

# **Title 14 INDEPENDENT AGENCIES**

## ***Subtitle 31 OFFICE FOR CHILDREN***

### **Chapter 05 Licensing and Monitoring of Residential Child Care Programs**

**Authority: Article 41, §§6-101 and 6-104; Article 83C, §§2-102, 2-104, 2-113, 2-120, and 2-123—2-125; Education Article, §§8-301—8-303 and 8-401—8-417; Family Law Article, §§5-506, 5-508, 5-509, and 5-510; Health-General Article, §§2-104, 7-904, 8-404, 10-922, and 10-924; Annotated Code of Maryland**

#### **.01 Purpose.**

This chapter sets forth the process in Maryland for licensure of residential child care programs and monitoring of residential child care programs for children and youth, and establishes the procedures which applicants must follow in order to obtain licensure. The licensure and monitoring processes are designed to protect the health, safety, and well being of children placed in residential child care programs.

#### **.02 Scope.**

A. This chapter applies to residential child care programs licensed by the Department of Human Resources, the Department of Health and Mental Hygiene, and the Department of Juvenile Services, including the following programs for children:

- (1) Alternative living units;
- (2) Emergency shelter placement;
- (3) Group homes;
- (4) Mother-infant programs;
- (5) Nonpublic residential educational facilities;
- (6) Programs for medically fragile children;
- (7) Programs for pregnant adolescents;
- (8) Psychiatric respite care;

- (9) Residential crisis services;
- (10) State-operated residential educational facilities;
- (11) Secure care;
- (12) Therapeutic group homes; and
- (13) Wilderness programs.

B. Except as set forth in §C of this regulation, a person shall be licensed under this chapter and COMAR 14.31.06 and 14.31.07 before operating a private residential child care program.

C. This chapter does not apply to the care of children by:

- (1) A parent or guardian of the child;
- (2) An individual related to the child by blood or marriage within four degrees of consanguinity or affinity under the civil law rule;
- (3) An individual who:
  - (a) Exercises temporary care, custody, or control over the child at the request of a parent or guardian of the child; and
  - (b) Who is not otherwise required to be licensed;
- (4) An individual with whom the child is placed in individual family care or foster care by a licensed child placement agency, a court of competent jurisdiction, or agency as defined by Regulation .03 of this chapter, and who is otherwise required to be licensed;
- (5) A youth camp subject to certification by the Department of Health and Mental Hygiene;
- (6) A facility subject to the Certificate of Need process under State law;
- (7) A nonpublic residential school that is not approved to serve students with disabilities under COMAR 13A.05.02.12;
- (8) A facility listed in Article 83C, §2-117, Annotated Code of Maryland; or
- (9) A residential facility operated by the Department of Juvenile Services.

D. Special Licensing and Monitoring Requirements.

- (1) Special licensing and monitoring requirements which differ from or supplement the requirements of this chapter are applicable to the following:
  - (a) Nonpublic residential educational facilities;
  - (b) Secure care programs;

- (c) Wilderness programs;
- (d) Programs for medically fragile children;
- (e) Programs for children with developmental disabilities;
- (f) Shelter care programs;
- (g) Programs for pregnant adolescents; and
- (h) Mother-infant programs.

(2) Special licensing and monitoring requirements for the programs listed in §D(1) of this regulation appear in COMAR 14.31.07.

### **.03 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Agency" means the Department of Health and Mental Hygiene, the Department of Human Resources, or the Department of Juvenile Services.

(2) "Alternative living unit" means a residence owned, leased, or operated by a licensee that:

(a) Provides residential services for children who, because of a developmental disability, require specialized living arrangements;

(b) Admits not more than three children; and

(c) Provides 24 hours of supervision per unit, per day.

(3) "Applicant" means a person who seeks a license.

(4) "Aversive technique" means the use of painful or noxious stimuli to the body, which is intrusive to the individual's physical, mental, or emotional well being, to terminate challenging or maladaptive behavior.

