to the applicant. The denial of the license may be appealed as provided in TCA §§ 71-3-509 and 71-3-510 and other applicable laws and rules governing the Child Care Agency Board of Review.
- (d) The license of any agency shall not be voided nor shall any pending appeal be voided pursuant to this paragraph solely for the reason that the agency is subject to judicial orders directing the

(Rule 1240-4-5-.03, continued)

transfer of control or management of a child care agency or its license to any receiver, trustee, administrator or executor of an estate, or any similarly situated person or entity.

- (e) If the current licensee dies, and provided that no licensing violations require the suspension, denial or revocation of the agency’s license, the Department may grant family members of the licensee, or administrators or executors of the licensee, a new temporary license to continue operation for a period of one hundred and twenty (120) days if it determines that the persons or entities who will assume operations of the agency otherwise meet the requirements of this chapter and the rules governing the operation of the class of child care agency for which the license is sought. At the end of such period, the Department shall determine whether an annual or extended license should be granted to a new licensee as otherwise provided in this chapter.
- (f) Nothing in this paragraph shall be construed to prevent the Department from taking any regulatory or judicial action as may be required pursuant to the licensing laws and regulations that may be necessary to protect the children in the care of such agency.

(15) Licensing Fees.

The following licensing fees shall apply to applications for licenses for child care agencies licensed by the Department effective January 1, 2001:

(a) Family child care homes:	Annual fee	\$100.00
	Biennial fee	\$150.00
	Triennial fee	\$175.00
(b) Group child care homes	Annual fee	\$125.00
	Biennial fee	\$175.00
	Triennial fee	\$200.00
(c) Child care centers (Less than 100 children)	Annual fee	\$200.00
	Biennial fee	\$250.00
	Triennial fee	\$300.00
(d) Child care centers (More than 100 children)	Annual fee	\$400.00
	Biennial fee	\$450.00
	Triennial fee	\$500.00
(e) Child care centers (More than 250 children)	Annual fee	\$500.00
	Biennial fee	\$550.00
	Triennial fee	\$600.00
(f) Drop-in centers	Annual fee	\$200.00
	Biennial fee	\$250.00
	Triennial fee	\$300.00

**Authority:** TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq., Acts 2000, ch. 981, §§ 3 and 14. **Administrative History:** Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.

**1240-4-5-.04 VIOLATIONS OF LICENSING REGULATIONS.**

- (1) Right of Inspection
  - (a) It is the duty of the Department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care agencies or suspected child care agencies, as defined in § 71-3-501.
  - (b) The Department is given the right of entrance, privilege of inspection, access to accounts, records, and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.
  - (c) If refused entrance for inspection of a licensed, approved or suspected child care agency, the chancery or circuit court of the county where the licensed, approved or suspected child care agency may be located may issue an immediate ex parte order permitting the Department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the Department in executing such order and inspection. Refusal to obey the inspection order may be punished as contempt.
  - (d) Except where court orders prohibit or otherwise limit access, parents or other caretakers of children in the care of a child care agency licensed pursuant to TCA 71-3-501 et seq. shall be permitted to visit and inspect the facilities and observe the methods for the care of their children at any time during which the children are in the care of the agency and, except those records of other children in the care of the agency and their parents or caretakers, shall further be permitted to inspect any records of the agency which are not privileged, or are not otherwise confidential, as provided by law or regulation, and the parents' or caretakers' access for these purposes shall not be purposely denied by the agency.
  - (e) Any violation of the rights given in this paragraph is a Class A misdemeanor.
- (2) Probation.
  - (a) If, during the licensing period, the Department determines that a child care agency is not in compliance with the laws or regulations governing its operation, and, if after reasonable written notice to the agency of the violation, the Department determines that the violation remains uncorrected, the Department may place the licensed agency on probation for a definite period of not less than thirty (30) days nor more than sixty (60) days as determined by the Department. The Department shall provide the agency a written basis describing the violation of the licensing rules that support the basis for the probationary status.
  - (b) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the Department of the violations which were the basis for the probation, in a conspicuous place as directed by the Department and with the agency's license, and the agency shall immediately notify in writing the custodians of each of the children in its care of the agency's status, the basis for the probation and of the agency's right to an informal review of the probationary status.
  - (c) If the agency requests an informal review within two (2) business days of the imposition of probation, either verbally or in writing to the Department's licensing staff which imposed the probation, the Department shall informally review the probationary status by a licensing supervisor or other designee who was not involved in the decision to impose the probation. The agency may submit any written or oral statements as argument to the licensing supervisor or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The licensing supervisor or



(Rule 1240-4-5-.04, continued)

designee shall render a decision in writing upholding, modifying or lifting the probationary status within seven (7) business days of the imposition of the probation.

