

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 660 Department of Human Resources

Rule No. 660-5-37.02

Rule Title: LICENSING: MINIMUM STANDARDS FOR RESIDENTIAL CHILD-CARE FACILITIES-
PERSONNL

 New X Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly
harm or endanger the public health, welfare, or safety?Yes

Is there a reasonable relationship between the state's
police power and the protection of the public health,
safety, or welfare?Yes

Is there another, less restrictive method of
regulation available that could adequately protect
the public?No

Does the proposed rule have the effect of directly
or indirectly increasing the costs of any goods or
services involved and, if so, to what degree?No

Is the increase in cost, if any, more harmful to the
public than the harm that might result from the
absence of the proposed rule?N/A

Are all facets of the rulemaking process designed
solely for the purpose of, and so they have, as
their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any
manner any litigation which the agency is a party to
concerning the subject matter of the proposed rule?No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer *Amy A. Hubbard*

Date 6-1-18

(DATE FILED)
(STAMP)

APA-2

(Department of Human Resources)

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Human Resources

RULE NO. & TITLE: 660-5-37.02 Licensing: Minimum Standards for Residential Child-Care Facilities-Personnel

INTENDED ACTION: To amend the personnel chapter of the current Minimum Standards for Residential Child Care Facilities.

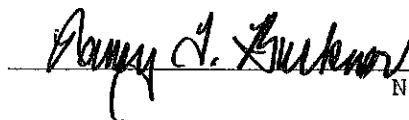
SUBSTANCE OF PROPOSED ACTION: The proposed action is required to make changes to the current Minimum Standards for Residential Child Care Facilities to include (1) acceptance of an Associate Licensed Counselor (ALC) as social services staff; (2) Licensed graduate social worker (LGSW) has changed to licensed master social worker (LMSW); and (3) Licensed certified social worker (LCSW) has changed to licensed independent clinical social worker (LICSW).

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested parties may submit data, views, or arguments respecting the proposed amendment by mail or in person through the close of business on August 3, 2018. Persons wishing to submit data, views, or arguments orally should contact the Department's Administrative Procedure Secretary between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding State holidays, at 334)242-9330, or set up an appointment for such oral/in person presentations.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: August 3, 2018

CONTACT PERSON AT AGENCY:

Gail Grobe, AP Secretary
State Department of Human Resources
Gordon Persons Building
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Nancy T. Buckner
Commissioner

ALABAMA DEPARTMENT OF HUMAN RESOURCES
SOCIAL SERVICES DIVISION
ADMINISTRATIVE CODE

CHAPTER 660-5-37
LICENSING: MINIMUM STANDARDS FOR
RESIDENTIAL CHILD-CARE FACILITIES

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660-5-37-.02 Personnel.

(1) Personnel Files. Administrative files shall include, but are not limited to, the following information:

(a) Written personnel policies approved by the board which regulate such practices as salaries, fringe benefits, working hours, sick leave, vacation, holidays, retirement, and termination, grievance and training. A copy shall be provided to each employee.

(b) Qualifications and job descriptions for all administrative and regular positions. These shall be reviewed annually by the executive.

(c) Individual personnel files shall be maintained for the executive and for each employee. A file shall also be established for each volunteer who individually has direct contact on a continuing basis with children in circumstances other than under direct supervision of agency staff. The files shall include at least the following:

1. The application for employment or volunteer position.
2. Information regarding the character and suitability of the applicant. This includes but is not limited to:

- (i) Results of criminal record check,
- (ii) Response to Clearance of State Central Registry On
- (iii) Child Abuse/Neglect (DHR-DFC-1598),
- (iv) Documentation of contact with former employers and references, and
- (v) Other pertinent history.

3. Verification that the employee meets the specific qualifications for his/her particular job as stated in job descriptions of the child care facility.

4. Documentation of completion of training.

5. Signed statement by the employee confirming that they have read and have an understanding of Section IV B, Program Child Care Practices outlined in these standards.

6. Annual evaluations.

7. Medical examination reports as required, which shall be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions as specified under ADA/ Section 504.

8. Reports regarding criminal convictions or charges occurring after the employment of an individual.

(d) In the event of misconduct or dereliction of duty, a full report of the circumstances, the inquiry procedure followed, and the disposition made shall be recorded and handled in accordance with the child care facility's policies.