(5) "Behavior plan" means a plan designed to modify a child's behavior through the use of clinically accepted techniques.

(6) "Child" means an individual younger than 21 years old, unless otherwise defined in the regulations of an agency that serves children in need of placement in a residential child care program.

(7) "Children's Cabinet" means those agencies directed by Executive Order:

(a) To examine Maryland's system of services to children and their families; and

(b) To facilitate ongoing improvements to this delivery system.

(8) "Community-based behavioral respite" means relief services provided by a community residential licensee designed to meet the individual behavioral needs of a child with a serious emotional disturbance for not more than 30 days in a community-based setting.

(9) "Corrective action plan" means a program's detailed remedy to correct deficiencies in the program's compliance with State licensing regulations and with other legal requirements identified by the licensing agency or other State or federal agency.

(10) "Day" means a calendar day.

(11) "Developmental disability" means a severe chronic disability of an individual that:

(a) Is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments;

(b) Is likely to continue indefinitely;

(c) Is manifested before the age of 22;

(d) Results in an inability to live independently without external support or continuing and regular assistance; and

(e) Reflects the need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are individually planned and coordinated for the individual.

(12) "Emergency shelter placement" means the immediate placement of a child in a residential child care program because the placing agency or individual satisfactorily documents that it is physically impossible to accomplish a planned placement as required by this chapter and good practice.

(13) "Employee" means an individual who works for a licensee for compensation.

(14) "Expansion request" means a request for materials required by the Governor's Office for Children under COMAR 14.31.02 of a licensed provider who wishes to expand a residential child care program to an additional location.

(15) "Facility" means the physical premises where a residential child care program is operated.

(16) "Group home" means a facility owned, leased, or operated by a licensee that provides:

(a) Residential services for youths such as care, diagnosis, training, education, and rehabilitation; and

(b) A group living experience.

(17) "Individualized educational program" means a plan for special education and related services designed to provide a free appropriate public education to a student with disabilities under 28 U.S.C. §1401 et seq. and COMAR 13A.05.01.

(18) "Interagency Rates Committee" means the Maryland Interagency Rates Advisory Committee constituted under COMAR 14.31.04 to establish State reimbursement rates for services to children in residential child care programs and other programs.

(19) "License" means the approval granted by a licensing agency to operate a private residential child care program.

(20) Licensee.

(a) "Licensee" means a corporation that has been granted a license to operate a residential child care program.

(b) "Licensee", unless the context indicates otherwise, includes the corporation's:

(i) Board of directors;

(ii) Officers;

(iii) Employees;

(iv) Agents;

(v) Assigns; and

(vi) Volunteers.

(21) "Licensing agency" means the agency designated by the Governor's Office for Children to be responsible for licensing a private residential child care program.

(22) "Management of disruptive behavior" means an agency-approved curriculum for managing challenging or aggressive behavior.

(23) "Mechanical support" means a mechanical device used to support an individual's proper body position, balance, or alignment.

(24) "Medically fragile child" means a child who is dependent upon any combination of the following:

(a) Mechanical ventilation for at least part of each day;

(b) Intravenous administration of nutritional substances or drugs;

(c) Other device-based respiratory or nutritional support on a daily basis, including tracheotomy tube care, suctioning, or oxygen support;

(d) Other medical devices that compensate for vital body functions; including:

(i) Apnea or cardiorespiratory monitors;

(ii) Renal dialysis; or

(iii) Other mechanical devices; or

(e) Substantial nursing care in connection with disabilities.

(25) "Monitoring" means the evaluation of a program's compliance with regulations.

