

PART 2

LICENSING

Sections 4 - 16

Licence application

A licence from the director is required to operate a child care facility other than a foster home.

Applications to operate a treatment centre must be approved by the Minister of Family Services and Housing.

Standards

1. An application for a licence must be accompanied by a written proposal [see section 4(2)] which in part, outlines the program to be provided, the need for the facility, the qualifications and training of the applicant including a curriculum vitae, a criminal reference and child abuse registry check; and a consent to release information regarding previous contact with the child and family services system.

This preliminary information will be reviewed by the director to determine if there is a need for the facility and the proposed program, and whether the applicant is suitable to provide residential care and supervision.

If the application is refused, the applicant will receive written notification of the decision and advised of their right to appeal to the Social Services Appeal Board.

2. Upon receiving preliminary approval the applicant must submit additional information as identified in Section 4(4) of the Regulation.
3. A licence may be issued by the director only after receipt of written information from the various authorities which indicates compliance with:
 - standards in legislation, regulations and bylaws as to building construction (Building Code) and zoning;
 - standards as to fire prevention and safety in legislation, regulations and bylaws; and
 - standards for sanitation, natural and artificial lighting, heating, plumbing, ventilation, water supply, sewage disposal and food handling.

Written approval of improvements or changes recommended by the fire, building and health authorities must be provided.

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Procedures

1. Upon receipt of the completed application, the Child Protection Branch will advise the applicant of the steps necessary to obtain zoning and building approvals.
2. The applicant will forward confirmation of approvals from zoning and building authorities to the Child Protection Branch. The required inspections will be coordinated through the Child Protection Branch.
3. The licensing coordinator conducts an on-site orientation to the licensing manual and a licensing review.
4. When the facility is in compliance with all requirements, the director will issue a licence to operate a child care facility.

Commentary

The following Public Health Regulations and By-Laws apply to child care facilities:

City of Winnipeg

- Sanitation - Regulation P. 210 - R3 - Division I
- Dwellings and Buildings - Regulation P. 210 - R3 - Division XII
- City of Winnipeg Minimum Standard of Housing Repair By-Law No. 19165
- City of Winnipeg Maintenance and Occupancy By-Law No. 4903/88
- City of Winnipeg Untidy and Unsightly Premises By-Law No. 762/74
- City of Winnipeg Food Services By-Law No. 2920/81

Other areas of the province

- Sanitation - Regulation P. 210 - R3 - Division I
- Dwellings and Buildings - Regulation P. 210 - R3 - Division XII
- Litter - Environment Act - Manitoba Regulation 92/88R
- Private Sewage Disposal Systems - Environment Act - Manitoba Regulation 95/88R
- Water Supplies - Regulation P. 210 - R3 - Division VII
- Food and Food Handling - Manitoba Regulation 204/83

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Terms and conditions of licence

Form of licence

Standard

1. Every licence issued shall:
 - be issued for a one-year period;
 - be in a form as the director may determine;
 - state the date of expiration;
 - designate the maximum number, the ages and sex of the children who may be placed in the facility;
 - be limited to a particular licensee and premises; and
 - state any other conditions on which the licence is issued.

Mixed facilities

Standard

Facilities proposing to provide service to children and adults will not be licensed as a child care facility unless a resident is transitioning to independence or an alternative long-term care arrangement.

The director may authorize the facility to provide care and maintenance for a former permanent ward for the purpose of assisting the ward to complete the transition to independence.

Continued placement of a resident, who is not a permanent ward, may also be considered by the director if an alternative source of funding has been identified, and a time-limited plan has been established to secure an alternative placement.

Commentary

Subject to section 5(2) of the regulation, facilities may make an application to the director, and the residential care licensing authority for adult facilities, to operate a facility with a specific adult(s) and children. The director must be satisfied that placing adults and children together would not be detrimental to the children; and is necessary to ensure continuity of service for the adult resident(s).

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*Children, sixteen years of age or over, may be placed in an adult facility if the director is of the opinion the placement is not detrimental to the child and is identified as a part of long-term planning for the child. **The placement is also subject to the approval of the adult licensing and program authorities.***

Change of location

Standard

1. Requests must be accompanied by the information required under Section 4(4), subsections (a), (c) to (l) and (o), of the regulation.

Commentary

Procedurally, a change of location will be treated similarly to a licence re-application. The initial request should be accompanied by the information in subsections (a),(c),(g),(h),(i),(j),(k), and (l) under Section 4(4) of the regulation.

Inspections will be required by the building, health and fire authorities regarding compliance with legislation, regulations, standards and by-laws following the preliminary approval of the change of location.

Upon approval, a new licence will be issued for a one-year period.

