

T. C. A. T. 49, Ch. 1, Pt. 11, Refs & Annos

T. C. A. § 49-1-1101

**§ 49-1-1101. Approval of certain child care programs by commissioner**

**Effective: August 5, 2013**

(a) The commissioner of education, acting through the commissioner's authorized agents and pursuant to regulations of the state board of education that are adopted pursuant to § 49-1-302(1), shall be responsible for inspecting and approving those child care programs subject to the state board's jurisdiction pursuant to § 49-1-302(1).

(b) The commissioner has the authority to issue certificates of approval from the department of education for those child care programs that meet the child care standards of the board, and the commissioner shall be responsible for enforcing the board's standards for such programs.

T. C. A. § 49-1-1102

**§ 49-1-1102. Definitions**

**Effective: August 11, 2009**

As used in this part, unless the context otherwise requires:

(1) "Care giver," "care givers," "care provider" or "care providers" means the person, persons, entity or entities directly responsible for providing for the supervision, protection and basic needs of the child;

(2) "Child care" means the provision of supervision, protection and, at a minimum, the basic needs of a child or children for three (3) or more hours a day, but less than twenty-four (24) hours a day. Care for a child of twenty-four (24) hours duration is "residential child care," which is licensed by the department of children's services pursuant to title 37, chapter 5, part 5. The department of human services licenses "child care agencies" providing child care in "child care centers," "group child care homes" or "family child care homes" as defined in § 71-3-501;

(3) "Child care program" means any place or facility operated by any person or entity that provides child care for children in a before or after school based program operated by a local board of education pursuant to § 49-2-203(b)(11), a public school administered early childhood education program, a church affiliated program operated pursuant to § 49-50-801, or a federally funded early childhood education program such as a Title I program, a school-administered head start or an even start program, state-approved Montessori school programs and a program operated by a private school as defined by § 49-6-3001(c)(3)(A)(iii);

(4) "Child or children" means a person or persons under eighteen (18) years of age;

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(5) "Commissioner" means the chief administrative officer in charge of the department of education; and

(6) "Department" means the department of education.

T. C. A. § 49-1-1103

§ 49-1-1103. Basis for approval; regulations; certificate application; temporary certificate; non-transferability of certificate; transfer of operation to circumvent approval laws or regulations; fees

Effective: August 5, 2013

(a)(1) All persons or entities operating a child care program must be certified by the department of education as provided by this part.

(2)(A) The state board of education has authority to issue regulations pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 2, for the issuance of certificates of approval of any persons or entities subject to this part and enforcement of appropriate standards for the health, safety and welfare of children in their care.

(B) To the extent not inconsistent with this part, the regulations of the department that are in effect on July 1, 2000, shall remain in force and effect until modified by regulatory action of the department.

(3) The state board of education's regulations of child care programs shall be developed and the continued approval of the certification status of a child care program shall be based upon the following criteria:

(A) The safety, welfare and best interests of the children in the care of the program;

(B) The capability, training and character of the persons providing or supervising the care to the children;

(C) The quality of the methods of care and instruction provided for the children;

(D) The suitability of the facilities provided for the care of the children; and

(E) The adequacy of the methods of administration and the management of the child care program, the program's personnel policies and the financing of the program.

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(b)(1) The department shall assist applicants or certificate holders in meeting the child care standards of the department, unless the circumstances demonstrate that further assistance is not compatible with the continued safety, health or welfare of the child in the program's care and that disapproval of the program's certificate is warranted.

(2) If a certificate holder is denied the renewal of a certificate or if the certificate is revoked, or if any applicant for a certificate cannot meet the standards, then the department shall offer reasonable assistance to the parents, guardians or custodians of the child in the planning for the placement of the child in other child care programs, in licensed child care agencies or in other suitable care.

(c) Application for a certificate to operate a child care program shall be made in writing to the department in the manner that the department determines.

(d)(1) If the department determines that the applicant has presented satisfactory evidence that the facility that is proposed for the care of children has received fire safety and environmental safety approval, that the applicant and the personnel who will care for the children are capable in all substantial respects to care for the children and that the applicant has the ability and intent to comply with the certificate of approval law and regulations, the department shall issue a temporary certificate of approval to the applicant.