- (26) "Mother infant programs" are residential child care programs that provide special services and residential care to children who are mothers and their infants.
- (27) "Nonpublic residential educational facility" means the residential facility of a nonpublic school program approved under COMAR 13A.05.02.12 for the placement of students with disabilities.
- (28) Parent.
- (a) "Parent" means a child's biological or adoptive parent.
- (b) "Parent", unless otherwise indicated, includes a child's guardian, or custodian or parent surrogate appointed under the Individuals with Disabilities Education Act.
- (29) "Physical plant" means the building or buildings in which a private residential child care program or state-operated program is operated.
- (30) "Placing agency" means the agency, individual, or entity that places a child in a private residential child care program or State-operated program.
- (31) "Program for pregnant adolescents" means a residential program that provides comprehensive prenatal care, dental care, delivery services, pediatric services, and day care arrangements for pregnant minors.
- (32) Program.
- (a) "Program" means a private residential child care program.
- (b) "Program", unless otherwise indicated, includes the physical plant.
- (33) "Psychiatric respite" means residential programs on hospital grounds in which children discharged from inpatient psychiatric hospitalizations receive transition services in anticipation of placement in a residential treatment or community-based setting.
- (34) "Quality assurance plan" means a plan submitted to the licensing agency by the licensee or applicant that documents the means by which achievement of goals and objectives established by the licensee will be measured.
- (35) Residential Child Care Program.
- (a) "Residential child care program" means an entity that provides care for children 24-hours-per-day within a structured set of services and activities that are designed to achieve specific objectives relative to the needs of the children served, including the provision of:
- (i) Food;
  - (ii) Clothing;
  - (iii) Shelter;
  - (iv) Education;
  - (v) Social services;

(vi) Health;

(vii) Mental health;

(viii) Recreation; or

(ix) Any combination of these services and activities.

(b) "Residential child care program" includes residential services for children in:

(i) Residential facilities for children with developmental disabilities;

(ii) Child care homes;

(iii) Child care institutions;

(iv) Therapeutic group homes; and

(v) Group homes.

(36) "Residential crisis services" means intensive mental health and support services that are:

(a) Provided to a child with mental illness who is expecting, or is at risk of, a psychiatric crisis that would impair the child's ability to function in the community;

(b) Designed to prevent a psychiatric inpatient admission of the child, provide an alternative to the psychiatric inpatient admission, or shorten the length of an inpatient stay; and

(c) Provided on a short-term basis in a community-based setting for not more than 30 days.

(37) "Secure care program" means a program that employs locked doors or other physical means to prevent egress by alleged or adjudicated delinquent children.

(38) "Shelter care" means care in:

(a) A shelter care program licensed solely for the temporary care of children for not more than 60 days; or

(b) A self-contained structured shelter care program licensed by the Department of Juvenile Services for the temporary care of children for not more than 90 days.

(39) "State-operated residential educational facility" means the Maryland School for the Deaf and the Maryland School for the Blind.

(40) "Submit" means to deliver a document:

(a) In a manner that ensures its receipt by the party to whom it is addressed; and

(b) Which is considered complete only upon actual receipt by that party.

(41) "Teen mother program" means a licensed residential program that provides care and services for children who are mothers with an infant.

(42) "Therapeutic group home" means a small private group home that provides residential child care as well as access to a range of diagnostic and therapeutic mental health services for children and adolescents who have mental disorders.

(43) "Treatment foster care" means a 24-hour substitute care program operated by a licensed child placement agency or local department of social services for children with a serious emotional, behavioral, medical, or psychological condition.

(44) "Variance" means an alternative to a specific licensing regulation.

(45) "Volunteer" means an individual who provides services without compensation at a residential child care program.

(46) "Waiver" means the setting aside of a specific licensing regulation.

(47) "Wilderness program" means a program:

(a) In which facilities and activities are related to nature as much as possible in a site that is left essentially in its natural state; and

(b) Where living and program quarters and activities are integrated into the natural environment.

## **.04 Organization and Administration.**

### **A. Incorporation.**

(1) Each applicant and licensee shall be incorporated and maintain their corporate status.

(2) The applicant shall submit to the licensing agency:

(a) A certified copy of the articles of incorporation and by-laws, before licensure and upon request of the licensing agency; and

(b) At least 45 days before the proposed implementation date, any changes in the:

(i) Corporate name;

(ii) Articles of incorporation; or

(iii) By-laws.

