

Chapter PW-CY 40

CHILDREN AND YOUTH

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DAY CARE CENTERS FOR CHILDREN

Note: Rules relating to day care centers can be found in ch. HSS 55, Wis. Adm. Code.

PW-CY 40.10 Introduction. History: 1-2-56; r. and recr. Register, October, 1961, No. 70, eff. 11-1-61; r. and recr. Register, August, 1970, No. 176, eff. 3-1-71; r. Register, July, 1980, No. 295, eff. 8-1-80.

PW-CY 40.11 Organization and administration. History: 1-2-56; r. and recr. Register, October, 1961, No. 70, eff. 11-1-61; r. and recr. Register, August, 1970, No. 176, eff. 3-1-71; r. Register, July, 1980, No. 295, eff. 8-1-80.

PW-CY 40.12 Personnel. History: Cr. Register, August, 1970, No. 176, eff. 3-1-71; r. Register, July, 1980, No. 295, eff. 8-1-80.

PW-CY 40.13 Physical plant and furnishings. History: Cr. Register, August, 1970, No. 176, eff. 9-1-70; r. Register, July, 1980, No. 295, eff. 8-1-80.

PW-CY 40.14 Program. History: Cr. Register, August, 1970, No. 176, eff. 3-1-71; am. (3) (a) 1., Register, December, 1972, No. 204, eff. 1-1-73; r. July, Register, 1980, No. 295, eff. 8-1-80.

PW-CY 40.20 Revocation of licenses, permits or certifications.

(1) **DEFINITIONS.** As used in these rules, "license" means any license, permit, certification or other grant of authority issued and subject to suspension or revocation by the state department of public welfare; "department" means the state department of public welfare; "hearing" includes a joint hearing by the department and any other administrative agency; "revocation or suspension" of licenses includes refusal to renew the same.

(2) **HOW PROCEEDINGS INITIATED.** Proceedings to revoke or suspend licenses may be initiated in one of 2 ways:

(a) On a verified complaint by an individual or an officer required by law to enforce the law in question, filed in triplicate (original and 2 copies) with the department;

(b) By the department on its own motion, whenever its investigation discloses probable grounds for action. The director of the division for children and youth may act for the department in initiating proceedings under this subsection.

(3) **STYLE OF PLEADINGS.** All pleadings, notices, orders and other papers filed in such proceedings shall be captioned "Before the Wisconsin State Department of Public Welfare" and shall be entitled

"In the Matter of the Revocation or Suspension of the _____ (license permit, or certification) of _____, Respondent." The party whose license is involved shall be known and designated as the "Respondent."

(4) **COMPLAINT ON DEPARTMENT'S INVESTIGATION.** If the complaint is founded upon an investigation made by the department, it shall be incorporated in the notice of hearing and statement of issues as prescribed by (7).

(5) **FORM OF CAUSES.** If the alleged cause is a continuing one, its general nature and the approximate time covered shall be stated in the complaint or notice or hearing; if a specific incident is relied on, it shall be alleged with such particularity as to time, place and circumstances as may be necessary to enable the respondent to prepare his defense; and in either case the cause may be alleged in the language of the statute or rule claimed to be involved, and shall conclude: "contrary to sec. _____ of the statutes" or "contrary to rule _____" of the rules and regulations of the department governing _____, or both. Separate causes shall be stated in separate paragraphs and numbered consecutively.

(6) **PROCEDURE UPON FILING OF COMPLAINT.** Upon the filing of a complaint as prescribed by (2) (a), the director of the division for children and youth shall cause an investigation to be made of the matters alleged to determine whether there is probable cause for action and if he determines that there is such probable cause he shall order a hearing as prescribed by (7) and also notify the complainant thereof. If he determines that no further action is warranted he shall notify the complainant, who may appeal in writing to the director of the state department of public welfare, who shall review the files of the director of the division for children and youth and may affirm his decision, order further investigation or order a hearing on the charges. Provided, that in any case where a

hearing has been ordered, the respondent has no standing to attack the determination of the

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director of the division for children and youth or the director of the state department of public welfare in ordering such hearing, but shall be required to plead to the merits.