(2)(A) The purpose of the temporary certificate is to permit the certificate applicant to demonstrate to the department that it has complied with all approval laws and regulations applicable to its classification prior to issuance of an initial annual certificate of approval.

(B) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted certificate that limits the program's authority in one (1) or more areas of operation.

(C) Within ninety (90) days of the issuance of the temporary certificate, the department shall determine if the applicant has complied with all regulations governing the classification of the child care program for which the application was made.

(3) The department may extend the temporary certificate for a period of forty-five (45) days if the department determines that the applicant has clearly demonstrated that it intends to, and will be able to, achieve compliance with all approval laws and regulations within the forty-five-day extension period and if the safety and welfare of the children in care of the applicant are not compromised by the extension.

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(4)(A)(i) If the department determines that the applicant for any certificate of approval has complied with all licensing regulations for the classification of child care program for which application was made, the department shall issue an annual certificate of approval.

(ii) If the department determines that the conditions of the applicant's facility, its methods of care or other circumstances warrant, it may issue a restricted certificate that limits the agency's authority in one (1) or more areas of operation.

(B) The certificate holder shall post the certificate in a clearly visible location as determined by the department so the parents or other persons visiting the program can readily view the certificate and all of the information on the certificate.

(C)(i) The certificate shall describe the ownership or controlling entity of the child care program, the person who is charged with the day-to-day management of the child care program, and, if the program is owned by a person other than the director or if the program is under the ownership, direction or control of any person or entity who is not also the on-site director or manager of the program, the certificate shall also state the corporate or other name of the controlling person or entity, its address and telephone number where the parents, guardians or custodians may have contact regarding the program's operations.

(ii) If the child care program is operated by a public school or a private nonprofit entity and is subject to the control or direction of a school board, or board of directors or other oversight authority, the certificate shall list the name, address and telephone number of the administrative officer in charge of the program or the administrative officer's designee or, if the child care program is not operated by a school system, the chair of the board or other chief executive officer of such controlling body.

(5) In granting any certificate, the department may limit the total number of children who may be enrolled in the program, regardless of the program's physical capacity or the size of its staff.

(6) If the department fails to issue or deny an annual certificate or extend the temporary certificate within ninety (90) days of the granting of the temporary certificate, the temporary certificate shall continue in effect, unless suspended, as provided in § 49-1-1107, until such determination is made. If an annual certificate of approval is denied following the issuance of a temporary certificate of approval, and if a timely appeal is made of the denial of the annual certificate of approval, the temporary certificate of approval shall remain in effect, unless suspended, until the advisory council renders a decision regarding the denial of the annual certificate of approval.

(7) If a temporary certificate is denied, or if an annual certificate is denied or restricted, the applicant may appeal the denial or restriction as provided in § 49-1-1107.

(e)(1) Except as provided in this subsection (e), no certificate for a child care program shall be transferable, and the

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transfer by sale or lease, or in any other manner, of the operation of the program to any other person or entity shall void the existing certificate immediately and any pending appeal involving the status of the certificate and the program shall be required to close immediately. If the transferee has made application for and is granted a temporary certificate, the program may continue operation under the direction of the new certificate holder. The new certificate holder in such circumstances may not be the transferor or any person or entity acting on behalf of the transferor.

(2) If the department determines that any person or entity has transferred nominal control of a program to any persons or entities who are determined by the department to be acting on behalf of the purported transferor in order to circumvent a history of violations of the certificate law or regulations or to otherwise attempt to circumvent the certificate law or regulations or any prior certificate actions instituted by the department, the department may deny the issuance of any certificate to the applicant. The denial of the certificate may be appealed as provided in § 49-1-1107.

(3)(A) The certificate of any program shall not be voided nor shall any pending appeal be voided pursuant to this subsection (e) solely for the reason that the program is subject to judicial orders directing the transfer of control or management of a child care program or its certificate to any receiver, trustee, administrator or executor of an estate, or any similarly situated person or entity.