(3) Before it submits an application for licensure to the licensing agency, an out-of-State applicant shall register and qualify with the Department of Assessments and Taxation to do business in Maryland.

### **B. Financial Operation. The applicant shall:**

(1) Upon initial application, provide written documentation that the organization:

(a) Is solvent; and

- (b) Has access to the financial resources to operate for at least 6 months;
- (2) Base the financial operation of the program on an annual budget that reflects anticipated expenditures and sources of income;
- (3) Have a sound plan of financing to provide sufficient funds to operate the program;
- (4) Maintain insurance in the following categories:
  - (a) Fire;
  - (b) Casualty;
  - (c) Professional liability;
  - (d) General liability; and
  - (e) Directors' and officers' liability;
- (5) Comply with the legal requirements for unemployment compensation and workers' compensation;
- (6) Submit to the licensing agency an annual audit by an independent certified public accountant who is not:
  - (a) An employee or officer of the corporation;
  - (b) A member of the board of directors; or
  - (c) Related to an employee, officer, or director;
- (7) Provide the licensing agency access to financial records or financial statements, upon request;
- (8) Notify the licensing agency of any filing of bankruptcy, and keep the licensing agency informed of any legal actions resulting from the bankruptcy filing; and
- (9) Notify the licensing agency of any legal action related to the licensee's residential child care programs that is filed against the licensee, and the outcome of the legal action.

## **.05 Licensing Process.**

### **A. Initial Inquiries.**

- (1) An applicant initially shall direct inquiries for obtaining a license to the Governor's Office for Children in accordance with COMAR 14.31.02.
- (2) Based upon a completed proposal submitted by the applicant in accordance with COMAR 14.31.02, the Governor's Office for Children shall designate a licensing agency.

(3) The licensing agency shall send an application to the applicant upon referral from the Governor's Office for Children.

B. Application Process.

(1) An applicant shall submit a completed application within 6 months of receipt of the application from the licensing agency.

(2) Within 60 days after receipt of a complete application, authorized staff individuals at the licensing agency shall:

(a) Evaluate the application, including consideration of the factors listed in COMAR 14.31.02.08A;

(b) Inspect the proposed physical plant; and

(c) Propose to issue or deny the license.

C. Valid License. Unless revoked or suspended, a license is valid for a period of 2 years.

D. Separate License. A license is valid only for the program and the physical plant specified in the license application. A licensee shall obtain a separate license for each physical plant where a program is located.

E. False Information. A licensing agency may deny a new license or a renewed license if the applicant or licensee knowingly provides false information to the licensing agency or the Interagency Rates Committee.

F. Expansion.

(1) A licensee may not expand the number of beds for which it is licensed, unless the licensee:

(a) Has been serving children in the program without suspension or revocation and has not been subject to a corrective action plan regarding matters concerning the health and safety of children for at least 1 year; and

(b) Has written permission from its licensing agency.

(2) A licensee who does not meet the conditions of §F(1)(a) and (b) of this regulation shall seek a waiver under Regulation .11 of this chapter to expand a program.

G. A licensee may operate more than one program in the same facility if the programs are:

(1) Individually licensed, and the licenses for each program specifically allow for the licensure of the other program in the same facility; and

(2) Operated as discrete programs with clear separation of the children in each program.

H. License Renewal.

(1) A licensee seeking renewal of its license shall submit to the licensing agency a license renewal application 120 days before its license expires.

(2) The licensing agency shall propose to grant or deny a completed renewal application within 60 days of its determination that the application is complete.

(3) If the licensing agency is unable to redetermine the licensee's eligibility before the license expires, the licensing agency shall extend the license expiration date until the renewal application process is completed in accordance with the requirements of State Government Article, §10-226, Annotated Code of Maryland.

(4) If the licensing agency renews a license to the licensee, the licensee shall return the expired license to the licensing agency.

