

## DPHHS Policy Manual: Child Care Licensing Day Care Complaint Referrals and Investigations

**Purpose** Federal Regulations, [45 CFR 98.32(f)] require that a procedure for maintaining validated parental complaints be adopted by the Department as grantee of the Child Day Care Block Grant. This information **MUST** be available to the public upon request. The following procedure for making and documenting referrals applies to department staff.

**Definitions** A person responsible for a child's welfare means the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides; a person providing care in a day care facility; an employee of a public or private residential institution, facility, home or agency; or any other person responsible for the child's welfare in a residential setting (MCA 41-3-102).

CACFP – Child and Adult Certified Food Program

CA/N – child abuse and neglect

CAPS – Child and Adult Protective Services System. This is the computer system which houses information regarding the CPS program.

- CPI – child protective information; no CPS investigation completed.
- CFS – child protective services request for services; no CPS investigation completed.
- CPS – child protective services; CPS investigation

CCL – Child Care Licensor

CCR&R – the district child care Resource and Referral agencies

CFSD- Child and Family Services Division

CI – Centralized Intake, State of Montana hotline for child abuse and neglect reports.

CPS – Child Protective Services

Complaint – The process by which a parent, guardian, or other interested individual reports concerns regarding licensing violations involving the care received by a child from a child care provider or caregiver.

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CCUBS – Child Care Under the Big Sky. This is the computer system used by the Child Care Licensing Program and the Early Childhood Services Bureau to retain licensing, and Best Beginnings data.

Department - Department of Public Health and Human Services

Not Validated – The child care licensor cannot determine the complaint allegations occurred or a regulation violation occurred.

PHN- Public Health Nurse

Validated – The child care licensor determines that the complaint allegations occurred or are occurring or that a regulation violation occurred.

### **Mandatory Reporting Law**

Any day care facility staff who has reason to suspect that any child is or has been abused or neglected is required to personally report the matter within 24 hours to the Dept. child abuse hotline at 1-866-820-5437. (See 41-3-102, MCA)

### **Common Complaint Sources**

- CCR & R Agencies
- CACFP
- CFSD
- Law Enforcement
- Neighbors
- Parents / Guardians
- Caregiver/employees
- Other: school officials, relatives, counselors, county health department, etc

### **Types of Complaints**

Law Enforcement Related: Any complaint where criminal prosecution may occur. Sudden Infant Death Syndrome (SIDS), deaths, abuse, sexual abuse, extreme negligence can all have criminal implications. Law enforcement may notice licensors upon investigations into day care facilities. It is imperative that licensing's involvement remains secondary to law enforcement's investigation. Upon request CCLs may team with law enforcement.

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Protective Service Related: A child protection (CPS) report refers to a complaint alleging maltreatment to a child. This means that acts or omissions of a child's parent or other person responsible for the child's welfare, i.e. registered or licensed day care provider, which could cause actual physical or psychological harm to a child, puts the child at substantial risk of physical or psychological harm or abandonment (§ 41-3-102 (7) MCA).

Licensing Related: A licensing related complaint refers to a complaint alleging regulatory violations in a day care facility. The child care licensor should review all reports and make a determination whether a licensing investigation is warranted. Questionable cases may be staffed with the Child Care Licensing Program Manager.

Child Care Program and Policy Related: a complaint alleging a day care program is operating without a registration or license.

Child-on-Child Assault Considerations: An incident of abuse on one child by another child will be referred to CPS and local law enforcement; however, QAD does have the responsibility to investigate and determine if a lack of supervision or other potential licensing violations contributed to the abuse allegation (or finding upon completion of the law enforcement investigation).

Health Department Referral: Local health department's have jurisdiction in child care centers and oversee regulations governing sanitation and child immunizations. Local health departments provide consultation to child care family and group home providers on the same issues.

The department cannot issue a license for a child care center unless the local health department grants approval as indicated in 52-2-735, MCA.

### Where to Report?

Complaints must be reported to the local or central DPHHS child care licensing office. Complaints can also be made online. Persons desiring to use this method may do so here.