(B) If the current certificate holder dies, and provided that no certificate violations require the suspension, denial or revocation of the agency's certificate, the department may grant family members of the certificate holder, or administrators or executors of the certificate holder, a temporary certificate to continue operation for a period of ninety (90) days. At the end of such period, the department shall determine whether an annual or extended certificate should be granted to a new certificate holder as otherwise provided in this section.

(C) Nothing in this subsection (e) shall be construed to prevent the department from taking any regulatory or judicial action as may be required pursuant to the certificate laws and regulations that may be necessary to protect the children in the care of such program.

(f)(1) Following the expiration of a least one (1) annual certificate, the department may issue an extended certificate to a certificate holder who seeks renewal of an existing certificate, if the department determines that the certificate holder has demonstrated that its methods of child care and its adherence to laws and regulations governing certificates for child care programs are clearly appropriate to justify an extended certificate period. An extended certificate of approval may not be granted as the first certificate immediately following any temporary certificate of approval.

(2) The department may by rule establish any criteria for the issuance of an extended certificate; provided, that no extended certificate shall exceed three (3) years' duration.

(3) At the time renewal of the certificate is sought, or at any other time during the certificate period, the department may reduce the period of the extended certificate to a shorter period if it determines that the certificate holder has failed to demonstrate continued adherence to the requirements for the issuance of the extended certificate. The

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certificate holder may appeal such action as provided in § 49-1-1107.

(4) The issuance of an extended certificate shall not be construed in any manner to prevent the department from suspending or revoking the certificate, or placing a child care program on probation, if it determines that such action is appropriate.

**T. C. A. § 49-1-1104**

**§ 49-1-1104. Injunctions against unapproved operations**

**Effective: August 11, 2009**

(a) The department may, in accordance with the laws of this state governing injunctions, maintain an action in the name of the state to enjoin any person, partnership, association, corporation or other entity from establishing, conducting, managing or operating any place or facility providing services to children without having a certificate as required by law, or from continuing to operate any such place or facility following suspension of a certificate or following the effective date of the denial or revocation of a certificate.

(b) In charging any defendant in a complaint for injunction, it shall be sufficient to charge that the defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a place, home or facility of any kind that is a child care program as defined in this part or to charge that the defendant is about to do so without having in effect a certificate as required by law, or that the defendant continues to operate any such place or facility following suspension of a certificate, or following the effective date of the denial or revocation of a certificate, without averring any further or more particular facts concerning the case. Refusal to obey the inspection order may be punished as contempt.

**T. C. A. § 49-1-1105**

**§ 49-1-1105. Criminal violations**

**Effective: August 11, 2009**

(a) Any person or entity operating a child care program without being certified by the department or who continues to operate such program while a suspension of the certificate is in effect, or who operates a child care program following the effective date of a denial or revocation of a certificate, commits a Class A misdemeanor.

(b) Each day of operation without an effective certificate constitutes a separate offense.

(c)(1) It is unlawful for any person who is an operator, certificate holder or employee of a child care program to make any statement, whether written or verbal, to a parent or guardian of a child in the care of such program, to any state or local official having jurisdiction over such program, or to any law enforcement officer, knowing the statement is false, including, but not limited to, statements regarding:

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- (A) The number of children in the child care program;
  - (B) The area of the child care program used for child care; or
  - (C) The credentials, licensure or qualification of any care giver, employee, substitute or volunteer of the child care program.
- (2) In order for subdivision (c)(1) to apply, the falsity of the statement must place at risk the health or safety of a child in the care of the child care program.
- (3) A violation of subdivision (c)(1) is a Class A misdemeanor.
- (4) This subsection (c) includes statements made in any child care program certificate application that misrepresents or conceals a material fact that would have resulted in the certificate being denied.
- (5) In addition to any punishment authorized under this subsection (c), the department may also take any certificate action authorized under this part.