- (d) If the licensing supervisor or designee did not lift the probation under subparagraph (c), the agency may also appeal such action in writing to the Commissioner within five (5) business days of the receipt of the notice of the licensing supervisor or designee's decision regarding the agency's probationary status as determined in subparagraph (c). If timely appealed, the Department shall conduct an administrative hearing pursuant to the contested case provisions of §§ 4-5-301 et seq. concerning the Department's action within fifteen (15) business days of receipt of the appeal and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.
  - (e) The provisions of this paragraph shall be discretionary with the Department, and shall not be a prerequisite to any licensing action, to impose a civil penalty or to suspend, deny or revoke a license of a child care agency.
- (3) Civil Penalties.
- (a) General Provisions
    - 1. If the Department determines that there exists any violation with respect to any person or entity required to be licensed pursuant to TCA §§ 71-3-501 et seq., the Department may assess a civil penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from Fifty Dollars (\$50.00) for minor violations up to a maximum of One Thousand Dollars (\$1,000.00) for major violations or violations resulting in death or injury to a child as defined in the rules of the Department. Each day of continued violation constitutes a separate violation.
    - 2. Civil penalties may not be imposed only upon recommendation of a licensing counselor or licensing supervisor. Any recommendation for a civil penalty shall be reviewed by the Department's state office licensing staff and the Department's legal staff before being imposed.
  - (b) Civil Penalties Schedule.
    - 1. Major Violations.
      - (i) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in serious injury to, or death of, a child, the Department may assess a civil penalty in a range from Seven Hundred Fifty Dollars (\$750.00) up to One Thousand Dollars (\$1,000.00). The Department shall determine the amount of the penalty based upon the extent of the injury to the child and whether the injury or death of the child was the result of negligence or intentional disregard of the licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.
      - (ii) For any violation of any licensing laws or regulations that, due to negligence or intentional disregard of licensing law or regulations, results in an injury to a child, the Department may assess a civil penalty in a range from Three Hundred Dollars (\$300.00) up to Five Hundred Dollars (\$500.00). The Department shall determine the amount of the penalty based upon the extent of the injury and whether the injury to the child was the result of negligence or intentional disregard of the

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licensing regulations. Consideration of the licensee's history of prior violations shall also be a factor in the determination of the amount of the civil penalty.

- (iii) For violations of the following categories of regulations the Department may impose a civil penalty of Two Hundred Dollars (\$200.00) for the first violation, Three Hundred Dollars (\$300.00) for the second violation, and Four Hundred Dollars (\$400.00) for the third and any subsequent such violation:
    - (I) Failure to follow any rule related to the proper transportation of children by employees, substitutes, volunteers, agents or contractors of the agency;
    - (II) Adult:Child Ratios;
    - (III) Lack of proper supervision of children;
    - (IV) Failure to properly dispense or store medications;
    - (V) Failure to remove persons from access to children following notification of a prohibited criminal background or pending criminal charge or following notification of the person's validated status as a perpetrator of child abuse;
    - (VI) Failure to properly store hazardous items such as, but not limited to, cleaning products, pesticides, hazardous chemicals, or other poisonous items; and
    - (VII) Failure to properly remove or secure firearms within the child care agency area which are under the ownership or control of the agency, or its staff substitutes or other persons permitted access to the children, or failure to prevent exposure of children in the agency's care to firearms which are under the control of the agency, or its staff, substitutes or other persons who have been permitted by the agency to have access to the children;
  - (iv) The existence of six (6) or more minor violations of any type in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars (\$200.00) in addition to the penalty for each minor violation. Three (3) or more minor violations of the same regulation in any period of three (3) or more months shall constitute a major violation and may be subject to a civil penalty imposed by the Department of Two Hundred Dollars (\$200.00) in addition to the penalty for each minor violation.
2. Minor Violations.
- (i) A minor violation shall be any rule violation not described as a major violation in part 1.
  - (ii) Each minor violation may subject the licensee to a civil penalty of Fifty Dollars (\$50.00).
- (c) The Department shall assess any civil penalty that it imposes in an order that states the reasons for the assessment of the civil penalty and the amount of the penalty.
  - (d) The order may be served on the licensee personally by an authorized agent of the Department who shall complete an affidavit of service, or the order may be served by certified mail, return receipt requested.