<https://dphhs.mt.gov/qad/licensure/childcarelicensing>

Reports involving child abuse and neglect should be directed to the Centralized Intake Hotline at 1-866-820-5437. If the complaint involves both abuse/neglect and licensing violations, the individual taking the

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complaint will obtain the information and will inform the reporter that they need to report concerns of abuse or neglect to Centralized Intake.

**Complaint  
Intake  
Procedure**

When a complaint is received by the department, staff will attempt to obtain from the caller, information about the incident and the name and phone number of both the complainant and the provider about whom they are making the complaint. If the individual chooses to remain anonymous, staff will just obtain the information about the provider.

When the CCL worker is documenting the complaint, the worker needs to follow the outline Specific of the Complaint as specified on page 12 of this policy section. The written documentation must be clear and concise and must be written in an objective, professional manner. The information gathered during the intake is then entered into the CCUBS system as indicated in the CCUBS USER Manual, Section IV B-C.

**Complaint  
Referral:  
*Licensing Concerns***

If the complaint is determined to be licensing related (and no CPS issues are identified), the CCL worker will assess that information and determine what licensing rules have potentially been violated. An investigation will be initiated.

***CPS Referral***

CFSD is the lead investigator in all CPS related complaints/reports. When a complaint is received and there is a question whether the complaint is child protection or licensing related, **it will be first treated as a child protection complaint and the individual reporting the concerns will be informed that they need to report their information to the Centralized Intake Office.** If the individual indicates that they are unable or unwilling to contact the Centralized Intake Office, the licensing worker will make a referral to the Centralized Intake Office promptly, not to exceed 24 hours. The licensor will notify the Program Manager of all complaints that are CFSD related. The licensors will then contact the Centralized Intake Office or local CFSD office to determine whether they had received the complaint.

The licensing program—which does not have authority to conduct CA/N investigations--will investigate the referral as it pertains to the licensing regulations. The CCL may conduct a separate investigation or it may elect to conduct a joint investigation with the CPS social worker.

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Regardless of whether the investigation is conducted jointly or separately, the licensing worker will conduct an inspection within 7 days of receiving the complaint upon consultation with the Program Manager. The child care licenser shall confer with the CFSD worker to ascertain their initial findings.

If CFSD/QAD elects not to conduct a joint investigation, CCL will conduct a licensing investigation upon direction of the Program Manager.

### ***R&R***

If the R&R receives information pertaining to the licensure of a day care facility, the R&R should encourage the caller to contact the local licenser. If the caller is unwilling to do so, then the R&R should follow the procedures identified on page 12 of this policy section.

If the R&R agency receives a complaint that is determined to be of a child protective nature, the R&R staff will immediately refer the caller to the Centralized Intake Unit (1-866-820-5437). They will not 'intake' the information. If the caller is a professional person legally mandated to report suspected child abuse or neglect, (i.e., doctor, teacher, day care staff person) the R&R agency staff will inform the caller that by law the referral must be made to the Centralized Intake Unit and will give the number.

### **Planning the Investigation**

The unannounced site visit should be conducted within a reasonable time frame following receipt of the initial complaint. The investigation must be initiated within **24 hours** from the time the report was received. This could include a phone call relating to the investigation. Urgency of the response is dependent upon identified or alleged health and safety risk factors. The licenser will notify the Program Manager whenever there are serious complaints such as a severe injury or death of a child, inappropriate touching issues, CFSD or Law Enforcement involvement, and any complaints regarding a facility that is currently involved in Negative Licensing Action.

There are times that the licensing worker may be waiting for additional information in order to conduct the investigation or has been asked to

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postpone due to law enforcement or CFSD involvement. If the licensing worker is unable to conduct an inspection within **7 days**, they will contact the Program Manager for further guidance.

### Investigation

The licensing investigation is not to be conducted in a manner that is capricious or oppressive. It is to be conducted in a fair and impartial manner, undistorted by personal feelings. Therefore, the licensor, based upon the details of the complaint, should prepare themselves to conduct a comprehensive investigation examining each requirement that is applicable to the issues outlined in the complaint. It is important to remember that there may be issues the program does not have authority to investigate, i.e., CPS or payment related concerns.