I. Program Closure. When a licensee closes its program, the license is invalid. Before the licensee closes its program, the licensee shall:

(1) Inform the licensing agency and any agency that has placed children in the program at least 30 days in advance of the closing;

(2) Submit a written plan for the removal of children from the program to the licensing agency for approval;

(3) Implement the plan for the removal of children subject to the oversight of the licensing agency; and

(4) Return the license to the licensing agency on the day the program closes.

J. Proposed License Denial. If the licensing agency proposes to deny an application for a license or renewal of a license under §E of this regulation, the licensing agency shall give written notice to the applicant or the licensee of the proposed denial that includes:

(1) The facts that warrant the proposed denial of the license or renewal of the license;

(2) Citation to the regulations upon which the proposed denial is based; and

(3) Notification that, before the denial of the license or renewal of the license, the applicant or licensee may request a hearing under the provisions of Regulation .10 of this chapter.

## **.06 Monitoring and Evaluation of Programs.**

A. Monitoring Activities.

(1) For monitoring purposes, the licensing agency may require the licensee to make its records, personnel, residents, and facilities available on an announced or unannounced basis:

(a) At any time, if the agency's visit concerns a matter regarding the health, safety, or proper care of the program's residents; or

(b) At a reasonable time during the program's business hours, if the visit concerns other matters.

(2) Monitoring activities may include:

(a) Reviews of financial, personnel, and child records;

(b) Interviews with staff individuals;

- (c) Interviews with children in care;
  - (d) Site inspections of the physical plant;
  - (e) On-site observations of the agency's program operations; and
  - (f) Any other information gathering pertinent to State law or this chapter.
- (3) The licensing agency shall monitor each program to evaluate its facilities, policies, and operations:
- (a) Before the issuance or renewal of a license;
  - (b) At the time of the mid-license period report; and
  - (c) Before the suspension or revocation of a license.

**B. Response to Complaints.**

- (1) The licensing agency shall initiate a response to complaints from any source about the licensee within 24 hours.
- (2) In responding to a complaint, the licensing agency may require the licensee to:
- (a) Make the program available for agency inspection as provided in §A of this regulation;
  - (b) Provide a written response to the complaint from the licensee; or
  - (c) Complete any additional appropriate procedure deemed necessary by the agency to ensure the safety and welfare of the program's residents.

**C. Mid-License Period Evaluation.** The licensing agency shall complete a mid-license period evaluation of each program as follows:

- (1) The licensing agency shall send notification to the licensee 60 days before the end of the first year of the license period that:
- (a) The program shall submit to the licensing agency a mid-license period report on or before the anniversary of the license issuance date;
  - (b) The mid-license period report shall include:
    - (i) A list of governing board members and officers;
    - (ii) The program's audit or audit review for the current year;
    - (iii) An operations budget for the current year; and
    - (iv) The licensee's current quality assurance plan; and
- (2) The licensing agency shall conduct a mid-license period review, including:

(a) Review of board minutes, personnel records, and children's records; and

(b) On-site inspection of the program.

D. Child Safety Concerns. If, at any time during the course of monitoring a program, the licensing agency's monitor has reason to believe that a child residing in a program has been subject to abuse or neglect, the monitor shall report that concern in accordance with Family Law Article, §§5-704 and 5-705, Annotated Code of Maryland.

## **.07 Interagency Monitoring of Residential Child Care Programs.**

A. A licensing or placing agency may request that a program be monitored by an interagency team if:

(1) Children placed by multiple agencies may be affected by suspected deficiencies in the program's compliance with State licensing or other legal requirements; or

(2) The expertise of another agency is required to adequately assess a program's compliance or remedy noncompliance with particular State licensing regulations or other legal requirements.

B. A request to constitute an interagency team shall be made to the Children's Cabinet, or its designee, in writing or in an oral presentation at an official meeting of the Children's Cabinet or its designee.

C. Upon receipt of a request, the Children's Cabinet or its designee shall:

(1) Decide whether to authorize formation of an interagency monitoring team;

(2) Identify the agencies to be represented on the team; and

(3) Specify the scope of the interagency monitoring initiative.