**T. C. A. § 49-1-1106**

**§ 49-1-1106. Inspection of persons or entities providing child care**

**Effective: August 11, 2009**

(a) It is the duty of the department, through its duly authorized agents, to inspect at regular intervals, without previous notice, all child care programs or suspected child care programs.

(b)(1) The department is given the right of entrance, privilege of inspection, access to accounts, records and information regarding the whereabouts of children under care for the purpose of determining the kind and quality of the care provided to the children and to obtain a proper basis for its decisions and recommendations.

(2) If refused entrance for inspection of a certified or suspected child care program, the chancery or circuit court of the county where the approved or suspected child care program may be located may issue an immediate ex parte order permitting the department's inspection upon a showing of probable cause, and the court may direct any law enforcement officer to aid the department in executing the order and inspection. Refusal to obey the inspection order may be punished as contempt.

(3) Except where court orders prohibit or otherwise limit access, parents or other caretakers of children in the care of a child care program certified pursuant to this part shall be permitted to visit and inspect the facilities and observe the methods for the care of their children at any time during which the children are in the care of the program and, except those records of other children and their parents or caretakers, shall further be permitted to inspect any records of the program that are not privileged, or are not otherwise confidential, as provided by law or regulation, and the parents' or caretakers' access for these purposes shall not be purposely denied by the program.

(c) Any violation of the rights given in this section is a Class A misdemeanor.

**T. C. A. § 49-1-1107**

**§ 49-1-1107. Violations of certificate regulations; probation; civil penalties, suspension, denial, and revocation of certificates; appeal procedures**

**Effective: August 5, 2013**

(a) If any complaint is made to the department concerning any alleged violation of the laws or regulations governing a child care program, the department shall investigate the complaint and shall take such action as it deems necessary to protect the children in the care of the program.

(b)(1) If, during the certificate period, the department determines that a child care program is not in compliance with the laws or regulations governing its operation, and if after reasonable written notice to the program of the violation, the department determines that the violation remains uncorrected, the department may place the certified program on probation for a definite period of not less than thirty (30) days nor more than sixty (60) days as determined by the department, and the department shall require the posting by the program of the notice of probation. The department shall provide the program a written basis describing the violation of the certificate rules that support the basis for the probationary status.

(2)(A) If placed on probation, the program shall immediately post a copy of the probation notice, together with a list provided by the department of the violations that were the basis for the probation, in a conspicuous place as directed by the department and with the program's certificate, and the program shall immediately notify in writing the custodians of each of the children in its care of the program's status, the basis for the probation and of the program's right to an informal review of the probationary status.

(B) If the program requests an informal review within two (2) business days of the imposition of probation, either verbally or in writing, to the department's program staff that imposed the probation, the department shall informally review the probationary status by a child care program staff person or other designee who was not involved in the decision to impose the probation. The program may submit any written or oral statements as argument to the child care program staff person or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means. The child care

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

(3) If the child care program staff person or designee did not lift the probation under subdivision (b)(2)(B), the program may also appeal such action in writing to the commissioner within five (5) business days of the receipt of the notice of the child care program staff's or designee's decision regarding the program's probationary status as determined in subdivision (b)(2)(B). If timely appealed, the department shall conduct an administrative hearing pursuant to the contested case provisions of the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 3, concerning the department's action within fifteen (15) business days of receipt of the appeal, and shall render a decision in writing within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(4) This subsection (b) shall be discretionary with the department, and shall not be a prerequisite to any certificate action, to impose a civil penalty or to suspend, deny or revoke a certificate of a child care program.

(c)(1) If the department determines that there exists any violation with respect to any person or entity required to be approved pursuant to this part, the department may assess a civil penalty against such person or entity for each separate violation of a statute, rule or order pertaining to such person or entity in an amount ranging from fifty dollars (\$50.00) for minor violations up to a maximum of one thousand dollars (\$1,000) for major violations or violations resulting in death or injury to a child as defined in the rules of the department. Each day of continued violation constitutes a separate violation.

