

Chapter 170-E. Residential Care and Child-Placing Agency Licensing

170-E:24 Purpose. – The purpose of this subdivision is to provide for the licensing of residential care and child-placing agencies.

Source. 1990, 257:8, eff. Jan. 1, 1991.

§ 170-E:25 Definitions. – In this subdivision:

I. "Child" means any person under 21 years of age.

II. "Child care agency" means any person, corporation, partnership, voluntary association or other organization either established for profit or otherwise, who regularly receives for care one or more children, unrelated to the operator of the agency, apart from the parents, in any facility as defined in this subdivision and maintained for the care of children. The types of child care agencies are defined as follows:

(a)(1) "Foster family home" means child care in a residence in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage. The maximum of 6 children includes the children living in the home and children received for child care who are related to the residents.

(2) If the limit of 6 children under subparagraph (a)(1) is reached, the foster family is willing and able to take a sibling or a group of siblings of a child already in their care, and the department has concluded that the foster family is able to provide for the safety, permanency, and well-being of the child or children, the department may, notwithstanding the limitations of subparagraph (a)(1), place the sibling or group of siblings in the foster family home.

(b) "Group home" means a child care agency which regularly provides specialized care for at least 5 but no more than 12 children who can benefit from residential living either on a short-term or long-term basis.

(c) "Specialized care" means a child care agency which regularly provides general care for children who are diagnosed as mentally ill, intellectually disabled, or physically disabled and who are determined to be in need of special mental treatment or nursing care, or both.

(d) "Homeless youth program" means a program, including any housing facilities utilized by such program, which receives any child for the purpose of providing services to facilitate independent living including all of the following program components: individual assessment, referral, housing, and case management. Such services may be provided directly by the agency or through one or more contracts for services.

III. "Child care institution" means a residential child care agency where more than 12 children are received and maintained for 24-hour care for the purpose of providing them with care or training, or both. The term "child care institution" shall not include:

(a) Any state operated institution for child care or juvenile detention established by law.

(b) Any institution, home, place or facility operating under a license pursuant to RSA 151:2.

(c) Any bona fide boarding school in which children are primarily taught branches of education corresponding to those taught in public elementary schools or high schools, or both, and which operates on a regular academic school year basis, and which is approved by the department of education.

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(d) Any bona fide summer camp.

IV. "Child-placing agency" means any firm, corporation or association which:

(a) Receives any child for the purpose of providing services related to arranging for the placement of children in a foster family home, group home, or child care institution; or

(b) Receives any child for the purpose of providing services related to arranging for the placement of children in adoption.

V. "Commissioner" means the commissioner of the department of health and human services.

VI. "Corrective action plan" means a written proposal setting forth the procedures by which a child care agency, child care institution, or child-placing agency will come into compliance with the standards set by rule adopted by the commissioner under RSA 541-A and subject to the approval of the department. The proposal shall include the time needed to assure compliance and the steps proposed by the agency to reach compliance.

VII. "Department" means the department of health and human services.

VIII. "Experiential/wilderness facility" means a child care institution which regularly provides specialized care and training in daily living for more than 12 children but fewer than 57 children, and meets the standards established by the commissioner by rule under RSA 170-E:34, I(a).

IX. "Guardian" means the guardian of the person of a minor, as defined in RSA 463.

X. "Independent living home" means a child care agency which regularly provides specialized services in adult living preparation in an experiential residential setting for persons 16 years of age or older who have a legal relationship with the department of health and human services and who can benefit from independent living training.

XI. "License" means a complete license issued to an operator of a child care agency, child care institution or child-placing agency, authorizing the licensee to operate in accordance with the term and conditions of the license, this subdivision, and the rules of the department.

XII. "Permit" means an issuance to an operator of a child care agency or child-placing agency which shall not be renewable except for good cause shown and which may be granted for a period not exceeding 6 months to agencies whose services the department finds are needed, but which are temporarily unable to conform to the qualification for a license.

XIII. "Regularly" or "on a regular basis" means supervision and care up to and including 7 days a week service, whether continuous or not, for all types of child care subject to the provisions of this subdivision.

XIV. "Related" means any of the following relationships by blood, marriage, or adoption: parent, grandparent, brother, sister, stepparent, stepgrandparent, stepbrother, stepsister, uncle, aunt, niece, nephew, first cousin or second cousin.