The licensor should not begin an investigation with any pre-conceived notions about whether the provider has in fact violated any rules and regulations. The licensor must approach the investigation with an open mind and based upon evidence presented, make the appropriate determination about the validity of the complaint.

### Gathering Evidence

The most common ways to gather evidence is through interviewing, observation and record review.

- Interviews:
  - Child interviews-- with parent permission: After consultation with Program Manager, CCL may interview a child only upon receipt of parent verbal or written authorization.
  - Staff interviews: CCL may interview staff to collaborate findings.
  - Collateral interviews of other persons of interest—this might include parents, household members, neighbors, former staff persons etc.
- Observation: while at the facility, the CCL may gather sufficient evidence using this technique.
- Record Review: CCL has authority to view all records on site.

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### Other Evidentiary Means

Another source of evidence gathering involves reports from :

- The CACFP program (from their onsite visits to participating providers)
- Reports gathered by R&R training personnel.
- Physical Plant reports from the fire department or local sanitarian
- Law Enforcement or CPS reports

*The CCL may write a deficiency notice based on the written reports from these sources; however, no adverse negative licensing action may be taken unless CCL conducts an investigation and validates the complaint. The CCL will staff with Program Manager prior to adverse action.*

Other sources of evidence include:

- Photographs—including video
- Affidavits

### Findings

#### Not Validated:

If the investigation reveals there is no direct evidence of a violation, the CCL should notify the provider in writing (complaint conclusion letter) of the investigation results, noting that the investigation is closed, that no adverse license action will be taken on this complaint.

#### Validated:

If the investigation reveals noncompliance with the identified complaint issue or other requirements, the CCL shall complete a standard deficiency notice and send the notice to the provider for response per his/her “plan of correction.” The deficiency notice is to include a cover letter.

### Immunization Issues—DCC

When the Public Health Nurse (PHN) finds an incomplete immunization record or finds the absence of a record system at a child care center, the PHN shall advise the center director they have 7 days to correct the non-compliance and obtain the documentation to complete the record. If the record is not complete after this time, the PHN will formally notice the center director. Another 7 day time period should be granted and the

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center director informed that non-compliance after this time will result in the child being excluded from the facility.

Should the center director not comply after the 2<sup>nd</sup> 7 day period, the PHN will not only order the exclusion of the child from the facility, but will make a formal referral to the Child Care Licensing Program at the local level. The local licensor will then make contact with the center director and advise that continued non-compliance will result in negative licensing action.

If the local licensor is unavailable, the referral should be made to the Child Care Licensing Program's Central Office.

**Immunization  
Issues--homes**

For those home programs where PHNs are providing consulting services pertaining to immunization, the same process will be followed except that it will be the child care licensing program that orders the exclusion of the child who does not have up to date immunization records.

**Statement of  
Deficiency and  
Plan of Correction**

The Statement of Deficiency and Plan of Correction will be issued in accordance with Policy Section CCL-017.

**Follow-up  
Inspection**

A follow-up inspection will be conducted on all validated complaints in accordance with Policy Section CCL-006.

**Removal from  
Referral List**

R & R notification: CCL will provide notification to the R & R of any licensing or registration negative licensing action (e.g. suspension, denial, revocation, etc.). This will prevent inadvertent referrals to an inappropriate provider.

A provider/facility can be removed from the R&R Referral list for the following reasons:

- If the provider is under investigation by CFSD;
- If the provider is under investigation by Child Care Licensing;
- If negative licensing has occurred as a result of either a CFSD or Licensing investigation or
- Other investigative findings causing serious licensing concerns, but do not mitigate negative licensing action.



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Facilities with no current, valid registration or license shall not be referred.

CCL will inform the child care provider his/her name has been removed from the referral listing.

### **Referral List Reinstatement**

R & R notification: CCL will provide written request or email to resume referrals to the provider's facility or until the registration or license is restored to a regular status. CCL will inform the child care provider his/her name is reinstated to the referral listing.

