

22 M.R.S.A. § 7801

§ 7801. License or approval required

Effective: September 28, 2011

**1. License required.** Except as provided in subsection 3 or section 7805, a person, firm, corporation or association may not operate any of the following without having, subject to this Subtitle and to the rules adopted by the department under this Subtitle, a written license from the department:

**A.** A residential care facility;

**A-1.** In accordance with subparagraphs (1) and (2), an assisted housing program either directly or by contract providing to its residents any of the following services: personal care assistance, the administration of medication or nursing services.

(1) An assisted housing program may directly provide to its residents meals, housekeeping and chore assistance, case management and personal care assistance delivered on the site of congregate housing without obtaining a separate license to do so.

(2) An assisted housing program licensee may hold at any one time only one license under this subsection. A qualified assisted housing program may obtain a license for a different category under this subsection, upon application and surrender of the previous license;

**B.** A drug treatment center;

**C.** A children's home;

**D.** A child placing agency;

**E.** A child care facility licensed under section 8301-A, subsection 2; or

**F.** Repealed. Laws 2001, c. 645, § 4.

**G.** An adult day care program.

**2. Deleted.** Laws 1985, c. 770, § 4.

**3. Residential care facilities.** A residential care facility providing care to no more than 2 residents is not required to obtain a license under subsection 1, unless the license is required for the residential care facilities to receive payment from available state funds. The department may issue 2-year licenses and conduct modified surveys for compliance of those facilities as long as the facilities have relatively deficiency-free surveys with no history of health or safety

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violations.

**4. Repealed.** Laws 1993, c. 661, § 4, eff. April 12, 1994.

**5. Residents under age of 18 years.** Notwithstanding any age requirement, a person who is 17 years of age or older may be a resident in an adult foster home or boarding home without the home being required to be licensed as a children's home under chapter 1669 if the department determines that such a placement is in the best interests of that person.

**6. National accreditation.** A person, firm, corporation or association operating a program or facility described under subsection 1 that receives and maintains accreditation from a national accrediting body approved by the department must be deemed in compliance with comparable state licensing rules upon its submission to the department of written evidence of compliance including, but not limited to, national accreditation approval, reports, findings and responses. The department may review compliance under this subsection in response to a complaint against the program or facility.

22 M.R.S.A. § 7802

§ 7802. Issuance of license or approval

Effective: October 9, 2013

**1. Types of license or approval.** The department shall issue the following types of licenses.

**A.** A provisional license or approval shall be issued by the department to an applicant who:

(1) Has not previously operated the facility for which the application is made or is licensed or approved but has not operated during the term of that license or approval;

(2) Complies with all applicable laws and rules, except those which can only be complied with once clients are served by the applicant; and

(3) Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license or approval term.

**B.** The department shall issue a full license or approval to an applicant who complies with all applicable laws and rules.

**C.** A conditional license or approval may be issued by the department when the individual or agency fails to comply with applicable law and rules and, in the judgment of the commissioner, the best interest of the public would be so served by issuing a conditional license or approval. The conditional license or approval shall specify when and what corrections must be made during the term of the conditional license or approval.

**D.** A temporary license to operate a family foster home may be issued on a one-time basis when a preliminary evaluation of the home by the department has determined that the applicants are capable of providing foster

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care, in accordance with applicable laws and rules relating to minimum standards of health, safety and well-being, except that it is not possible to obtain a fire safety inspection in accordance with section 8103 prior to licensure and there are no obvious fire safety violations and, in the judgment of the commissioner, the best interest of the public will be so served by issuing a temporary license.

**E.** A 2-year full license may be issued by the department for a residential care facility or a congregate housing service program as long as it is in substantial compliance with licensing rules and has no history of health or safety violations.

**1-A. Consolidation of functions.** All staff performing general licensing functions within the Bureau of Child and Family Services, including the out-of-home abuse and neglect investigating team when investigating pursuant to section 5005, subsection 3, paragraph C, shall be consolidated as a single organizational unit.

**2. Term of license or approval; compliance visits.**

**A.** The provisional license or approval shall be issued for a minimum period of 3 months or a longer period, as deemed appropriate by the department, not to exceed 12 consecutive months.

**B.** The terms of full licenses or approvals are as follows.

(1) Except as provided in subparagraphs (2) to (7), the term of all full licenses and approvals issued pursuant to this chapter is for one year or the remaining period of a conditional or provisional license that has been issued for less than one year.

(2) The term of a children's residential care facility license is for 2 years.

(3) The term of a drug treatment center license may be for either one or 2 years.

(4) The term of a family foster home or specialized foster home license is for 2 years.

(5) The term of a child care facility license issued under section 8301-A, subsection 2 is for 2 years.

(6) The term of a home day care certificate issued under section 8301-A, subsection 3 is for 2 years.

(7) The term of an adult day care program license pursuant to chapter 1679 is for either one or 2 years at the discretion of the department.

**C.** The conditional license shall be issued for a specific period, not to exceed one year, or the remaining period of the previous full license, whichever the department determines appropriate based on the laws and rules violated.