(e) Staff records shall be kept for a period of five (5) years after the date of employment termination. These files shall be made available for review by the Department upon request.

(2) Medical Requirements. Complete physical examinations for staff by a licensed practicing medical doctor or physician's assistant shall be made within three months prior to employment, and record of the examination shall be on file in the facility as a separate confidential medical record. The DHR-DFC-737, Medical Report for Persons Giving Care to Children shall be completed in all respects, including tests specified.

(a) Another medical report form other than that which is supplied by the Department (DHR-DFC-737) may be used that includes:

1. The same information;
 2. The history of any chronic disease and a statement by the licensed practicing medical doctor or the physician's assistant indicating whether or not the condition affects the individual's ability to care for children or to perform services in a child care facility;
 3. A statement by the licensed practicing medical doctor or physician's assistant as to whether or not the examination reveals that the person examined is free of any contagious or infectious disease, physically fit to care for children or to perform services and does not pose a "direct threat" to the health or safety of others in a child care facility as outlined under requirements of the American Disabilities Act.
 - (b) At least every four years from the initial examination (earlier if concerns regarding the mental, physical or emotional health of the employee arise) each employee shall have:
 1. A complete physical examination as specified above, excluding the tests specified; or
 2. A statement from a licensed practicing medical doctor or physician's assistant which attests to the employee's freedom from contagious and infectious diseases and his/her physical fitness to care for children or to perform services in a child care facility.
 - (c) A record of such examination or physician's statement shall be on file in the facility as a separate confidential medical record.
 - (d) A staff person, who, upon observation or examination or as a result of tests, shows indication of a physical, emotional, or mental condition that could be detrimental to the children or staff, or which would prevent satisfactory performance of duties, shall not continue work at the center until the staff person provides a written statement from a licensed practicing medical doctor indicating that the staff person is able to return to work.
 - (e) An additional medical or psychological evaluation shall be required at the discretion of the Department's representative. A release to allow the Department Office of Licensure representative to confer directly with the doctor shall be provided on request. Such report or recommendation shall be maintained in the employee's file for review by the Department.
- (3) Character and Suitability Requirement. All applicants and holders of a child care license or six-month permit, all applicants for employment in a paid or voluntary position, and all current employees in paid or voluntary positions must be suitable and of good moral character in order to operate or work in a child care facility.
- (a) All applicants shall be investigated to determine character and suitability to hold a license/permit or work in a child care facility. Information regarding the character and suitability shall be reviewed by the Department at the time of initial application.

(b) For purposes of this requirement, an applicant includes all board members and officers of corporations, partnerships, associations, or other legal entities having direct contact with the children in care. Because staff family members living in the home or visiting overnight shall also be of good character and suitability, a criminal background check shall be obtained on these individuals.

(c) Upon promulgation of these regulations, the applicant/licensee shall conduct a character and suitability review on all applicants for employment in a paid or voluntary position, and all current employees in paid or voluntary positions. The review shall consist of the following components:

1. Review of Past History
2. Criminal History Check
3. Clearance of State Central Registry On Child Abuse/Neglect.

(d) Evidence of unsuitable character may be the basis for the denial of an initial application or renewal, or the suspension, or revocation of a license or six-month permit.

(e) The character and suitability of a licensee/permit holder, staff member, or applicant for employment, in a paid or voluntary position, to hold a license or six-month permit or to work in a child care facility may also be assessed by a review of the past history of the individual regarding their veracity and their ability to care for children. Past history to be considered includes but is not limited to the following:

1. False or misleading statements made by the individual to the Department or other Government facility personnel regarding incidents or events occurring while on the job or surrounding part of any child abuse or neglect investigation conducted by the Department, law enforcement or other government officials are considered as evidence of unsuitable character;

2. Applicants for a license/six month permit and holders of licenses/six month permits who are discovered to have had a history of operating without a license and refusal to cease operations and apply for a license or permit or refusal to allow the Department to conduct investigations regarding their activities or allegations of abuse and neglect or history of noncompliance with minimum standards are also considered as evidencing unsuitable character.

(f) All applicants for a license or six-month permit and all staff members and applicants for employment in paid or voluntary positions, must reveal on their application all past criminal convictions/or charges, except for minor traffic violations, since age 16. Driving Under the Influence is not considered a minor traffic violation and must be reported to the Department.