XV. "Respite care" means substitute care provided by a person or agency which is licensed as a child care or child-placing agency.

§ 170-E:26 Exemptions; Child Endangerment Prohibited. –

I. The definitions in RSA 170-E:25, II and III shall not apply to the following:

(a) Families housing exchange students or up to 4 children in summer exchange programs.

(b) Nonresident families visiting the state for purposes of a vacation who have in their care foster children from their home state and have written approval of the out-of-state agency which supervises the foster children.

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II. Families exempted from licensing pursuant to this section shall be subject to the provisions of RSA 170-E:27, II.

§ 170-E:27 License Required; Prohibition Against Child Endangerment. –

I. No person may establish, maintain, operate or conduct any agency for child care or for child-placing without a license or permit issued by the department under this subdivision.

II. No person, whether licensed as a child care agency or institution or child-placing agency, or exempted from licensing pursuant to RSA 170-E:26, I, shall care for a child in a manner which endangers the health, safety or welfare of the child. For purposes of this paragraph, endangerment shall mean the negligent violation of a duty of care or protection owed to such child or negligently inducing such child to engage in conduct which endangers his health or safety. Licensees in violation of this paragraph shall be subject to the provisions of RSA 170-E:35. Persons exempted from licensing who are in violation of this paragraph shall be enjoined by a court of competent jurisdiction in accordance with the provisions of RSA 170-E:46 from caring for such child and may be enjoined, as the court may determine, from caring for other children. The court in its order for injunctive relief shall provide for removal and placement of the child who is the subject of the order with an organization licensed pursuant to this subdivision.

§ 170-E:27-a Homeless Youth Programs; Special Provisions. – Any child care agency which receives children for the purpose of providing a homeless youth program, as defined in RSA 170-E:25, II(d), shall be subject to the following provisions:

I. When a child 16 or 17 years of age contacts a homeless youth program requesting emergency shelter or homeless services, the program shall:

(a) Assess the child's essential needs, physical and mental health condition, and the circumstances that led the child to seek services.

(b) Upon completion of the assessment, but in no case later than 72 hours from the child's initial request for services, attempt to notify the child's parent or legal guardian that such child is present at the agency's facility. If compelling circumstances become evident during assessment which justify not notifying the parent or legal guardian, the program shall instead notify the department according to RSA 169-C:29. In this paragraph, the term "compelling circumstances" means circumstances which indicate that notifying the parent or legal guardian would subject the child to risk of abuse or neglect as defined in RSA 169-C:3.

(c) Notify the department no later than 30 days after the child's initial request for services if the program is unable to make contact with either of the child's parents or the legal guardian after reasonable attempts to do so.

II. Nothing in this section shall alter the legal relationship between parent or legal guardian and child, and in the absence of a court order directing otherwise, the program shall release the child to the custody of his or her parent or legal guardian upon request by the parent or guardian.

III. If the child is discharged from the program or voluntarily terminates participation in the program, the program shall immediately notify the parents or legal guardian; or the department if the parent or legal guardian has never consented to the child's placement in the program.

IV. A parent or legal guardian who consents in writing to the child's participation in a licensed homeless youth program shall not be deemed neglectful under RSA 169-C:3, XIX.

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V. The agency may charge the child a reasonable fee for the services provided the child is working and/or has other regular income and such fee is within his or her ability to pay.

§ 170-E:28 Applications; Compliance With State and Local Codes Required. –

I. Any entity which intends to receive children, or arranges for child care or child placement of one or more children unrelated to the operator, shall apply for a license to operate one or more of the types of facilities for child care. Application for a license to operate a child care agency or institution or a child-placing agency shall be made to the department in the manner and on forms prescribed by rules adopted by the commissioner under RSA 541-A. Such forms shall provide for the birth names, birth dates and addresses of all persons having responsibility for care or placement of children or regular contact with children at the institution or agency. The agency or institution shall obtain approvals in accordance with state and local requirements pertaining to health, safety and zoning as applicable; and, if the department is satisfied that the person, institution, agency, or program conforms to standards prescribed for the type of child care or child placement for which application is made, the department shall issue a license in proper form designating on that license the type of child care or child placement, the name and address of the person or institution, the duration of the license and, except for child-placing agencies, the age range, the gender, and the number of children to be served.