D. The interagency monitoring team shall submit a copy of its findings and recommendations for corrective action to the Children's Cabinet or its designee for final approval.

E. This regulation does not limit agencies from informally collaborating in the monitoring of a program upon mutual agreement.

## **.08 Corrective Actions.**

A. If the licensing agency determines through its monitoring and evaluation activities that a program is deficient in meeting the licensing requirements of this chapter, COMAR 14.31.06, or COMAR 14.31.07, the licensing agency shall:

(1) Assess the seriousness of the deficiencies;

(2) Require the program to develop a corrective action plan;

(3) Determine whether it is necessary during the pendency of the corrective action process to:

(a) Remove children currently placed in the facility; or

(b) Place a moratorium on future placements to the program;

(4) Evaluate and, if acceptable, approve the corrective action plan;

(5) Determine appropriate timelines for the completion of corrective actions;

(6) Conduct periodic monitoring of any program for which it required a corrective action plan:

(a) To assess the program's progress toward remedying the deficiencies; and

(b) To evaluate the program's viability as it is affected by the licensing agency's action; and

(7) Impose sanctions under Regulation .09 of this chapter, as appropriate, if the deficiencies are not remedied through implementation of corrective actions.

B. Upon determining that corrective actions are required to remedy deficiencies, the licensing agency shall give written notice to the program including:

(1) A description of the regulation violated or other program violation;

(2) A description of the sanction; and

(3) The requirements for the licensee's submission of a plan of correction to the licensing agency.

C. Corrective Action Plans.

(1) Within 10 days of receipt of a deficiency notice under §B of this regulation, the licensee shall submit a corrective action plan to the licensing agency for approval.

(2) The licensing agency shall review the corrective action plan by the effective date of the sanction indicated in the deficiency notice and inform the licensee whether the plan of correction has been accepted.

(3) If the licensee fails to submit an acceptable corrective action plan within the agency's timelines, the licensing agency may:

(a) Impose additional corrective action measures under this regulation;

(b) Provide additional time for the licensee to submit a revised corrective action plan; or

(c) Impose sanctions under Regulation .09 of this chapter.

D. Corrective Action Outcomes.

(1) If the licensing agency, at any time during the corrective action period, determines that the licensee has failed to fulfill the corrective action plan requirements or makes insufficient progress towards remedying deficiencies, the licensing agency may:

- (a) Require the removal of currently placed children from the program;
  - (b) Place a moratorium on future placements at the program; or
  - (c) For good cause, grant an extension of time for completion of a corrective action plan.
- (2) If the licensing agency determines, at the end of the prescribed corrective action period, that the licensee has failed to remedy deficiencies adequately, the agency shall impose sanctions under Regulation .09 of this chapter.

E. Services to Children at Programs with Corrective Action Plans.

- (1) The placing agency shall identify an expedited, interim placement for a child who must be removed from a program due to deficiencies.
- (2) If the licensing agency determines that children may no longer be placed in a program with uncorrected deficiencies, the licensing agency may grant a waiver for the placement of an individual child, or group of children, in the program based on the following considerations:
- (a) The seriousness of the deficiency and its implications for the child's health, safety, and welfare;
  - (b) Applicable legal requirements including:
    - (i) The child's individualized education program, if the child is a student with disabilities;
    - (ii) Any court order regarding the child's placement; and
    - (iii) Any other legal requirements that may govern in the child's placement;
  - (c) The medical recommendations of the child's treating physician;
  - (d) The availability of alternative placements; and
  - (e) The ability of the program to ensure safe and appropriate services for each child for whom the waiver is sought.