(Rule 1240-4-5-.04, continued)

- (e) The licensee may appeal the penalty to the Child Care Agency Board of Review by filing a request for an appeal in writing with the Commissioner within ten (10) days of the personal service of the order or mailing date of the order. The hearing on the appeal shall be heard within ninety (90) days unless continued for good cause shown.
  - (f) Civil penalties assessed pursuant to this subsection shall become final ten (10) days after the date an order of assessment is served if not timely appealed, or, if timely appealed, within seven (7) days following entry of the Board's order unless the Board's order is stayed.
  - (g) Remedies for Failure to Pay Civil Penalty.
    - 1. If the violator fails to pay an assessment when it becomes final, the Department may apply to the Chancery Court of Davidson County, Tennessee for a judgment and seek execution of such judgment.
    - 2. No application for a new license or for renewal of an existing license will be accepted by the Department until a civil penalty that has become final has been paid in full. Failure to pay in full a civil penalty which has become final is grounds for denial of a pending application for a new annual license or a pending application for renewal or extension of an existing license, and, further, is grounds for revocation of an existing license.
  - (h) The determination to impose a civil penalty shall be discretionary with the Department and shall not be a prerequisite to any other licensing action to suspend, deny or revoke a child care agency's license. Civil penalties may also be used in conjunction with the probation, suspension, denial or revocation of a license.
- (4) Denial and Revocation of Licenses.
- (a) If the Department determines that any applicant for a temporary license or for the renewal of an existing license has failed to attain, or an existing licensee has failed to maintain, compliance with licensing laws or regulations after reasonable notice, consistent with the safety of the children in the care of the child care agency, of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, the Department may deny the application for the new or renewed license or may revoke the existing license; provided, however, the Department at any time may deny a temporary license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, if the Department determines that repeated or serious violations of licensing laws or regulations warrant the denial or revocation of the license, then, notwithstanding any provisions of § 4-5-320 or this paragraph to the contrary, the Department may seek denial or revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application or before or after notice of the revocation of the license.
  - (b) Notwithstanding the provisions of TCA § 4-5-320, the notice of denial or revocation may be served personally by an authorized representative of the Department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.
  - (c) If application for the temporary, annual, or extended license is denied or if an existing license is revoked, the applicant may appeal the denial or revocation by requesting in writing to the Department a hearing before the Child Care Agency Board of Review within ten (10) days of the personal delivery or mailing date of the notice of denial or revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.
  - (d) The hearing shall be held in accordance with the hearing procedures before the Child Care Agency Board of Review pursuant to the licensing law.

(Rule 1240-4-5-.04, continued)

- (e) If timely appeal is made, then, pending the hearing upon the denial or revocation, the child care agency may continue to operate pending the decision of the Child Care Agency Board of Review unless the license is summarily suspended as provided in paragraph (5).

(5) Summary Suspension of Licenses.

- (a) Subject to the following provisions of this section, if the Department determines at anytime that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the Department pending any further proceedings for revocation, denial or other action. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or which have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.

(b) Contents of the Order of Summary Suspension.

1. The licensee shall be provided written notice of the issuance of the order of summary suspension and shall be notified that the licensee has the opportunity for an informal hearing before an administrative law judge or before a hearing officer who is not an employee of the Department (except as provided in part (e)(3)) within three (3) business days of the issuance of the order of summary suspension.
2. The Department shall set forth with specificity in its order the legal and factual basis for its decision, stating therein the specific laws or regulations which were violated by the agency, and shall state with specificity in the order the reasons that the issuance of the order of summary suspension is necessary to adequately protect the health, safety or welfare of children in the care of the child care agency.
3. The order shall state the time, date and location of a show cause hearing to determine if the suspension is appropriate, shall state the issues involved as described in subparagraph (f) and shall notify the licensee of the right to be represented by counsel.