(g) All applicants for a license or six-month permit and all staff members and applicants for employment in paid or voluntary positions shall submit authorization for release of

Alabama criminal history information by completing the ABI-46 Release Form to the Alabama Bureau of Investigations (ABI) with instructions to send the results to the Department for licensee/permit holders and to the facility director for staff members or applicants for employment in a paid or voluntary position. Fees required shall be paid by the facility or employees of the facility.

(h) No applicant shall be hired or volunteer services used if convicted of a crime in this or another state at any time if a State court of competent jurisdiction has determined a felony conviction for any of the following crimes. Also, an applicant shall not be hired or volunteer's services used if convicted as an accessory to a crime that involves a felony conviction for one of the following offenses:

1. Any abuse or neglect against a child,
2. Any felony against a child,
3. Any assault or abuse against a domestic partner or former domestic partner,
4. Any crime which has violence or threat of violence against any person. This includes but is not limited to any sex-related crime (including those listed under the Community Notification Act). This includes the following crimes:

- (i) rape in the first or second degree;
- (ii) sodomy in the first or second degree;
- (iii) sexual torture;
- (iv) promoting prostitution in the first or second degree;
- (v) arson in the first or second degree;
- (vi) serious intentional, reckless or negligent physical injury, danger or death of any person such as but not limited to: murder, homicide, manslaughter, assault with a weapon, criminal negligence;
- (vii) stalking or aggravated stalking;
- (viii) any solicitation, attempt or conspiracy to commit any of the above crimes.

(i) An applicant will not be hired or volunteer's services used if the record check reveals that within the past five (5) years a court of competent jurisdiction determined a felony conviction for any of the following crimes. Also, the applicant will not be hired or volunteer's services used if convicted as an accessory to a crime that involves a felony conviction for one of the following offenses:

1. physical assault against someone other than a child, domestic partner, or former domestic partner in which a weapon or deadly instrument was not used (see above if committed against a child, domestic partner, or former domestic partner or if a weapon or deadly instrument was used).

2. battery or

3. a felony drug-related offense. This includes a felony DUI.

(j) The licensee or permit holder, and all staff members must advise the facility's director or administrator and the Department of all criminal convictions and /or current criminal charges, including Driving Under The Influence which occurred after the licensee/permit holder attains a license/permit or during the course of employment with the child care facility. Such reports shall be made within 24 hours and will be followed by a written report within five (5) days. This information shall be kept in the individual's file.

(k) The character and suitability of a licensee/permit holder, staff member, or applicant for employment, in a paid or voluntary position, to hold a license or six-month permit or to work in a child care facility shall also be assessed by a clearance of the State Central Registry on Child Abuse/Neglect.

1. At the time of initial application, a completed Request for Clearance of State Central Registry on Child Abuse/Neglect (DHR-DFC-1598) shall be submitted by the licensee/permit holder, staff member, or applicant for employment, in a paid or voluntary position. Completed forms shall be kept in the individual's file. NOTE: Subsequent Request for Clearance of State Central Registry on Child Abuse/Neglect (DHR-DFC-1598) may be requested at any time.

2. A review shall be conducted on all applicants for a license/permit, staff members, and all applicants for employment, who are discovered to have been determined by a child or adult protective service agency in any state, to have perpetrated the abuse or neglect of a child or adult.

3. Determinations which fall within the general subject area outlined under Criminal Records check above, even if no criminal conviction has occurred, are considered as evidence of unsuitable character.

4. Employment or approval shall be denied, terminated or the approval revoked if persons are determined to not be of appropriate character or suitability to work with or provide care and supervision for children.

(4) Job Descriptions and Qualifications. Any child care facility accepting referrals from the Department of Human Resources shall be certified by the Department as being in compliance with all laws pertaining to non-discrimination (Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and Americans With Disabilities Act of 1990).

(a) There shall be a board of directors active in an administrative and/or advisory capacity. Their responsibilities shall be as follows:

1. The board or its designee shall consult with the Department prior to establishing a new child care facility, changing the purpose, goals or function of the basic program, or extending services into additional program or geographic areas.

2. The board shall notify the Department when there is a change of the executive and/or chief officer of the board.

3. The board or its designee shall provide financial information to the Department.

4. The board shall articulate the purpose, goal, and function of the child care facility and establish written job descriptions and qualifications.