(7) NOTICE OF HEARING AND STATEMENT OF ISSUES. Notices of hearing shall be addressed to the respondent or respondents at his last known post-office address, shall include the statement of issues and shall be in substantially the following form:

(a) If on complaint filed as provided in (2) (a), such complaint shall be attached to the following notice:

"To _____ (name)
 _____ St.
 _____, Wis.
Respondent

"Please take notice that a hearing will be held on the _____ day of _____, 19____, at room No. _____ (or other proper designation) of the _____ Building (or other proper designation, No. _____ St., in the city of _____, Wisconsin, at _____ o'clock ___M, or as soon thereafter as the matter may be reached, on the question whether the _____ (license, permit or certification) heretofore issued to the above named Respondent pursuant to sec. _____, Stats., should be suspended or revoked. The issues involved and the causes there to be considered are (as set forth in the attached complaint) to which you are required to make answer in writing at least _____ days before the time set for said hearing.

"Dated at Madison, Wisconsin this _____ day of _____, 19____.

"WISCONSIN STATE DEPARTMENT OF PUBLIC WELFARE

By _____
Director, Division for Children and Youth

(b) If on only part of the causes set forth in such complaint, the form set forth in subsec. (a) shall be altered by inserting in lieu of the matter enclosed in brackets: "as set forth in paragraphs _____, _____, _____ and _____ of the attached complaint."

(c) If initiated on the department's own motion, the form set forth in subsec. (a) shall be altered by inserting in lieu of the matter enclosed in brackets:

"the following:

"1. _____
 "2. _____
 "3. _____"

(d) If in part on complaint and in part on causes initiated by the department on its own motion, the form set forth in (a) shall be altered by inserting in lieu of the matter enclosed in brackets:

"as set forth in the attached complaint, (or paragraphs _____, _____, _____ and _____ of the attached complaint), together with the following additional issues and causes:

"1. _____
 "2. _____
 "3. _____"

(8) ANSWER. The answer of the respondent shall be verified, unless an admission of the allegations might subject the party to prosecution for a felony, and shall be filed with the director of the division for children and youth in triplicate (original and 2 copies) within at least one-half the time intervening between the notice of hearing and the time set for said hearing, and such time for answer shall be stated in said notice as required by (7). The answer must contain:

(a) A specific denial of each material allegation of the causes controverted by the respondent.

(b) A statement of any new matter constituting a defense or mitigating circumstances charged, which the respondent wishes to have considered.

(9) ADMISSION BY NOT DENYING. Every material allegation of the causes not controverted as prescribed shall be taken as true, but new matter in the answer shall be deemed controverted without any reply being served or filed.

(10) DEFAULT; RELIEF THEREFROM. In case the respondent fails to submit an answer as required by (8), or fails to appear at the hearing at the time fixed therefor, the causes specified may be taken as true and the department may make findings and enter its order on the basis of the facts revealed by the preliminary investigation. But the director of the division for children and youth officer or the department may, for good cause shown, relieve the respondent from the effect of such default and permit him to answer and defend the proceeding, at any time before the department enters its order or within 60 days thereafter.

(11) SERVICE AND FILING OF PAPERS. Notice of hearing shall be given by personal service, but all other notices, orders and other papers may be served by the director of the division for children and youth or the department by first class or registered mail addressed to the party at his last known post office address, or to his attorney of record. Papers required to be filed with the department or the director of the division for children and youth may be mailed to the following address:

311 State Street
Madison (3), Wisconsin

(12) CONDUCT OF HEARINGS; CONTINUANCES; APPEARANCES; EXAMINATION OF WITNESSES. Unless otherwise ordered by the department, all hearings shall be conducted on behalf of the department by the director of the division for children and youth or some other member of the division designated by him. Continuances and adjournments may be granted by such presiding officer for cause shown. The respondent may appear in person or by any officer, regular employe or attorney. The complainant may likewise so appear. Witnesses competent to take an oath shall be sworn by the presiding officer and may be examined on behalf of the department by the presiding officer or by a representative of the attorney-general acting as counsel for the department, or, with the permission of the presiding officer, by any employe of the department or by any complainant or his attorney. The respondent or any of his agents, officers or employes may be examined adversely as prescribed by section 325.14, Wis. Stats.

