

**§7802. Issuance of license or approval**

**1. Types of license or approval.** The department shall issue the following types of licenses.

A. A provisional license or approval shall be issued by the department to an applicant who:

- (1) Has not previously operated the facility for which the application is made or is licensed or approved but has not operated during the term of that license or approval;
- (2) Complies with all applicable laws and rules, except those which can only be complied with once clients are served by the applicant; and
- (3) Demonstrates the ability to comply with all applicable laws and rules by the end of the provisional license or approval term. [PL 1983, c. 386, §2 (NEW).]

B. The department shall issue a full license or approval to an applicant who complies with all applicable laws and rules. [PL 1983, c. 386, §2 (NEW).]

C. A conditional license or approval may be issued by the department when the individual or agency fails to comply with applicable law and rules and, in the judgment of the commissioner, the best interest of the public would be so served by issuing a conditional license or approval. The conditional license or approval shall specify when and what corrections must be made during the term of the conditional license or approval. [PL 1983, c. 386, §2 (NEW).]

D. A temporary license to operate a family foster home may be issued on a one-time basis when a preliminary evaluation of the home by the department has determined that the applicants are capable of providing foster care, in accordance with applicable laws and rules relating to minimum standards of health, safety and well-being, except that it is not possible to obtain a fire safety inspection in accordance with section 8103 prior to licensure and there are no obvious fire safety violations and, in the judgment of the commissioner, the best interest of the public will be so served by issuing a temporary license. [PL 1985, c. 706, §1 (NEW).]

E. A 2-year full license may be issued by the department for a residential care facility or a congregate housing service program as long as it is in substantial compliance with licensing rules and has no history of health or safety violations. [PL 2001, c. 263, §1 (RPR).]

[PL 2001, c. 263, §1 (AMD).]

**1-A. Consolidation of functions.** All staff performing general licensing functions within the Office of Child and Family Services, including the out-of-home abuse and neglect investigating team when investigating pursuant to section 5005, subsection 3, paragraph C, shall be consolidated as a single organizational unit.

[PL 1989, c. 400, §13 (AMD); PL 2013, c. 368, Pt. CCCC, §7 (REV).]

**2. Term of license or approval; compliance visits.**

A. The provisional license or approval shall be issued for a minimum period of 3 months or a longer period, as deemed appropriate by the department, not to exceed 12 consecutive months. [PL 1983, c. 386, §2 (NEW).]

B. The terms of full licenses or approvals are as follows.

- (1) Except as provided in subparagraphs (2) to (7), the term of all full licenses and approvals issued pursuant to this chapter is for one year or the remaining period of a conditional or provisional license that has been issued for less than one year.
- (2) The term of a children's residential care facility license is for 2 years.
- (3) The term of a drug treatment center license is for 2 years.
- (4) The term of a family foster home or specialized foster home license is for 2 years.

(5) The term of a child care facility license issued under section 8301-A, subsection 2 is for 2 years.

(6) The term of a family child care provider license issued under section 8301-A, subsection 3 is for 2 years.

(7) The term of an adult day care program license pursuant to chapter 1679 is for either one or 2 years at the discretion of the department. [PL 2021, c. 35, §14 (AMD).]

C. The conditional license shall be issued for a specific period, not to exceed one year, or the remaining period of the previous full license, whichever the department determines appropriate based on the laws and rules violated. [PL 1983, c. 386, §2 (NEW).]

C-1. The term of a temporary family foster home license shall be for a specific period not to exceed 120 days. [PL 1985, c. 706, §2 (NEW).]

D. The department shall inspect for continued compliance with applicable laws and rules prior to the expiration of the license or approval. [PL 2001, c. 263, §2 (AMD).]

E. Residential care facilities and congregate housing services programs for which a license has been issued must be periodically inspected for continued compliance with applicable laws and rules under the rules to be established by the department. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [PL 2001, c. 263, §3 (NEW).]

[PL 2021, c. 35, §14 (AMD).]

**3. Failure to comply with applicable laws and rules.** In taking action pursuant to this subsection, the department shall notify the licensee of the opportunity to request an administrative hearing or shall file a complaint with the District Court in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

A. When an applicant fails to comply with applicable law and rules, the department may refuse to issue or renew the license or approval. [PL 1983, c. 386, §2 (NEW).]

B. If, at the expiration of a full or provisional license or approval, at the expiration of a temporary family foster home license or during the term of a full license or approval, the facility fails to comply with applicable law and rules and, in the judgment of the commissioner, the best interest of the public would be served, the department may issue a conditional license or approval, or change a full license or approval to a conditional license or approval. Failure by the conditional licensee to meet the conditions specified by the department shall permit the department to void the conditional license or approval or refuse to issue a full license or approval. The conditional license or approval shall be void when the department has delivered in hand or by certified mail a written notice to the licensee or, if the licensee cannot be reached for service in hand or by certified mail, has left written notice thereof at the agency or facility. For the purposes of this subsection the term "licensee" means the person, firm, corporation or association to whom a conditional license or approval has been issued. [PL 1985, c. 706, §3 (AMD).]