- (c) The notice may be personally delivered by any authorized representative of the Department to any person in charge of or reasonably believed to be in charge or who may be supervising the agency at the time of delivery. If such person is not the licensee, the order shall also be sent to the licensee by certified mail, return receipt requested, but the effect of the order shall not be delayed by mail delivery. The order shall contain a certificate of service or shall have attached to it a certificate verifying its service by personal delivery, and, if required, by certified mail service.

- (d) The order shall be effective upon entry by the Commissioner, or the Commissioner's designee, at such time as directed by the order. Upon receipt of the order by any person to whom the order is delivered at the child care agency, the agency shall cease or limit its operations at such time and in such manner as the order directs.

(e) Hearing Official and Authority.

1. Hearings on summary suspension orders shall be heard by an administrative law judge from the Administrative Procedures Division of the Secretary of State's Office, if the administrative law judge is available within the time frames for a summary suspension hearing.
2. If the Administrative Procedures Division of the Secretary of State's Office informs the Department that an administrative law judge is unavailable, the Department may obtain

(Rule 1240-4-5-.04, continued)

an administrative law judge, or hearing officer who is not an employee of the Department except as provided herein. The substitute administrative law judge or hearing officer may be obtained by the Department by contract with a private attorney or by contract or agreement with another state agency. If the Administrative Procedures Division of the Office of the Secretary of State informs the Department that the Division's contested case docket prevents the scheduling of a hearing on the issuance of a summary suspension order within the initial timeframes set forth in this subparagraph, and if the Department is unable to obtain a private or state agency administrative law judge or hearing officer to hear the show cause hearing on the summary suspension order within the timeframes set forth in this part, the Department may utilize a hearing officer from the Department's Administrative Review section.

3. The administrative law judge or hearing officer shall have authority, as otherwise permitted in this section and subject to the provisions of subparagraph (h), to enter orders binding on the Department resulting from show cause hearings involving summary suspension orders.

(f) Hearing Procedures.

1. The informal hearing described by this subdivision shall not be required to be held under the contested case provisions of TCA § 4-5-301 et seq.
2. The hearing is intended to provide an informal, reasonable opportunity for the licensee to present to the hearing official the licensee's version of the circumstances leading to the suspension order and any measures taken to correct the violations leading to the suspension.
3. The only issues to be considered are whether the public health, safety or welfare imperatively required emergency action by the Department and what, if any, corrective measures have been taken by the child care agency following the violation of the licensing laws or regulations cited by the Department and prior to the issuance of the order of summary suspension, that would eliminate the danger to the health, safety or welfare of the children in the care of the agency.

(g) Hearing Order.

1. Upon conclusion of the hearing, the administrative law judge or hearing officer shall render a decision immediately regarding the status of the agency's license and shall state the basis for the decision.
2. The administrative law judge or hearing officer may lift, modify, or continue the suspension based upon the evidence presented and the stipulations and agreements of the parties.
3. The hearing order containing findings of fact and conclusions of law to support the decision shall be reduced to writing within fifteen (15) days after the hearing and shall be sent to the parties and their counsel.

(h) Revocation, Denial of the License Following Suspension or Modification of the Order of Summary Suspension by the Department.

1. Subsequent to the hearing on the summary suspension, the Department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license, or the Commissioner, upon satisfactory proof that the conditions warrant, may by further order, lift or reduce the

(Rule 1240-4-5-.04, continued)

restrictions contained in the order of summary suspension without further order by the administrative law judge or hearing officer, or, may, upon agreement of the licensee, further modify the order by imposing new, additional or different restrictions or conditions upon the licensee or the licensee's operations. A summary suspension order entered by the Department may be lifted or modified by the Department following its entry by the Department as provided in this part, before, or after, a case is docketed with the Child Care Agency Board of Review, without further approval of the Board or a Board panel.

2. If the Department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by the licensing law.
3. Unless extended by agreement of the licensee, the order of summary suspension shall be dissolved upon motion of the licensee unless the Department has issued a notice of denial or revocation of the license within thirty calendar (30) days of the summary suspension order's entry.