### **Requests for Information:**

Any person wishing to know the status of a day care facility's license or registration certificate may call the local DPHHS-QAD office or District Child Care Resource and Referral Agency.

If negative licensing action has been taken against a day care facility, the public can be informed:

- That a license has been reduced to a provisional, probationary or restricted status;
- That a license has been suspended or revoked, pending the completion of a corrective action plan;
- Provider's name; and/or
- Provider's phone number.

### **Public Requests**

Validated licensing complaints against a registered or licensed provider may be disclosed to a person requesting information on that facility. The nature of the validated complaint, (e.g. leaving child unattended, lack of supervision) may be shared but names or specific details **may not** be disclosed.

In cases when a complaint is made but is not validated, information pertaining to the nature of the allegations will not be shared with the public.

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Once the provider has submitted an approved Plan of Correction, the inspection will be archived and will be available for the public at the following website:

<https://dphhs.mt.gov/qad/licensure/childcarelicensing/providersearch>

**Response to Reporter**

A written response stating whether the complaint was validated or not will be sent to the reporter if they indicate during the intake that they want to be notified. The reporter will not be informed of any information other than information relating to the specific complaint that was called in or sent online. This information will only be sent upon request of the reporter.

**Parent Notification**

If the registration or license is placed on probationary status as a result of investigative findings, the department shall notify all parents and guardians of all children attending the facility of the status of the license/registration, the basis for the reduced status and the time period for which the license is reduced. Notification may be conducted via personal contact, written notice, or posting notice on the day care license. The certificate is required to be posted in plain view at the facility.

**Confidentiality**

A complaint reporter's identity is confidential. Complaint information is not to be discussed with other persons unless authorized by department policy or Montana law i.e., licensing staff, child protection workers, etc.

The CCL may reveal to the Resource and Referral (R&R) agency that an investigation is ongoing. DPHHS-QAD will notify the R&R that a license has been reduced to provisional, probationary, restricted or suspended status pending completion of corrective action plan, or that the license has been revoked.

If as a result of investigative findings, the department determines that services under the Training and Technical Assistance program offered by the R&R agency are necessary, the CCL will share with the R&R staff the non-compliances found and appropriate training will be developed. This information is to be considered confidential. The R & R must keep this information confidential.

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CCL shall not reveal details of any case involving child abuse or neglect which results in negative licensing actions. Requests for details of licensing actions are referred to CCL Day Care Program Manager. All names of the children and the family must be deleted from the register that is available to the public.

**References**

45 CFR 98.5 (f)  
Section 41-3-201, MCA  
Section 41-3-205, MCA

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**Specifics of the  
Complaint**

**WHO?**

- Who are the persons involved, including the complainant / reporter, any witnesses, any children injured, staff at the facility who were involved in the incident or who may have knowledge of it?
- If names are unavailable, what did the person look like?
- How can the licensing representative contact these people? (addresses, telephone numbers, places of employment, etc.)
- Does the complainant / reporter (person making the complaint/report) know of anyone else who might have knowledge of the same or a similar incident?
- What is the complainant's / reporter's relationship to the provider? Are they an employee? A former employee? Volunteer? Parent?
- How does the complainant / reporter know what has occurred?
- What are the ages or date of birth of any children involved?

**WHAT?**

- Specifically, what occurred?
- What does the complainant / reporter think is being violated?
- What is the severity of the injuries sustained?
- What is the condition of the other children in care?

**WHEN?**

- When did the incident occur? (Be as specific as possible)
- If it has been recurring, when and how often has it been observed?
- Was there anything special about the day involved (such as a school holiday, teacher work day and so on)?

**WHERE?**

- Where did the incident occur? Outside the facility? Inside the facility?
- What was the address of the facility?
- What room/area did the event occur?

**WHY?**

- What caused the incident?
- Was a staff member sick?
- Was it an emotional outburst or premeditated?

**HOW?**

- Specifically, how did the incident occur? What was the sequence of events? What things or instruments were used?
- How often has it occurred?
- How does the complainant / reporter know that it has occurred?