II. Either the state fire marshal or the local fire department shall review compliance of the foster family home with applicable state fire safety laws and local ordinances. In conducting the review, the state fire marshal or local fire department shall apply the appropriate single family or multi-unit dwelling provisions of the applicable code.

§ 170-E:29 State Registry and Criminal Records Check for Foster Family Homes, Institutions, and Child-Placing Agencies. –

I. Foster family homes, institutions, and child-placing agencies shall, within 30 days of adding new staff members responsible for care of or in regular contact with children, submit the names, birth dates, and addresses of such staff members to the department.

II. Except in the case of an initial application for a foster family home, the department shall, for every name submitted on the application and for each new staff member, or at each renewal, review the names, birth names, birth dates, and current and previous addresses of such persons against the state registry of founded abuse and neglect reports. The department shall submit the names, birth names, birth dates, and addresses to the state police files to obtain information about criminal convictions.

II-a. In the case of an initial application for a foster family home, the department shall conduct a background check of the prospective foster parents and any other adult living in the home. The background check shall consist of a fingerprint-based criminal record check of national crime information databases for the prospective foster parents and a central registry check for the prospective foster parents and any other adult living in the home.

(a) For the criminal record check required under this paragraph, the department shall submit the prospective foster parents' fingerprints to the department of safety, division of state police, for forwarding to the Federal Bureau of Investigation. Upon completion of the criminal record check, the division of state police shall forward the results to the department.

(b) The central registry check shall include a check of the department's central registry of founded reports of child abuse and neglect under RSA 169-C:35 and shall include a check of the child abuse and neglect registries in any other state in which the prospective

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foster parents or other adult living in the home has resided in the preceding 5 years. Information obtained from another state pursuant to this subparagraph shall be used only for the purposes of conducting the background checks.

III. If any individual whose name has been submitted for a check under this section has been convicted of a violent or sexually-related crime against a child, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall deny the license, pending the development and implementation of a corrective action plan approved by the department.

IV. If any individual whose name has been submitted for this check has been convicted of crimes against minors or adults, except crimes as provided in paragraph III, or is the subject of a founded complaint of child abuse or neglect, the department may deny the license or permit, revoke a license, or suspend a license pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the individual poses a present threat to the safety of children. The investigation shall include an opportunity for the individual to present evidence on his behalf to show that he does not pose a threat to the safety of children.

V. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

§ 170-E:29-a State Registry and Criminal Records Check for Child Care Institutions and Child Care Agencies. –

I. Child care institutions and child care agencies, with the exception of foster family homes, that are required to be licensed according to the provisions of this chapter shall, prior to making a final offer of employment to a person who will be responsible for the care of, or who will have regular contact with children, and upon adding a new household member, a current household member who turns 17 years of age, or other persons who will have regular contact with children, submit to the department, the names, birth names, birth dates, and addresses of such persons and other information required by the department as prescribed by rules adopted by the commissioner under RSA 541-A. The persons described in this paragraph shall submit directly to the department of safety a notarized criminal history records release form, as provided by the New Hampshire division of state police, which authorizes the release of the person's criminal records, if any, to the department. The person shall submit with the release form a complete set of fingerprints taken by a qualified law enforcement agency or an authorized employee of the department of safety. The department of safety shall complete the criminal history records check and forward such record, if any, to the department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints shall be necessary to complete the criminal history records check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years.

II. (a) The department shall, for every name submitted on an application and for each person for whom information is required to be submitted pursuant to paragraph I, review the names, birth names, birth dates, and current and previous addresses of such persons against the state registry of founded abuse and neglect reports.

(b) The department of safety shall submit the criminal history records release form to the

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New Hampshire division of state police, which shall conduct a criminal history records check through its records and through the Federal Bureau of Investigation. Upon completion of the background investigation, the division of state police shall release copies of the criminal conviction records to the department. The department shall maintain the confidentiality of all criminal history records information received pursuant to this paragraph.

(c) The costs of criminal history record checks shall be borne by the licensee; provided, that the licensee may require an applicant to pay the actual costs of the criminal history check of the employee.