**.09 Sanctions.**

A. Causes for Sanctions. The licensing agency may impose sanctions upon a program for:

- (1) Violations of the regulations of this chapter, or COMAR 14.31.06 and 14.31.07;
- (2) Misrepresentations of fact to the licensing agency, a placing agency, the Office for Children, or the Interagency Rates Committee;
- (3) Submission of false financial information to the licensing agency, the Office for Children, or the Interagency Rates Committee;

(4) Failure to cooperate with the monitoring activities of the licensing agency or placing agencies under Regulation .06 of this chapter;

(5) Failure to prepare or implement an adequate corrective plan under Regulation .08 of this chapter when found to be in noncompliance with the licensing standards of COMAR 14.31.06; or

(6) Violations of other federal or State laws or regulations that jeopardize the safety or welfare of the program's residents.

#### B. Types of Sanctions.

(1) Sanctions may include the suspension, revocation, and limitation of the program's license.

(2) Limitations on a license may include restrictions on the:

(a) Number of children served by the program;

(b) Diagnostic and other characteristics of the population served by the program; and

(c) Elements of the program's services for which corrective action is deemed necessary by the licensing agency.

#### C. Revocation.

(1) Except as set forth in §D of this regulation, the licensing agency shall give the licensee notice of the intended revocation at least 20 days before a license is revoked.

(2) The licensing agency shall include in the notice:

(a) A statement of the regulation violated and the nature of the violation;

(b) The effective date of the revocation; and

(c) A statement describing the licensee's right under Regulation .10 of this chapter to a hearing before the revocation.

(3) Unless the licensee files an appeal of the revocation under Regulation .10 of this chapter, the licensing agency shall:

(a) Notify the placing agency of the revocation at least 20 days before the intended revocation; and

(b) Advise the placing agency to remove the children by the revocation date.

(4) Unless the licensee files an appeal under Regulation .10 of this chapter, the licensee shall relinquish care of the children in the program to the placing agency by the revocation date.

#### D. Other Sanctions.

(1) The licensing agency may suspend or limit a license for a violation of these regulations, which the licensing agency determines can be corrected within the period of suspension or limitation.

(2) Except as set forth in §E of this regulation, the licensing agency shall give the licensee notice of the intended action at least 20 days before a license is suspended or limited.

(3) The licensing agency shall include in the notice:

(a) A statement of the regulation violated and the nature of the violation;

(b) For proposed license suspensions:

(i) The length of the suspension; and

(ii) The effective date of the suspension;

(c) For proposed license limitation:

(i) The nature of the limitation on the program's license;

(ii) The duration of the limitation; and

(iii) The effective date of the limitation;

(d) Information about the licensee's responsibility to submit to the licensing agency a corrective action plan; and

(e) A statement describing the licensee's right under Regulation .10 of this chapter to a hearing before the imposition of the suspension or limitation.

(4) Unless the licensee files an appeal of the suspension or license limitation under Regulation .10 of this chapter, the licensing agency shall:

(a) Notify the placing agency of the intended suspension or limitation at least 20 days before a license is suspended or limited; and

(b) Advise the placing agency to remove the children by the effective date.

(5) Unless the licensee files an appeal under Regulation .10 of this chapter, the licensee shall:

(a) By the suspension date, relinquish care of the children in the program to the placing agency; or

(b) By the license limitation date, modify the program's operations in accordance with the license limitation, including relinquishment of the care of children to the placing agency as necessary.

#### E. Emergency Action.

(1) Notwithstanding any other requirement of these regulations, if the licensing agency determines that action is necessary to protect the health, safety, or welfare of the children or the general public, the licensing agency, without prior notice, may suspend, revoke, or limit a license pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland.

(2) If the licensing agency takes an emergency action, the licensing agency shall deliver to the licensee a notice that includes:

- (a) A statement of the specific regulation violated and the nature of the violation;
  - (b) A description of the action being taken by the licensing agency;
  - (c) For emergency suspensions, information about the licensee's responsibility to submit to the licensing agency a plan of correction; and
  - (d) A statement describing the licensee's right under Regulation .10 of this chapter to a hearing after the emergency action.
- (3) The licensing agency shall notify the placing agency of the emergency action and advise the placing agency to remove the children immediately.
  - (4) The licensee shall relinquish care of the children in the program to the placing agency.