C. Whenever, upon investigation, conditions are found which, in the opinion of the department, immediately endanger the health or safety of persons living in or attending a facility, the department may request the District Court for an emergency suspension pursuant to Title 4, section 184, subsection 6. [PL 1999, c. 547, Pt. B, §42 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

D. Any license or approval issued under this subtitle may be suspended or revoked for violation of applicable law and rules, committing, permitting, aiding or abetting any illegal practices in the operation of the facility or conduct or practices detrimental to the welfare of persons living in or attending the facility.

When the department believes that a license or approval should be suspended or revoked, it shall file a complaint with the District Court as provided in the Maine Administrative Procedure Act, Title 5, chapter 375. [PL 1983, c. 386, §2 (NEW); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AMD).]

[PL 1999, c. 547, Pt. B, §§42, 78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

**4. Subsequent application for a full license or approval.** Subsequent to any of the following actions, a subsequent application for a full license or approval may be considered by the department when the deficiencies identified by the department have been corrected:

- A. Issuance of a conditional license or approval; [PL 1983, c. 386, §2 (NEW).]
- B. Refusal to issue or renew a full license or approval; [PL 1983, c. 386, §2 (NEW).]
- C. Revocation or suspension of a full license or approval; [PL 1985, c. 706, §4 (AMD).]
- D. Refusal to issue a provisional license or approval; or [PL 1985, c. 706, §4 (AMD).]
- E. Expiration of a temporary family foster home license. [PL 1985, c. 706, §5 (NEW).]

[PL 1985, c. 706, §§4, 5 (AMD).]

**5. Appeals.** Any person aggrieved by the department's decision to take any of the following actions, may request an administrative hearing, as provided by the Maine Administrative Procedure Act, Title 5, chapter 375:

- A. Issue a conditional license or approval; [PL 1983, c. 386, §2 (RPR).]
- B. Amend or modify a license or approval; [PL 1983, c. 386, §2 (RPR).]
- C. Void a conditional license or approval; [PL 1983, c. 386, §2 (RPR).]
- D. Refuse to issue or renew a full license or approval; [PL 1985, c. 706, §6 (AMD).]
- E. Refuse to issue a provisional license or approval; or [PL 1985, c. 706, §7 (AMD).]
- F. Refuse to issue a temporary family foster home license. [PL 1985, c. 706, §8 (NEW).]

[PL 1985, c. 706, §§6-8 (AMD).]

**6. Time limit on reapplication after denial or revocation.** The following time limit applies to a reapplication after denial or revocation.

A. When a license for a child care facility or a family child care provider has been denied or revoked on one occasion, the applicant or licensee may not reapply for a license for a child care facility or a family child care provider for a period of one year from the effective date of the denial or revocation decision if not appealed, or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later. [PL 2021, c. 35, §15 (AMD).]

B. If a license for a child care facility or a family child care provider has been denied or revoked on 2 occasions, the applicant or licensee may not reapply for a license for a child care facility or a family child care provider for a period of 2 years from the effective date of the second denial or revocation decision if the decision is not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later. [PL 2021, c. 35, §15 (AMD).]

C. If a license for a child care facility or a family child care provider has been denied or revoked on 3 occasions, the applicant or licensee may not receive another license for the care of children. [PL 2021, c. 35, §15 (AMD).]

[PL 2021, c. 35, §15 (AMD).]

**7. Rules.** The department may adopt rules necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2007, c. 324, §10 (NEW).]

SECTION HISTORY

PL 1975, c. 719, §6 (NEW). PL 1977, c. 694, §374 (AMD). PL 1983, c. 386, §2 (RPR). PL 1983, c. 602, §§1-4 (AMD). PL 1985, c. 706, §§1-8 (AMD). PL 1987, c. 511, Pt. B, §3 (AMD). PL 1989, c. 400, §§13, 14 (AMD). PL 1991, c. 69, §1 (AMD). PL 1993, c. 661, §5 (AMD). PL 1995, c. 670, Pt. B, §6 (AMD). PL 1995, c. 670, Pt. D, §5 (AFF). PL 1999, c. 547, Pt. B, §§42, 78 (AMD). PL 1999, c. 547, Pt. B, §80 (AFF). PL 1999, c. 599, §1 (AMD). PL 2001, c. 263, §§1-3 (AMD). PL 2005, c. 640, §1 (AMD). PL 2007, c. 324, §§8-10 (AMD). PL 2013, c. 179, §6 (AMD). PL 2013, c. 368, Pt. CCCC, §7 (REV). PL 2015, c. 267, Pt. RR, §1 (AMD). PL 2021, c. 35, §§14, 15 (AMD).

The State of Maine claims a copyright in its codified statutes. If you intend to republish this material, we require that you include the following disclaimer in your publication:

*All copyrights and other rights to statutory text are reserved by the State of Maine. The text included in this publication reflects changes made through the First Special Session of the 130th Maine Legislature and is current through October 31, 2021. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.*

The Office of the Revisor of Statutes also requests that you send us one copy of any statutory publication you may produce. Our goal is not to restrict publishing activity, but to keep track of who is publishing what, to identify any needless duplication and to preserve the State's copyright rights.

PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.