III. Notwithstanding paragraph I, a licensee may make a final offer of employment and allow a person to begin working in the program while the results of the state and national criminal background check is pending provided that, prior to beginning employment, the applicant completes a sworn statement signed by a notary public or justice of the peace stating that he or she:

(a) Does not have any felony conviction in this or any other state.

(b) Has not been convicted of a sexual assault, assault including simple assault, any other violent crime, abuse, neglect, or any other crime that shows that they may pose a threat to well-being of children, such as a violent crime or a sexually-related crime against an adult.

(c) Has not had a finding by the department or any administrative agency in this or any other state for abuse, neglect or exploitation of children.

IV. The results of the federal criminal background check shall be valid for 3 years. Prior to the expiration of that 3-year period, a person required to undergo a criminal background check pursuant to this section shall submit a new set of fingerprints and undergo a subsequent federal criminal background check. If a person who is or has been employed or volunteered at a child care institution or child care agency is offered employment or volunteers at another child care institution or child care agency or a child day care agency, the person shall, before entering employment or volunteering with the new agency, undergo a New Hampshire state criminal records check through the department of safety and shall complete a sworn statement as set forth in paragraph III.

V. If any person whose name has been submitted for a check under this section has been convicted of a violent or sexually-related crime against a child, or of a crime which shows that the person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-related crime against an adult, the department shall:

(a) If the person is the applicant or owner, revoke or deny the license.

(b) If the person is a board member, household member, or child care institution or child care agency personnel, or any other person having regular contact with the enrolled children:

(1) Inform the child care institution or child care agency that the person poses a threat to children and give the program an opportunity to take immediate corrective action to remove the person from the program, and, in conjunction with the department, to develop a corrective action plan, approved by the department, which shall ensure that the person will not be on the premises of the child care institution or child care agency and shall have no contact with children enrolled in the child care institution or child care agency; and/or

(2) Suspend, deny, or revoke the license or permit if the child care institution or child care agency refuses to take corrective action as indicated in subparagraph (b)(1), or subsequently fails to comply with the corrective action plan approved by the department.

VI. If any person whose name has been submitted for this check has been convicted of a

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felony offense or violent crime deemed directly or indirectly harmful to children in child residential care, crimes against minors or adults, except crimes as provided in paragraph V, or is the subject of a founded complaint of child abuse or neglect, the department may deny, revoke, or suspend a license, permit, or registration pending the development and implementation of a corrective action plan approved by the department. The department shall conduct an investigation in accordance with rules adopted under this subdivision to determine whether the person poses a present threat to the safety of children. The investigation shall include an opportunity for the person to present evidence on his or her behalf to show that the person does not pose a threat to the safety of children.

VII. At the time the licensee is next due to renew the license, the licensee shall submit a notarized criminal conviction record release authorization form and a set of fingerprints to the department of safety for any existing employee or household member who is 17 years of age or older and who has not undergone a national criminal background check as of the effective date of this section. Upon receiving the results of the state and national criminal records check, if the licensee learns that a current employee has been convicted of any felony, a sexual assault, any other violent crime, assault including simple assault, abuse, neglect or any other crime that shows that they may pose a threat to well-being of children, such as a violent crime or a sexually-related crime against an adult, or has a founded allegation of abuse, neglect or exploitation against children, the licensee shall either terminate the employee or suspend the employee and promptly request a waiver from the department allowing the employee to resume working in the program. Upon receiving the results of the state and national criminal records check, if the licensee learns that a current household member has been convicted of any felony, a sexual assault, any other violent crime, assault including simple assault, abuse, neglect or any other crime that shows that the person may pose a threat to well-being of children, such as a violent crime or a sexually-related crime against an adult, or has a founded allegation of abuse, neglect or exploitation against children, the licensee shall take immediate corrective action to remove the person from the child care institution or child care agency, and, in conjunction with the department, develop a corrective action plan, approved by the department, which shall ensure that the person will not be on the premises of the child care institution or child care agency and shall have no contact with children residing in the child care institution or agency. If the licensee fails to take such corrective action, the department shall suspend the license until such time as the licensee does implement the corrective action, or it shall revoke the license.

VIII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the confidentiality of information collected under this section and to the release, if any, of such information.