(13) **SUBPOENAS.** The director of the division for children and youth may sign and issue subpoenas, whether he is to conduct the hearing or not.

(14) **PREHEARING CONFERENCES.** Prehearing conferences may be held at the convenience of the parties and shall be conducted by the director of the division for children and youth or other member or employe of the division designated by him, who shall keep and preserve a record of any agreement as to the issues or stipulation or admission of fact which may be made at such conference. Such record shall be attached to the file and constitute a part of the official record of the case.

(15) **ARGUMENTS.** Except as provided in section 227.12, Wis. Stats., arguments shall be submitted to the department in writing, unless otherwise ordered. Five copies of such written arguments shall be filed with the director of the division for children and youth. The time for filing arguments shall be fixed by the officer presiding at the hearing.

(16) **VARIANCES.** The provisions of section 263.28, Wis. Stats., with reference to variances between the allegations and the proof, shall apply to proceedings under these rules.

PW-CY 40.25 Rules for the approval of start-up grants for the expansion of child care in Wisconsin. (1) **GENERAL INFORMATION.** (a) *Statement of intent.* These rules provide for the regulation of the expenditure of the funds which have been appropriated for the expansion of day care in Wisconsin.

(b) *Effect of rules.* The following rules for approval of start-up grants have the full effect and force of law as provided in chapter 227 of the Wis. Stats.

(c) *To whom the rules apply.* The rules apply to all persons, groups or newly operating day care centers making application for start-up grants.

(d) *Exceptions to rules.* The department may make exceptions to any of the rules for approving start-up grants when it is assured that granting such exception is not detrimental to the health, safety and welfare of children.

(e) *Definitions.* The following words, phrases and initials have the designated meanings:

1. Department. Unless qualified, means the state of Wisconsin department of health and social services.

2. Division. Unless qualified, means the division of family services of the department.

3. Rule. Means a regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing) of general application and having the effect of law.

4. Newly operating center. Means a day care center which has been in operation for a period less than 6 months.

5. Start-up grants. Are money payments or a planned series of money payments to an approved applicant to be used to develop a needed child care service or assist a newly operating center having financial difficulties. The grants are not loans.

6. Child care. For the purposes of these rules means day care for children.

7. Satellite system. For the purposes of these rules is defined as family day care homes, in-home care providers or a combination of both which are centrally organized, coordinated, and administered as a unit in themselves or as an extension of another service/center or as part of the educational/training program of an accredited school of social work or early childhood education.

8. In-home care. Is the care of the child in his own home on a routine planned basis for a period less than 24 hours by a responsible person other than his parents.

9. Family day care. Is the care of the child in a family home other than his own by a responsible person other than the child's parents for a period of time less than 24 hours.

(2) APPLICATION FOR START-UP GRANTS. (a) Application shall be made on a form provided by the department.

(b) Application shall be open to:

1. Individuals or groups planning to establish a voluntary non-profit or a proprietary child care service.

2. Individuals or groups submitting a proposal of a plan for:

a. A new center.

b. Expansion of an existing center to include a new program.

c. A small innovative program around special need.

d. Satellite systems of family day care, in-home care or a combination of both. (See subsection (5) of these rules for information on satellite systems).

3. Newly operating centers which are experiencing financial difficulties.

(c) The individual, group or center making application shall:

1. Have a policy board whose proposal of a plan shall document involvement in the planning of parents who will use the service.

2. Document the need for the specific service to be provided in the area proposed in the plan.

3. Submit written assurance to the appropriate division regional staff that the service to be provided will meet the requirements for Licensing of Day Care Centers for Children (PW-CY 40.10-40.14) and/or the Federal Inter-Agency Day Care Requirements for Certification.

(d) Application from newly operating centers experiencing financial difficulties shall include with part I of the application form:

1. Documentation of expenditures and income for the total period of operation giving special details of financial problem areas.

2. Documentation of need for the service including the target group of parents and/or children they serve.

3. Endorsement from the appropriate division regional staff member that this particular center should receive a start-up grant to continue its operations.

4. Detailed operating budget for the review of any period of operation if requested by the division regional director.