5. The board shall establish written by-laws governing the organization, duties and operation of the board.

6. The board shall ensure the establishment of written operating policies including, but not limited to: organizational structure, administration, personnel practices, intake, discharge, program, and behavior management practices.

7. The board shall distribute to its members copies of the prescribed regulations for child care facilities. The board shall employ a qualified executive, and delegate to him/her the responsibility for administration of the child care facility.

8. The board shall be responsible for providing operating and capital funds. Financial policies and practices shall be in accord with sound budgeting, disbursement, and audit procedures.

9. The board shall provide evidence that sufficient funds are available to equal twenty-five percent (25%) of the projected operating budget for the first year of operation and annually thereafter.

10. The board shall approve the annual budget and revisions, if any, to the annual budget, in advance of the applicable fiscal period.

11. The board shall provide for proper bonding of board officers and child care facility employees who handle operating or capital funds of the child care facility.

12. The board shall provide for an opinion audit on an annual basis by a certified public accountant not on the staff of the child care facility nor a member of the board.

13. The board shall provide a copy of the audit, which the chief officer of the board certifies has been presented to the board as a whole, to the Department. Child care facilities

operated by a governmental agency shall provide a copy of the annual report of the appropriate fiscal examining authority.

(b) Executive responsibilities shall be as follows:

1. Maintain knowledge of the licensing standards, operating policies and personnel policies;
2. Direct, evaluate, and articulate a program of child care within the limits of function and policy established by the board;
3. Make regular reports to the board on all phases of the operation of the child care facility and its program;
4. Make regular reports to the Department in accordance with requirements by the Department;
5. Prepare the annual budget, and handle expenditures according to budget allocations;
6. Organize the work of the child care facility and delegate responsibility to various staff members, as appropriate, including the appointing, evaluating and termination of staff;
7. Make provision for continuity of administrative authority in his/her own absence;
8. Assess the total operation of the child care facility and its program annually, report to the board the successes, barriers, strengths and needs, and make appropriate recommendations;
9. The executive shall not be assigned, nor assume, any primary responsibility for fund-raising or other activities that necessitate extended absences from the child care facility or which interferes with his/her administrative responsibilities in conducting the child care facility program, unless another full-time staff member is assigned responsibility and authority for the day-to-day operation of the child care facility.

(c) Executive qualifications shall be as follows:

1. A baccalaureate degree in the field of social work, psychology, administration, or a related field, from a college or university accredited by one of the six regional accrediting associations of the United States.
2. A minimum of 24 months' successful full-time, paid employment in family and children's services, including progressively responsible administrative and/or supervisory experience.
3. Graduate training in administration, education, psychology or social work at an accredited graduate school may be substituted in lieu of up to 12 months of the experience listed

above. One academic year may substitute for 6 months 'experience, and two academic years for 12 months' experience (i.e. completion of a two year graduate program will require only an additional 12 months experience rather than the 24 months as stated above).

(d) Child Care Staff Responsibilities shall be as follows:

1. Provide direct care and supervision of children;
2. Every child care staff worker who directly supervises children shall be off at least 24 consecutive hours per week for which they are not working in a child care worker capacity;
3. When two relief staff are unavailable, one child care staff worker shall be permitted to provide relief for the two regular child care staff, as long as staff to child ratio is maintained.

(e) Child Care staff qualifications shall be as follows:

1. A high school diploma or a GED certificate; Staff hired prior to March, 2000 who do not hold a high school diploma or GED may retain their child care position for the facility in which they are employed as of March, 2000.
2. Training or experience in child development issues;
3. Physical health adequate to participate, when appropriate, in the activities of children, as documented by the required medical examination;
4. Minimum age of 19 years old.

(f) Relief Staff shall provide for care and supervision of children when child care staff are off duty.

(g) Relief staff shall meet the same qualifications for employment as child care workers.

(h) Social workers' service staff responsibilities shall be as follows:

1. The child care facility shall employ its own social service staff, or
2. Contract with a cooperating agency or private individual to provide social services;
3. A written agreement shall be signed between the child care facility and the social service agency providing such services. The agreement shall detail specific duties to be performed for the child care facility relative to admissions, discharges and Care/Treatment Plans.