§ 170-E:30 Child Care Institution; Child-Placing Agency; Information Required. –

In addition to the steps required in RSA 170-E:29, the department, upon receiving an application and authorization filed by a child care institution or child-placing agency in proper order, shall, in cooperation with the operator, examine the facility or agency, and investigate the program and person or persons responsible for the care of children. When the facility or agency is administered through an executive board, board of trustees, board of directors, or other governing body, the names, addresses, and any connection of individuals on such bodies with the facility or agency shall be included. The institution or child-placing agency shall obtain and provide receipts of approval of state and local requirements pertaining to health, safety and zoning, as applicable. If the department is satisfied that the institution or child-placing agency conforms to the standards prescribed

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for the type of facility or agency to be operated, a license shall be issued. The commissioner or his designee may inspect the facility or agency at any time.

§ 170-E:31 Issuance. –

I. Licenses shall be issued in such form and manner as prescribed by rules adopted by the commissioner under RSA 541-A and, for foster family homes and specialized care, shall be valid for 2 years from the date issued, unless revoked by the department, or voluntarily surrendered by the licensee, or subject to conditions attached to the license which provide for a shorter license period than 2 years.

II. The department may provide dual licensure to a facility or child-placing agency. Such licensure shall be granted only upon application and shall be contingent upon a determination, by the appropriate licensing units consulting with each other, that the standards of both programs have been met without compromising any licensing requirements. If the licensing units are unable to agree, the final decision shall be made by the commissioner.

III. Licensure for child care institutions and child-placing agencies shall be valid as follows:

(a) Group homes and child care institutions: 3 years from the effective date of the license.

(b) Child-placing agencies: 4 years from the effective date of the license.

IV. The department shall make monitoring visits a minimum of once yearly each licensing period. At least one such visit during the licensing period shall not be announced in advance; however, such unannounced visit is optional for foster family homes. Clear and comprehensive records shall be maintained by the department on each licensed facility showing the dates and findings of each such visit. Such records shall be made available to the facility. If the facility is found not to be in compliance either with the statute or the rules adopted by the commissioner, a corrective action plan shall be submitted to the department. Failure to submit an acceptable plan shall result in license suspension or revocation.

V. The department may issue a 6-month permit to a newly established facility for child care, or to an established facility which has changed its physical location, to allow that facility reasonable time to become eligible for full licensure. The 6-month permit may be issued immediately upon completion of the necessary licensing inspections. If the language on such permit allows it, the facility may begin operation immediately without waiting for the state office to complete the processing of the application.

§ 170-E:32 License Renewal. –

I. A licensed child care agency, child care institution, or child-placing agency shall file for renewal of its license 3 months prior to the expiration date of the license on forms prescribed by rules adopted by the commissioner under RSA 541-A.

II. The department, a duly licensed child-placing agency, or a person designated by the department as its agent, shall reexamine every child care facility for renewal of its license, including examination of the premises, program, and such records of the facility as the department considers necessary to determine that minimum standards for licensing continue to be met. If the department is satisfied that the person, institution, or child-placing agency continues to maintain the minimum standards established by rule for that category of child care or child-placing, it shall renew the license to operate.

§ 170-E:33 Record of Licenses. –

I. The department shall keep in a central depository records of licenses issued under this subdivision and all monitoring reports that have been made relative to licensees. When a

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license is issued to a person or institution, the department shall give notice to the health officer and the fire department of the city or town in which the licensee is located stating the granting of such license and its terms. A like notice shall be given of any suspension or revocation of such license.

II. The license itself shall be considered public information and available for review by members of the public; information submitted in the application process, however, shall be private, confidential and not available for review.