Renewal of licence

Commentary

Upon application, a licence may be renewed for two one-year periods by the director.

Standard

Approximately two to three months prior to the expiry date, a renewal form shall be forwarded to the licensee. An on-site inspection to confirm compliance shall be conducted by the licensing coordinator prior to renewal of the licence.

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Reapplication for licence

Standard

Approximately two to three months prior to the expiry date of the existing licence, an application will be forwarded to the licensee.

The licensing coordinator will request an inspection from the fire and health authorities. Written confirmation of compliance will be required prior to issuing a new licence.

An on-site licensing review shall be conducted by the licensing coordinator and the licensee advised of any outstanding requirements.

Variation of licence

Commentary

The director may vary the terms and conditions of the licence, including numbers, ages or sexes of the residents provided that the facility continues to meet the requirements of this regulation.

Standard

Requests for a variance must be submitted in writing to the director identifying: 1) the nature and reason for the variance, and 2) the anticipated length of time the variance may be required.

Written approval for the variance will be provided by the director.

Compliance orders

Commentary

If a facility is found to be in violation of the requirements of this regulation or its standards, the director will by written order, direct the licensee to take corrective measures. A time-frame will be provided, which will vary depending on the nature and severity of the violation and the impact on residents' safety.

Violations which compromise the immediate safety of the residents may result in a suspension or cancellation of the licence as outlined in Section 14.

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Failure to comply with these orders may result in the cancellation or suspension of the facility's licence.

Licence suspension and cancellation

Standards

1. When the director has reason to believe that the facility is in violation of the terms set out in Section 14 of this regulation, an investigation will be conducted to ensure the safety of the residents.
2. The director shall advise the licensee of the results of the investigation, stating the reason for cancellation or suspension of the licence, and advise the licensee of the right to appeal.
3. Where the investigation concludes that the safety, health or well being of the residents is, or may be in jeopardy, the director may immediately cancel the licence, or take whatever action is deemed necessary to ensure the safety of the residents.
4. When a licence is cancelled, the residents of the facility must be removed from the premises forthwith by the placing agency or jurisdiction.

Commentary

Where a police investigation is in progress, the director may not be at liberty to divulge the details of either the investigation or the allegations.

Reasons for suspension or cancellation

Standard

A written decision, stating the reason for the cancellation or suspension of the licence shall be delivered to the licensee by certified mail or courier, or in person.

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Right to appeal

Commentary

Section 8(5) of *The Child and Family Service Act* directs any person who is refused a licence for the operation of a child care facility other than a foster home or, whose licence is cancelled, suspended or not renewed by the director, may appeal the decision to the Social Services Appeal Board within 10 days of receiving the notice.

Section 16(1) of *The Social Services Appeal Board Act* notes,
“For each appeal, the appeal board must arrange the earliest possible hearing date. The hearing must not be commenced more than 30 days after the board receives the notice of appeal, unless the board at the request of the appellant, grants an extension.”

Section 23(1) of *The Social Services Appeal Board Act* advises,
“Any party to the appeal before the appeal board may appeal the board’s order to The Court of Appeal on any question involving the board’s jurisdiction or on a point of law, but only after obtaining leave to appeal from a judge of The Court of Appeal.”

Procedures

1. Any person aggrieved by the director’s decision or reasons for the refusal, cancellation, or suspension, may within ten (10) days after receipt of the notice, appeal in writing to the Social Services Appeal Board, 7th Floor – 175 Hargrave, Winnipeg, Manitoba, R3C 3R8.
2. Upon receipt of the written notice of appeal, the Social Services Appeal Board will schedule a hearing date.
3. The Social Services Appeal Board will request a report from the director.
4. The report will be distributed to the appellant and Appeal Board members prior to the date of the hearing.
5. The appellant and respondent may be represented by legal counsel at the hearing.
6. The Social Services Appeal Board will, within 30 days of the date of the appeal, consider the matter and, in writing, advise the appellant of its decision.
7. The appellant, if not in agreement with the decision of the Social Services Appeal Board, may within 10 days of receipt of the decision by the Committee, appeal the matter to the Court of Queen’s Bench.
8. Upon receipt of the notice of Appeal, the Court of Queen’s Bench will schedule a court date.

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9. The decision of the Court is final and the matter will not be considered further in any form.

Facility ceases operation

Commentary

Whether a facility voluntarily chooses to close, or the licence is not renewed, cancelled or suspended, the primary focus is provide an effective transition plan to assist with the replacement or discharge of the residents. Residents requiring immediate attention should be identified to the agency and the director.

Residents records are to be returned to the placing agency, to the organization or jurisdiction that placed the resident, the parent or guardian, or to the resident as determined by the Director.

The licence shall be returned to the director.