**C-1.** The term of a temporary family foster home license shall be for a specific period not to exceed 120 days.

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**D.** The department shall inspect for continued compliance with applicable laws and rules prior to the expiration of the license or approval.

**E.** Residential care facilities and congregate housing services programs for which a license has been issued must be periodically inspected for continued compliance with applicable laws and rules under the rules to be established by the department. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

**3. Failure to comply with applicable laws and rules.** In taking action pursuant to this subsection, the department shall notify the licensee of the opportunity to request an administrative hearing or shall file a complaint with the District Court in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.<sup>1</sup>

**A.** When an applicant fails to comply with applicable law and rules, the department may refuse to issue or renew the license or approval.

**B.** If, at the expiration of a full or provisional license or approval, at the expiration of a temporary family foster home license or during the term of a full license or approval, the facility fails to comply with applicable law and rules and, in the judgment of the commissioner, the best interest of the public would be served, the department may issue a conditional license or approval, or change a full license or approval to a conditional license or approval. Failure by the conditional licensee to meet the conditions specified by the department shall permit the department to void the conditional license or approval or refuse to issue a full license or approval. The conditional license or approval shall be void when the department has delivered in hand or by certified mail a written notice to the licensee or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term “licensee” means the person, firm, corporation or association to whom a conditional license or approval has been issued.

**C.** Whenever, upon investigation, conditions are found which, in the opinion of the department, immediately endanger the health or safety of persons living in or attending a facility, the department may request the District Court for an emergency suspension pursuant to Title 4, section 184, subsection 6.

**D.** Any license or approval issued under this subtitle may be suspended or revoked for violation of applicable law and rules, committing, permitting, aiding or abetting any illegal practices in the operation of the facility or conduct or practices detrimental to the welfare of persons living in or attending the facility.

When the department believes that a license or approval should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5, chapter 375.

**4. Subsequent application for a full license or approval.** Subsequent to any of the following actions, a subsequent application for a full license or approval may be considered by the department when the deficiencies identified by the department have been corrected:

**A.** Issuance of a conditional license or approval;

**B.** Refusal to issue or renew a full license or approval;

**C.** Revocation or suspension of a full license or approval;

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D. Refusal to issue a provisional license or approval; or

E. Expiration of a temporary family foster home license.

**5. Appeals.** Any person aggrieved by the department's decision to take any of the following actions, may request an administrative hearing, as provided by the Maine Administrative Procedure Act, Title 5, chapter 375<sup>1</sup>:

A. Issue a conditional license or approval;

B. Amend or modify a license or approval;

C. Void a conditional license or approval;

D. Refuse to issue or renew a full license or approval;

E. Refuse to issue a provisional license or approval; or

F. Refuse to issue a temporary family foster home license.

**6. Time limit on reapplication after denial or revocation.** The following time limit applies to a reapplication after denial or revocation.

A. When a license or certificate for a child care facility or a family child care provider has been denied or revoked on one occasion, the applicant or licensee may not reapply for a license or certificate for a child care facility or a family child care provider for a period of one year from the effective date of the denial or revocation decision if not appealed, or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.

B. If a license or certificate for a child care facility or a family child care provider has been denied or revoked on 2 occasions, the applicant or licensee may not reapply for a license or certificate for a child care facility or a family child care provider for a period of 2 years from the effective date of the second denial or revocation decision if the decision is not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.

C. If a license or certificate for a child care facility or a family child care provider has been denied or revoked on 3 occasions, the applicant or licensee may not receive another license or certificate for the care of children.

**7. Rules.** The department may adopt rules necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.<sup>2</sup>

22 M.R.S.A. § 7803

§ 7803. Repealed. Laws 1983, c. 386, § 3

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22 M.R.S.A. § 7804

§ 7804. Right of entry

The department shall have the right of entry to any facility licensed under this subtitle, at any reasonable time in order to determine the state of compliance by the facility to applicable laws and rules.

To inspect any facility which the department knows or believes is operated without a license, the department may enter only with the permission of the owner or person in charge or with a search warrant from the District Court authorizing entry and inspection.

Any application for a license under this subtitle shall constitute permission for entry and inspection to verify compliance with applicable law and rules.

22 M.R.S.A. § 7805

§ 7805. Tribally licensed facilities

With respect to the placement care and funding of care of any Indian child as defined in the Indian Child Welfare Act, 25 United States Code, Section 1901, et seq., this Subtitle does not apply to any Indian foster family home, adoptive home or other facility licensed by a federally recognized Indian tribe in this State pursuant to that Act.

22 M.R.S.A. § 7806

§ 7806. Confidentiality guidelines

As a condition of licensure under this subtitle, the department shall require entities described in section 7801, subsection 1, paragraphs A, A-1, B and C to develop policies for releasing nontreatment information about a resident to law enforcement agencies, schools, parents, guardians or other appropriate public agencies. The department shall establish by rule a model resident information confidentiality policy for entities subject to this section. Rules adopted under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.<sup>1</sup>

22 M.R.S.A. § 7807

§ 7807. License not required

A license is not required to operate an independent housing with services program, as defined in section 7852.

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