§ 170-E:34 Rulemaking; Consultation. –

I. The commissioner shall adopt rules, under RSA 541-A, relative to:

- (a) Minimum standards for licensing which apply to the various types of facilities for child care and child placement. The department shall seek the advice and assistance of persons representative of the various types of child care and child-placing agencies in establishing such standards. The standards prescribed shall include:
 - (1) The operation and conduct of the person, institution, or child-placing agency and the responsibility it assumes for child care or child placement, or both.
 - (2) The character, qualifications, mental and physical ability and competence of the applicant as well as all persons directly responsible for the care and welfare of children served, or of persons who will be providing necessary care for children and maintaining prescribed standards, or of persons who will do both.
 - (3) The number of individuals or staff required to insure adequate supervision and care of the children provided the particular type of care.
 - (4) The appropriateness, safety, environmental health and general adequacy of the premises, including maintenance of adequate fire prevention and health standards conforming to state laws and municipal codes, to provide for the physical comfort, health and care of children received.
 - (5) Provisions for food, clothing, educational opportunities, program, equipment and individual supplies to assure the health and the physical and mental development of children served.
 - (6) Provisions to safeguard the legal rights of children served.
 - (7) Maintenance of records pertaining to the admission, progress, health and discharge of children.
 - (7-a) Provisions for the permanent retention of records pertaining to the placement of children for adoption, including maintenance of such records in the event that a licensed agency ceases to operate as a licensed child-placing agency.
 - (8) Filing of reports with the department, including format, frequency and content of such reports.
 - (9) Discipline of children.
 - (10) Protection and fostering of the particular religious faith of the children served, where applicable.
 - (11) Provisions to provide for a report of any new staff, paid or unpaid, or resident of the facility which shall include the name, birth name, date of birth and previous addresses of the person, or other information as required by rules of the department.
 - (12) Duties and responsibilities of the board of directors or other governing body of the facility or child-placing agency with respect to compliance with this subdivision and the standards relating to this subdivision as established by the department.
 - (13) Retention of records and, in the event the facility or child-placing agency is no longer functioning, transfer of records.
- (b) Minimum standards for facilities for specialized care, where there are children

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diagnosed as mentally ill, intellectually disabled, or physically disabled, who are determined to be in need of special mental treatment or nursing care, or both, when the facility is not subject to licensure under RSA 151. The department shall seek the advice and recommendation of the department of education, as appropriate, regarding the residential treatment, education, and nursing care provided by the facility.

(c) The confidentiality of information gathered pursuant to RSA 170-E:28, 170-E:29, 170-E:33 and RSA 170-E:42.

(d) The procedures for the appeals processes provided by RSA 170-E:36, II and IV.

(e) Policy and procedures concerning the investigation of licensees and all disciplinary proceedings, including corrective action plans, against licensees.

(f) Compensation to foster family homes for the costs of caring for each child placed in their home.

(g) The release of information to persons receiving the child which pertains to the life and safety of the child either about to be placed or already in placement, and which may pertain to the life and safety of the persons who are receiving or who have received the child for placement, including any physical and mental health issues, history of abuse or neglect, behaviors that may be expected, and recommended ways of handling the child's problems. For purposes of this subparagraph, placement shall mean out-of-home placements, including placements for adoption.

(h) Establishing, maintaining, and directing a system of child care resource and referral pursuant to RSA 170-E:5-a.

II. The department, in applying the standards adopted by rule under paragraph I, shall offer consultation through employed staff or other qualified persons to assist applicants and licensees in meeting and maintaining minimum requirements for a licensee.

§ 170-E:35 License or Permit Suspension, Revocation, or Denial. – The department may suspend, revoke, deny, or refuse to renew any license, or revoke or refuse to issue a full license to any permit holder, whether or not the person, institution or agency is approved by a child-placing agency, if the licensee or permit holder:

I. Neglects or abuses children in his care;

II. Does not comply with this subdivision or the rules adopted under this subdivision relative to the supervision of children in his care;

III. Violates any provision of this subdivision, or is unable to meet and maintain standards adopted by the commissioner;

IV. Substantially or repeatedly violates any provisions of the license or permit issued;

V. Furnishes or makes any misleading or any false statement or report to the department or to the child-placing agency;

VI. Refuses or fails to submit any reports or to make available to the department any records required by it in making an investigation of the facility for licensing purposes;

VII. Refuses or fails to submit to an investigation or to the required visits by the department;

VIII. Refuses or fails to admit authorized representatives of the department at any reasonable time for the purpose of investigation or visit;

IX. Fails to provide, maintain, equip and keep in safe and sanitary condition premises established or used for child care as required under standards prescribed by rules adopted by the commissioner under RSA 541-A or as otherwise required by any law, rule, ordinance, or term of the license applicable to the location of such facility;

X. Refuses to display its license or permit or to make it readily available to view, if requested;

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XI. Fails to exhibit, meet or maintain financial or other resources, or both, adequate for the satisfactory care of children served in regard to upkeep of premises and provisions for personal care, medical services, clothing, education and other essentials in the proper care, rearing, training and placement of children, so long as such lack of financial resources is not due primarily to delays in state payments for care;

XII. Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it;

XIII. Continues to employ a person without taking corrective action, after receipt of written notification from the department that the person poses a risk to children, such notification including the basis for the department's determination that the risk exists; or

XIV. Fails to comply with the corrective action plan jointly developed between the department and the person, institution or agency.