(i) Staff rendering social services must meet at a minimum one of the following criteria:

1. A social ~~workers~~ licensed under Alabama law, ~~licensed and practicing~~ shall be licensed and shall practice social work pursuant to Alabama Act No 652, (Regular Session 1977) effective November 23, 1978 and Alabama Act 2016-313, §1.

2. The social worker shall have at least one of the following qualifications. The individual may be licensed at the following levels:

(i) A license as a ~~graduate~~ master social worker (~~LGSW~~) (LMSW), or

(ii) A license as a ~~certified~~ an independent clinical social worker (~~LCSW~~) (LICSW),
or

(iii) A license as a bachelor social worker (LBSW) with continuing supervision from a person licensed as specified above. ~~A professional counselor licensed under Alabama law.~~

(iv) A licensed professional counselor (LPC) under Alabama law specified in Code of Alabama, 1975, § 34-8A-7(1) through (7) or

(v) ~~A professional counselor licensed under Alabama law.~~ An associate licensed counselor (ALC) under Alabama law specified in Code of Alabama, 1975, § 34-8A-8 (1) through (3). The associate licensed counselor may not practice without direct supervision by a licensed professional counselor. The plan for supervision of the associate licensed counselor is to be approved by the Alabama Board of Examiners in Counseling prior to any actual performance of counseling on the part of the associated licensed counselor.

(vi) A psychologist licensed under Alabama law.

~~(j)~~(vii) All other professional staff employed by the child care facility shall be qualified in their occupational fields or licensed in their professional fields.

~~(k)~~ (j) For those child care facilities using volunteers, the volunteer responsibilities shall be as follows:

1. Volunteers shall not be permitted to assume total responsibilities or duties of any paid staff member;

2. Written job descriptions and responsibilities shall be developed for all volunteers;

3. A staff member shall be designated to supervise and evaluate the activities of the volunteers;

4. A file will be maintained on the schedules, hours worked and activities of volunteers.

- (2) Staff Development (all staff, including volunteers).
 - (a) New staff shall receive orientation within 30 days of employment.
 - (b) Orientation will cover the following topics:
 - 1. Agency philosophy, policies, and procedures;
 - 2. Generally accepted principles of child care and behavior management practices;
 - 3. Overview of the Child Care Institution, Group Homes, and Child Placing Agencies;
 - 4. Confidentiality issues.
 - (c) This program must be under the supervision of qualified staff and appropriate to the position being assumed by the new employee;
 - (d) Completion of orientation shall be documented in the employee's file;
 - (e) New hire training consisting of a minimum of thirty (30) hours of actual training time will be given within the first one hundred eighty (180) days of hire.
 - (f) The training shall consist of the following components:
 - 1. Child development;
 - 2. Behavior management;
 - 3. The process of grief and loss;
 - 4. The dynamics of attachment and separation;
 - 5. The value of families;
 - 6. *Individualized Service Plan;
 - 7. Identifying the strengths and needs of families and children;
 - 8. Behavior as an expression of underlying needs;
 - 9. The value of partnerships;
 - 10. How children enter the foster care system;

11. Family implications among agency personnel;
12. *Overview of the R.C. Consent Decree;
13. Understanding and valuing cultural differences.

*Exemptions of these sections allowed for agencies not accepting DHR children into placement.

(g) After the first anniversary of employment, a program of in-service training will provide staff with a minimum of fifteen (15) hours in-service training annually. Participation at conferences and workshops may be included as part of the 15 hours as documented by attendance certificates.

- (h) Training may include, but is not limited to the following components:
1. Child safety issues;
 2. Crisis intervention/engaging families;
 3. The impact of the media on children;
 4. Effects of multiple placements;
 5. Cultural sensitivity and responsive services;
 6. Significance of birth families;
 7. Substance abuse;
 8. Gang activity;
 9. Universal precautions and infection control.

Author: ~~Linda Stephens~~ Gloria J. Holloway

Statutory Authority: Code of Ala. 1975, §§38-7-1 through -17, §§41-22-1 through -27, : Alabama 1975, §§34-8A-7(1) through (7) and 34-8A-8 (1) through (3); Alabama 1975, §§34-30-20 Public Law 105-89, Title IV-E. History: Repealed and New Rule: Filed November 15, 1999; effective December 20, 1999; operative March 1, 2000. 660-5-37-.03 Social Services. Emergency Amendment: Effective April 13, 2018; Amendment: Filed June 11, 2018