F. Court Action. If the licensee does not relinquish care of the children as set forth under §§B—E of this regulation, the licensing agency shall take appropriate court action to enjoin the licensee from further caring for the children, including, if applicable, requesting that criminal action be taken pursuant to State law.

## **.10 Hearings.**

A. Right to Hearing. An applicant or licensee has a right to a hearing under the contested case provisions of the Maryland Administrative Procedure Act when:

- (1) A licensing agency proposes to deny an application for a license;
- (2) A licensing agency proposes to deny an application for renewal of a license;
- (3) A licensing agency intends to impose sanctions or to suspend or revoke the license; or
- (4) The licensee is subject to emergency action.

B. Request. A request for hearing under this regulation shall be submitted to the secretary of the licensing agency within 10 days after notice of the action about which the hearing is requested.

C. Notification. The licensing agency shall notify the placing agency of the final decision of the hearing.

## **.11 Injunctions.**

A. The licensing agency may seek to enjoin an institution, agency, society, individual, or set of individuals from operating a private residential child care program without a license or in violation of a term or condition of a license.

B. The licensing agency shall file the request for an injunction in the circuit court in the jurisdiction in which the program is located or has an established place of business.

## **.12 Variance and Waiver.**

### **A. Request for Variance.**

- (1) An applicant or licensee may submit to the licensing agency a written request for a variance.
- (2) An applicant or licensee shall demonstrate that the variance will:
  - (a) Meet or produce the intended effect of each regulation for which the variance is requested; and
  - (b) Maintain the health, safety, and well-being of the children in the program at or above the level required by the regulation for which the variance is requested.

### **B. Licensing Agency Action on Request for Variance.**

- (1) The licensing agency shall act on a request for variance and notify the applicant or licensee of its decision within 30 days of receipt of the request, except for good cause.
- (2) The licensing agency may grant the request for a variance if:
  - (a) The applicant or licensee submitted the request in accordance with the provisions of §A of this regulation;
  - (b) The applicant or licensee has complied with all other licensing regulations; and
  - (c) The licensing agency determines that the requested variance will meet the requirements of §A(2) of this regulation.
- (3) Unless otherwise specified in the licensing agency's decision, a variance remains in effect for the term of the license.

### **C. Request for Waiver.**

- (1) An applicant or licensee may submit to the licensing agency a written request for a waiver.
- (2) The applicant or licensee shall include in the request specific facts upon which the waiver is requested and shall demonstrate that:
  - (a) The waiver is necessary to meet the requirements of State or federal law; or
  - (b) It would be unduly burdensome and inequitable for the applicant or licensee to comply with the provisions of the regulation for which the waiver is requested; and
  - (c) Under the waiver, the program will maintain the health, safety, and well-being of the children in the program at or above the level required by the regulation for which the waiver is sought.

### **D. Licensing Agency Action on Request for Waiver.**

- (1) The licensing agency shall act on a request for a waiver and notify the applicant or licensee of its decision within 30 days of receipt of the request, except for good cause.

(2) The licensing agency may grant the request for a waiver if:

(a) The applicant or licensee submitted the request in accordance with the provisions of §C of this regulation;

(b) The waiver is consistent with State law;

(c) The health, safety, and well-being of the children in the program is not jeopardized by the granting of the waiver; and

(d) The licensing agency determines that the requested waiver meets the requirements of §C(2) of this regulation.

(3) Unless otherwise specified in the licensing agency's decision, a waiver remains in effect for the term of the license.

(4) Appeals. An applicant or licensee aggrieved by the decision of the licensing agency on a request for a variance or waiver may appeal the decision under Regulation .10 of this chapter.

### **.13 Amendments to Regulations.**

This chapter may not be amended unless the amendment is approved by the Office for Children, the Secretary of Health and Mental Hygiene, the Secretary of Human Resources, the Secretary of Juvenile Services, and the State Superintendent of Schools.