(2) The department shall by rule establish a graduated schedule of civil penalties designating the minimum and maximum civil penalties that may be assessed pursuant to this subsection (c). In developing the graduated civil penalty procedure, the following factors may be considered:

(A) Whether the amount imposed will be a substantial economic deterrent to the violator;

(B) The circumstances leading to the violation and the program's history of violations;

(C) The extent of deviation from the statutes, rules or orders governing the operation of the child care program, the severity of the violation, including specifically the level of risk of harm to the children in care of the person or entity caused by the violation, and the penalty may be further classified based upon whether the violation resulted in the issuance of an order of summary suspension, denial or revocation of the certificate of the program and whether death or injury of a child occurred as a result of violation;

(D) The economic benefits gained by the violator as a result of noncompliance;

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- (E) The program's efforts to comply with the licensing requirements; and
  - (F) The interest of the public.
- (3) The department shall assess the civil penalty in an order that states the reasons for the assessment of the civil penalty, the factors used to determine its assessment and the amount of the penalty.
- (4) The order may be served on the certificate holder personally by an authorized agent of the department who shall complete an affidavit of service, or the order may be served by certified mail, return receipt requested.
- (5) The certificate holder may appeal the penalty to the child care advisory council by filing a request for an appeal in writing with the commissioner within ten (10) days of the service of the order.
- (6)(A) Civil penalties assessed pursuant to this subsection (c) shall become final ten (10) days after the date an order of assessment is served if not timely appealed, or, if timely appealed, within seven (7) days following entry of the child care advisory council's order unless the order is stayed.
- (B) If the violator fails to pay an assessment when it becomes final, the department may apply to the chancery court for a judgment and seek execution of the judgment.
- (C) Jurisdiction for recovery of such penalties shall be in the Chancery Court of Davidson County.
- (7) All sums recovered pursuant to this subsection (c) shall be paid into the state treasury, but shall be earmarked to be used by the department exclusively to improve child care quality in this state by funding activities that include, but are not limited to, child care provider training activities, but excluding any costs associated with conducting criminal background checks.
- (8) The provisions of this subsection (c) relative to civil penalties shall be discretionary with the department, and shall not be a prerequisite to any certificate action to suspend, deny or revoke a certificate of a child care program. Civil penalties may also be imposed in conjunction with the probation, suspension, denial or revocation of a certificate.
- (d)(1) If the department determines that any applicant for a conditional certificate or for the renewal of an existing certificate has failed to attain, or an existing certificate holder has failed to maintain, compliance with certificate laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance

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with certificate laws or regulations, the department may deny the application for the new or renewed certificate or may revoke the existing certificate; provided, that the department at any time may deny a conditional certificate if the applicant fails to meet the initial requirements for its issuance; and provided, further, if the department determines that repeated or serious violations of certificate laws or regulations warrant the denial or revocation of the certificate, then, notwithstanding any provisions of § 4-5-320 or this subsection (d) to the contrary, the department may seek denial or revocation of the certificate regardless of the program's demonstration of compliance either before or after the notice of denial of the application or after notice of the revocation.

(2) Notwithstanding § 4-5-320, the notice of denial or revocation may be served personally by an authorized representative of the department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.

(3) If application for the temporary, annual or extended certificate is denied or if an existing certificate is revoked, the applicant may appeal the denial or revocation by requesting in writing to the department a hearing before the child care advisory council within ten (10) days of the personal delivery or mailing date of the notice of denial or revocation. Failure to timely appeal shall result in the expiration of any existing certificate immediately upon the expiration of the time for appeal.

(4) The hearing upon the denial or revocation shall be heard by the child care advisory council within thirty (30) days of the date of service of the notice of denial or revocation; provided, that, for good cause as stated in an order entered on the record, the council or the administrative law judge may continue the hearing. In order to protect the children in the care of the program from any risk to their health, safety and welfare, the council or administrative law judge shall reset the hearing at the earliest date that circumstances permit.

(5)(A) If timely appeal is made, pending the hearing upon the denial or revocation, the child care program may continue to operate pending the decision of the council unless the certificate is summarily suspended as provided in subsection (e).