XV. Demonstrates a repeated failure to cooperate with the department, other service providers, or the parents of a child who is placed with the child care agency, as necessary to implement the child's case plan or the department's treatment decisions.

§ 170-E:36 Notice and Hearing. –

I. Should the department determine to suspend, revoke or deny, or refuse to renew a license or permit, it shall send to the applicant, licensee or permittee, by registered mail, a notice which sets forth the particular reasons for the determination. The suspension, revocation, or denial shall become final 10 days after receipt of such notice unless the applicant, licensee or permittee requests a hearing under paragraph II of this section.

II. Any applicant, licensee or permittee aggrieved by a decision of the department to suspend, revoke, deny, or refuse to renew a license or permit may appeal to the commissioner through an administrative hearings process. For purposes of carrying out the provisions of this section, the commissioner may, in accordance with the rules adopted by the department of personnel pursuant to RSA 541-A, appoint a hearings officer or officers, as necessary, to preside over such hearings. A hearings officer may affirm, deny or modify the decision of the department. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to procedures for the appeals process provided under this paragraph.

III. When the department decides to suspend, revoke, deny, or refuse to renew a license or permit, and it expressly finds that the continued operation of a child care facility or child-placing agency violates any minimum standard prescribed by law or rule, or otherwise jeopardizes the health, safety, morals, well-being or welfare of children served by the facility or child-placing agency, the department shall include in its notice an order of closure directing that the operation of the facility or child-placing agency terminate immediately. In this event, the facility or child-placing agency shall not operate during the pendency of any proceeding for the review of the decision of the department, except under court order.

IV. Rehearings and appeals from a decision of the hearings officer shall be in accordance with rules adopted under RSA 541-A.

V. On or before December 31, 2010, and each year thereafter, the department shall submit a report to the chair of the house standing committee on children and family law relative to the number of license or permit suspensions, revocations, denials, and appeals for that year.

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§ 170-E:37 Appeal. – Any person aggrieved by any decision rendered after a rehearing held or an appeal brought under RSA 170-E:36, IV may appeal the decision to the superior court.

§ 170-E:38 Operation Without a License. – Whenever the department is advised, or has reason to believe, that any entity is operating a child care facility or child-placing agency without a license or permit, it may make an investigation to ascertain the facts. If it finds that the child care facility or child-placing agency is operating or has operated without a license or permit, the department may report the results of its investigation to the attorney general or to the appropriate county attorney for prosecution.

§ 170-E:39 Advertising. – A child care agency, child care institution, or child-placing agency licensed or operating under a permit issued by the department may publish advertisements of the services for which it is specifically licensed or issued a permit under this subdivision. No person who is required to obtain a license or permit under this subdivision may advertise or cause to be published an advertisement soliciting or offering care for a child for care or placement unless the person has obtained the requisite license or permit.

§ 170-E:40 Investigation. –

I. If the department has reason to believe that state or federal funds solicited and received by a corporation for conduct of a child care facility or child-placing agency are not being used for the purpose for which the funds were awarded, or are being fraudulently used by the corporation or its members, or purportedly are being used for a facility or child-placing agency which is actually defunct, or are being used for a facility or child-placing agency which no longer carries a valid license or permit, the department shall report these facts to the attorney general and request an investigation of the corporation to determine if the corporation should be dissolved or whether other action should be taken against the corporation or its members.

II. The department shall conduct an investigation of any complaint of violations of any licensing or operating standards against permitted or licensed child care or child-placing agencies. All investigations shall be conducted at reasonable times, with the cooperation of other state or municipal authorities, if required, and may include unannounced visits. The commissioner shall request an annual narrative summary of complaints received by the department.

III. Records compiled during an investigation shall be confidential and shall not be made public by the department.

§ 170-E:41 Oaths; Subpoenas. –

I. The department shall have the power to administer oaths in any disciplinary proceedings.

II. Upon request of the commissioner, the attorney general shall be authorized, for good cause shown, to subpoena witnesses and to compel, by subpoena duces tecum, the production of papers and records in any disciplinary proceedings under this subdivision.