**Authority:** TCA §§ 4-5-201 et seq.; 4-5-301 et seq.; 71-1-105; 71-3-501 et seq.; Acts 2000, ch. 981, §§ 10 and 14.  
**Administrative History:** Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.

#### **1240-4-5-.05 RESTRICTED LICENSES FOR CHILD CARE AGENCIES.**

- (1) Limitation of Authority
  - (a) In determining whether to deny, revoke or summarily suspend a license, the Department may choose to deny, revoke or suspend only certain authority of the licensee to operate and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency which the Department determines should be restricted or modified to protect the health, safety or welfare of the children.
  - (b) The restrictions shall be contained in the notice of denial or revocation or in the order of summary suspension entered by the Department and shall state the basis for the restriction and the specific areas of operation which are to be limited.
- (2) The actions by the Department authorized by this section may be appealed to the Child Care Agency Board of Review as otherwise provided by the licensing law for any denial or revocation, or as provided in this chapter for summary suspensions of licenses.
- (3) Appeal and Status of Restricted License.
  - (a) If the licensee does not appeal the issuance of a restricted license or the summary suspension of authority to operate, it may petition the Department to request that the restrictions be removed or altered.
  - (b) If timely appeal is made, then, pending the hearing upon the restricted license, the child care agency may continue to operate pending the decision of the Child Care Agency Board of Review unless the license is summarily suspended as provided in Section .04(5).

(Rule 1240-4-5-.05, continued)

- (4) The Department may, at any time, modify or remove the restrictions on the license upon order of the Commissioner, or the Commissioner's designee.

**Authority:** TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Act 2000, ch. 981, §§ 10(f) and 14. **Administrative History:** Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.

#### **1240-4-5-.06 REAPPLICATION PERIODS.**

- (1) When an application for a license has been denied, or a license has been revoked, on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the Child Care Agency Board of Review's or reviewing court's order.
- (2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2) years from the effective date of the denial or revocation if not appealed or, if appealed, from the effective date of the Child Care Agency Board of Review's or reviewing court's order.
- (3) If an application for a license has been denied, or a license has been revoked on three (3) occasions, the agency shall not receive another license for the care of children.
- (4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care agency if that person participated in such capacity in a child care agency which has been denied a license, or which had a license revoked, on three (3) occasions.
- (5) Waivers
  - (a) The time restrictions in paragraphs (1) and (2) may be waived by the Child Care Agency Board of Review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the Commissioner, in a separate subsequent hearing before the Child Care Agency Board of Review or, in the discretion of the Commissioner, upon review by the Commissioner. No waiver may be granted for any permanent restriction imposed pursuant to paragraph (3).
  - (b) The agency must show to the Child Care Agency Board of Review's or the Commissioner's satisfaction, by a preponderance of the evidence, that the agency has corrected the deficiencies which led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations.
  - (c) The decision of the Child Care Agency Board of Review or the Commissioner shall be reduced to an order, which shall be a final order pursuant to Title 4, Chapter 5, Part 3 of the Tennessee Code Annotated, and may be appealed pursuant to TCA § 4-5-322.
- (7) When, except for provisions relative to the continuation of the license provided in Rule 1240-4-5-.03(11), 1240-4-5-.04(4)(e) or 1240-4-5-.05(3)(b), a license would have expired during the time a case involving that license is being litigated before the Child Care Agency Board of Review or a reviewing court, and the Child Care Agency Board of Review or reviewing court does not uphold the Department's denial, revocation or restriction of the license, the licensee must apply for a renewal of an annual license within ten (10) business days of the entry of the Child Care Agency Board's or reviewing Court's order.

(Rule 1240-4-5-.06, continued)

- (8) For purposes of this section, unless otherwise specified in the order, the “effective date of the board’s or court’s order” shall mean the date the order is entered by the Chair of the Child Care Agency Board of Review or panel chair or vice-Chair of the Child Care Agency Board of Review.

**Authority:** TCA §§ 4-5-201 et seq.; 71-1-105; 71-3-501 et seq.; Acts 2000, ch. 981, §§ 10(g) and 14.  
**Administrative History:** Chapter 1240-4-5 has been assigned a new control number, removed and renumbered to chapter 0250-4-5 filed and effective March 25, 1999. New rule filed September 29, 2000; effective December 13, 2000.