(B) The council, as part of its decision regarding the status of the applicant's application for a certificate or the certificate holder's certificate, may direct that the child care program be allowed to operate on a probationary or conditional status, or may grant or continue the certificate with any restrictions or conditions on the program's authority to provide care.

(e)(1) Subject to this subsection (e), if the department determines at any time that the health, safety or welfare of the children in care of the child care program imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the certificate may be ordered by the department pending any further proceedings for revocation, denial or other action. If the department determines that revocation or denial of the certificate is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by this part.

(2) The department shall set forth with specificity in its order the legal and factual basis for its decision stating in the

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order the specific laws or regulations that were violated by the program, and shall state with specificity in the order the reasons that the issuance of the order of summary suspension is necessary to adequately protect the health, safety or welfare of children in the care of the child care program. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or that have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.

(3) In issuing an order of summary suspension of a certificate the department shall use, at a minimum, the following procedures:

(A) The department shall proceed with the summary suspension of the program's certificate and shall notify the certificate holder of the opportunity for an informal hearing within three (3) business days of the issuance of the order of summary suspension before the department;

(B) The notice provided to the certificate holder may be provided by any reasonable means and, consistent with subdivision (e)(2), shall inform the certificate holder of the reasons for the action or intended action by the department and of the opportunity for an informal hearing as permitted by subdivision (e)(3)(C);

(C) The informal hearing described by this subdivision (e)(3) shall not be required to be held under the contested case provisions of the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 3. The hearing is intended to provide an informal, reasonable opportunity for the certificate holder to present to the hearing official the certificate holder's version of the circumstances leading to the suspension order. The sole issues to be considered are whether the public health, safety or welfare imperatively required emergency action by the department and what, if any, corrective measures have been taken by the child care agency following the violation of licensing laws or regulations and prior to the issuance of the order of summary suspension that eliminate the danger to the health, safety or welfare of the children in the care of the agency. The hearing official may lift, modify or continue the order of summary suspension; and

(D) Subsequent to the hearing on the summary suspension, the department may proceed with revocation or denial of the certificate or other action as authorized by this part, regardless of the decision concerning summary suspension of the certificate.

(4) The department shall by rule establish any further necessary criteria that it determines are required for the determination of circumstances that warrant imposition of the summary suspension order and any other necessary procedures for implementation of the summary suspension process.

(5) If the conditions existing in the child care program present an immediate threat to the health, safety or welfare of the children in care, the department may also seek a temporary restraining order from the chancery or circuit court of the county in which the child care program is located seeking immediate closure of the program to prevent further harm or threat of harm to the children in care, or immediate restraint against any violations of the certificate laws or regulations that are harming or that threaten harm to the children in care. The department may seek any further injunctive relief as permitted by law in order to protect children from the violations, or threatened violations of the certificate laws or regulations. The use of injunctive relief as provided by this subdivision (e)(5) may be used as an

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alternative, or supplementary measure, to the issuance of an order of summary suspension or any other administrative proceeding.

(f)(1) In determining whether to deny, revoke or summarily suspend a certificate, the department may choose to deny, revoke or suspend only certain authority of the certificate holder to operate and may permit the certificate holder to continue operation, but may restrict or modify the certificate holder's authority to provide certain services or perform certain functions, including, but not limited to transportation or food service, enrollment of children at the program, the program's hours of operation, the program's use of certain parts of the program's physical facilities or any other function of the child care program that the department determines should be restricted or modified to protect the health, safety or welfare of the children. The child care advisory council, in considering the actions to be taken regarding the certificate, may likewise restrict a certificate or place whatever conditions on the certificate and the certificate holder it deems appropriate for the protection of children in the care of the program.

(2) The actions by the department or the council authorized by subdivision (f)(1) may be appealed as otherwise provided in this part for any denial, revocation or suspension.

(g)(1) When an application for a certificate has been denied, or a certificate has been revoked, on one (1) occasion, the child care program may not reapply for a certificate for a period of one (1) year from the effective date of the denial or revocation order if not appealed, or, if appealed, from the effective date of the council's or reviewing court's order.

