

19-008 DENIAL, REFUSAL TO RENEW, AND DISCIPLINARY ACTION

19-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action:

19-008.01A The Department may deny or refuse to renew a mental health center facility license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 19-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 19-008.01B.

19-008.01B The Department may take disciplinary action against a mental health center facility license for any of the following grounds:

1. Violation of any of the provisions of the Health Care Facility Licensure Act or 175 NAC 19;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of a client or employee;
4. A report from an accreditation body sanctioning, modifying, terminating, or withdrawing the accreditation of the facility;
5. Failure to allow an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure access to the facility for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of these departments;
6. Discrimination or retaliation against a client or employee who has submitted a complaint or information to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure;
7. Discrimination or retaliation against a client or employee who has presented a grievance or information to the office of the state long term care ombudsman;
8. Failure to allow a state long term care ombudsman or an ombudsman advocate access to the facility for the purposes of investigation necessary to carry out the duties of the office of the state long term care ombudsman;
9. Violation of the Emergency Box Drug Act;
10. Failure to file a report of payment or action taken due to a liability claim or an alleged violation required by Neb. Rev. Stat. Section 71-168.02;

11. Violation of the Medication Aide Act; or
12. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. Sections 28-372 and 28-711.

19-008.02 Procedures for Denial, Refusal to Renew or Disciplinary Action

19-008.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a license, the Department must send a notice to the applicant or licensee, by certified mail to the last address shown on its records. The notice must state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

19-008.02B The denial, refusal to renew, or disciplinary action must become final 15 days after the mailing of the notice unless the applicant or licensee, within this 15 day period, makes a written request to the Director for an informal conference or an administrative hearing.

19-008.02C Informal Conference

19-008.02C1 At the request of the applicant or licensee, the Department must hold an informal conference within 30 days of the receipt of the request. The conference must be held in person, or by other means, at the request of the applicant or licensee. If the pending action is based on an inspection, the Department's representative at the conference must not be the individual who did the inspection.

19-008.02C2 Within 20 working days of the conference, the Department representative must state in writing the specific reasons for affirming, modifying, or dismissing the notice. The representative must send a copy of the statement to the applicant or licensee by certified mail to the last address shown in the Department's records and a copy to the Director.

19-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department must remove the deficiencies from the notice and rescind any sanction imposed solely as a result of those cited deficiencies.

19-008.02C4 If the applicant or licensee contests the affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the statement.

19-008.02D When an applicant or a licensee contests the notice and requests a hearing, the Department must hold a hearing in accordance with the Administrative Procedures Act (APA) and with the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. sections 33-139 and 139.01.

19-008.02D1 On the basis of evidence presented at the hearing, the Director must affirm, modify, or set aside the determination. The Director's decision must:

1. Be in writing;
2. Be sent by registered or certified mail to the applicant or licensee; and
3. Become final 30 working days after mailing unless the applicant or licensee, within the 30-day period, appeals the decision.

19-008.02D2 An applicant or a licensee's appeal of the Director's decision must be in accordance with the Administrative Procedure Act.

19-008.03 Types of Disciplinary Action

19-008.03A The Department may impose any one or a combination of the following types of disciplinary action against the license:

1. A fine not to exceed \$10,000 per violation;
2. A prohibition on admissions or re-admissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;
3. A period of probation not to exceed two years during which the mental health center may continue to operate under terms and conditions fixed by the order of probation;
4. A period of suspension not to exceed three years during which the mental health center may not operate; and
5. Revocation which is a permanent termination of the license. The licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

19-008.03B In determining the type of disciplinary action to impose, the Department must consider:

1. The gravity of the violation, including the probability that death or serious physical or mental harm will result;
2. The severity of the actual or potential harm;
3. The extent to which the provisions of applicable statutes, rules, and regulations were violated;
4. The reasonableness of the diligence exercised by the mental health center in identifying or correcting the violation;
5. Any previous violations committed by the mental health center; and
6. The financial benefit to the mental health center of committing or continuing the violation.

19-008.03C If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the Department may take additional disciplinary action as described in 175 NAC 19-008.03A.

19-008.03D Temporary Suspension or Temporary Limitation: If the Department determines that clients are in imminent danger of death or serious physical harm, the Director may:

1. Temporarily suspend or temporarily limit the facility license, effective when the order is served upon the facility. If the licensee is not involved in the daily operation of the facility, the Department must mail a copy of the order to the licensee, or if the licensee is a corporation, to the corporation's registered agent;
2. Order the immediate removal of residents; and
3. Order the temporary closure of the facility pending further action by the Department.

The Department must simultaneously institute proceedings for revocation, suspension, or limitation of the license, and must conduct an administrative hearing no later than ten days after the date of the temporary suspension or temporary limitation.

19-008.03D1 The Department must conduct the hearing in accordance with the Administrative Procedure Act and the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. sections 33-139 and 139.01.

19-008.03D2 If a written request for continuance of the hearing is made by the licensee, the Department must grant a continuance, which may not exceed 30 days.

19-008.03D3 On the basis of evidence presented at the hearing, the Director must:

1. Order the revocation, suspension, or limitation of the license; or
2. Set aside the temporary suspension or temporary limitation.

If the Director does not reach a decision within 90 days of the date of the temporary suspension or temporary limitation, the temporary suspension or temporary limitation will expire.

19-008.03D4 Any appeal of the Department's decision after hearing must be in accordance with the APA.

19-008.04 Reinstatement from Disciplinary Probation, Suspension, or Revocation: A licensee may request reinstatement of its license at the end of probation or suspension, prior to the completion of the probation or suspension term, or following revocation.

19-008.04A Reinstatement at the End of Probation or Suspension: A licensee requesting reinstatement at the end of probation or suspension must:

1. Submit to the Department an application for reinstatement that conforms to the requirements of 175 NAC 19-003.02;
2. Pay the renewal fee as specified in 175 NAC 19-004.10, and
3. Successfully complete an inspection.

The Department must reinstate the license when it finds, based on an inspection as provided for in 175 NAC 19-005, that the facility is in compliance with the operation, care, treatment, and physical plant requirements of 175 NAC 19-006 and 19-007.

19-008.04B Reinstatement Prior to Completion of Probation or Suspension: A licensee requesting reinstatement of its license prior to the completion of probation or suspension, must:

1. Submit to the Department a petition stating:
 - a. The reasons why the license should be reinstated prior to the probation or suspension completion date; and

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- b. The corrective action taken to prevent recurrence of the violation(s) that served as the basis of the probation or suspension;
2. Pay the renewal fee as specified in 175 NAC 19-004.10; and
3. Successfully complete any inspection that the Department determines necessary.

19-008.04B1 The Director must consider the petition submitted and the results of the inspection or investigation conducted by the Department and:

1. Grant full reinstatement of the license;
2. Modify the probation or suspension; or
3. Deny the petition for reinstatement.

19-008.04B2 The Director's decision is final 30 days after mailing the decision to the licensee unless the licensee requests a hearing within the 30-day period. The requested hearing must be held according to rules and regulations of the Department for administrative hearings in contested cases.

19-008.04C Re-Licensure After Revocation: A facility license that has been revoked is not eligible for re-licensure until two years after the date of revocation.

19-008.04C1 A facility seeking re-licensure must apply for an initial license and meet the requirements for initial licensure in 175 NAC 19-003.01.

19-008.04C2 The Department must process the application for re-licensure in the same manner as specified in 175 NAC 19-003.01.