§ 170-E:42 Records. – Every child care facility and child-placing agency shall keep and maintain such records as the department prescribes pertaining to the admission, progress, health, and discharge or placement, or both, of children under the care of the facility or child-placing agency, and shall report relative to such matters to the department

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whenever called for, upon forms prescribed by rule. All records regarding children and all facts learned about children and their relatives shall be kept confidential by the child care facility, the child-placing agency, and the department.

§ 170-E:43 Notice of Death. – If any child under the control of any licensed child care agency or institution dies, the licensee shall give notice of such event to the department within 24 hours thereafter stating the date and cause of death, to the extent known, duration of the most recent illness, and the names and addresses of the attending physician and undertaker.

§ 170-E:44 Reports to the Department of Health and Human Services. –

I. Any child care facility or child-placing agency receiving a child for care or supervision from a foreign state or country shall report that child to the department of health and human services in the same manner as it is required for reporting other children pursuant to RSA 170-A:1.

II. A person other than a licensed child care institution or child-placing agency shall not receive a child from a foreign state or country without prior notice to and approval of the department of health and human services. Any placement of children shall conform to RSA 170-A and RSA 170-B:28.

III. The department of health and human services may require a guarantee that a child accepted for care or supervision from a foreign state or country will not become a public charge upon this state.

IV. The department of health and human services may enter into agreements with public or voluntary social agencies headquartered in states adjacent to this state regarding the placement of children in licensed foster family homes within the boundaries of this state if the agencies meet the standards and criteria required for license as a child-placing agency in this state. The agreements may allow foreign agencies to place and supervise children for whom they have responsibility with this state without regard to paragraph I. These agreements shall, however, include a requirement that the agencies cooperate fully with the department in its inquiry or investigation into the activities and standards of those agencies, and provide that the department of health and human services may, at any time upon 15 days' written notice to an agency by registered mail, void the agreement and require the observance of paragraph I.

V. The department of health and human services shall perform its duties under this section with the approval of the commissioner.

§ 170-E:45 Penalty. –

I. Any person shall be guilty of a misdemeanor who:

(a) Conducts, operates or acts as a child care facility or child-placing agency without a license or permit to do so in violation of RSA 170-E:27, I;

(b) Makes materially false statements in order to obtain or retain a license or permit;

(c) Fails to keep the records and make the reports required under this subdivision;

(d) Is required to obtain a license or permit under this subdivision and who advertises or causes to be published an advertisement for a service which is not authorized by any license or permit held;

(e) Violates any other provision of this subdivision or any rule adopted under RSA 541-A by the commissioner for the enforcement of this subdivision;

(f) Fails to comply with the requirements for notifying parents, legal guardians, or the department under RSA 170-E:27-a, I.

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II. Foster family homes which have not been licensed but which have been asked to receive children by the department or another child-placing agency on an emergency basis shall not be subject to the penalty provided in subparagraph I(a). The exemption provided in this paragraph is valid for a period of 30 days from the date of placement of the child in the home.

III. Each day a violation continues to exist shall constitute a separate offense.

§ 170-E:46 Injunctive Relief. – Any person may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this subdivision or of the rules adopted under RSA 170-E:34; and the court shall adjudge relief, by way of injunction, which may be mandatory or otherwise as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purpose of this subdivision and the rules adopted under it. In a prosecution under this subdivision, a defendant who relies upon the relationship of any child to himself has the burden of proof as to that relationship.

§ 170-E:47 License Remains in Effect. – Any license issued under this subdivision remains valid until its expiration date, unless revoked by the department, or until the date established by conditions placed on the license.

§ 170-E:48 Retaliation Prohibited. – A child care agency or child-placing agency license holder shall not retaliate, through discharge, harassment, or other discrimination, against an employee who in good faith reports a suspected violation of the provisions of this subdivision and rules adopted under it. Such retaliation shall constitute grounds for license revocation.

§ 170-E:49 Confidentiality and Investigations. – The department may request and shall receive cooperation from other state agencies in connection with investigations and licensure. Because certain information kept by other state agencies and requested by the department may be confidential, the department shall strictly observe the confidentiality requirements of the agency from which it receives information.