(2) If application for a certificate has been denied, or a certificate has been revoked, on two (2) occasions, the child care program may not reapply for a certificate for a period of two (2) years from the effective date of the denial or revocation if not appealed or, if appealed, from the effective date of the council's or reviewing court's order.

(3) If an application for a certificate has been denied, or a certificate has been revoked on three (3) occasions, the child care program shall not receive another certificate for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care program shall receive a certificate to operate a child care program if that person participated in such capacity in a child care program that has been denied a certificate, or that had a certificate revoked, on three (3) occasions.

(5)(A) The time restrictions of subdivisions (g)(1) and (2) may be waived by the child care advisory council in the hearing in which the denial or revocation is sustained, or, if requested by the former certificate holder in writing to the commissioner, in a separate subsequent hearing before the child care advisory council or, in the discretion of the commissioner, upon review by the commissioner.

(B) The program must show to the council's or the commissioner's satisfaction that the program has corrected the

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deficiencies that led to the denial or revocation, and that the child care program can demonstrate that it has the present and future ability, and is willing, to maintain compliance with certificate laws or regulations. The decision of the council or the commissioner shall be reduced to an order, which shall be a final order pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 3, and may be appealed pursuant to § 4-5-322.

(C) No waiver may be granted for any permanent restriction that has been imposed pursuant to subdivision (g)(3).

(h)(1) In conducting hearings before the child care advisory council on the appeal of the denial or revocation of a certificate or for review of summary suspension orders, it is the legislative intent that such hearings be promptly determined consistent with the safety of the children in the care of the child care program appealing the department's certificate action and with the due process rights of the certificate applicants or certificate holders.

(2) If, however, the administrative procedures division of the office of the secretary of state certifies by letter to the recording secretary of the child care advisory council that the division's contested case docket prevents the scheduling of a hearing on the appeal of a denial or revocation of a certificate before the child care advisory council within the initial time frames set forth in this part, then the department shall have the authority to appoint a hearing officer to conduct the proceedings before the council. The substitute hearing officer shall have all authority as an administrative law judge of the department of state. The hearing may be continued by order of the council for the purpose of obtaining a substitute hearing officer.

(3) Hearings on summary suspension orders shall be heard by a hearing officer of the department. Such hearing officer shall have authority, as otherwise permitted in this section, to enter orders binding on the department resulting from show cause hearings involving summary suspension orders.

(i) Rules shall be promulgated pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5.

**T. C. A. § 49-1-1108**

**§ 49-1-1108. Annual report**

**Effective: August 11, 2009**

(a) Each child care program shall submit to the commissioner an annual report.

(b) The report shall consist of:

(1) Identification information;

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- (2) Current enrollment figures;
- (3) Self-reporting on mandatory regulations;
- (4) Current certification status; and
- (5) Additional information as determined by the department.

(c) Any entity not completing the annual report by October 1, shall receive notice of such failure and, if the report is not filed within thirty (30) days of the date of mailing of the notice, the certificate of approval shall be suspended immediately, pending receipt of the report.

**T. C. A. § 49-1-1109**

**§ 49-1-1109. Collaboration with department of human services for training; funding and technical assistance**

**Effective: August 11, 2009**

(a) The departments of education and human services shall collaborate regarding the following areas relative to child care:

- (1) Access to appropriate training opportunities that are provided through the Tennessee early childhood training alliance;
- (2) Representation in committees and work groups that are responsible for planning funding allocations for child care development block grant funds;
- (3) Recognition of department of education programs on the department of human services' resource and referral system;
- (4) Eligibility of department of education-monitored programs for child care certificate funds;
- (5) Dual access to child care provider data in order to maintain the current status of child care service broker information;

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(6) The planning and coordination of annual meetings between staff of the child care services division of the department of human services and the department of education for the purpose of advancing the quality of child care in this state;

(7) Access to training and technical assistance from the child care resource center; and

(8) Training that might be developed through any of the child care programs monitored by the department of education.

(b) The department of education shall require departmental employees who conduct on-site inspections of child care programs to periodically participate in the training activities conducted by the department of human services for inspectors of that department's child care programs.