

TITLE 395
CHILDREN AND FAMILY SERVICES
PROTECTION AND SAFETY

CHAPTER 3 FOSTER CARE: LICENSURE, APPROVAL, AND HOME STUDIES

3-000 DEFINITIONS

REASONABLE AND PRUDENT PARENT STANDARD means a standard characterized by careful and sensible parental decisions which maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.

3-001 FOSTER CARE LICENSE: A foster care license is the State's authorization to provide care for children placed with the licensee, when the applicant has met licensing standards. A license issued to an applicant is effective for two years, and identifies the ages of children cared for, the number of children for whom the home is licensed, and the location of the licensed home.

3-001.01 Fees for a License: A foster parent will not be charged a fee for a foster care license.

3-001.02 General Limitations for Foster Care Licenses

3-001.02A Only one license can be issued for each address.

3-001.02B To be licensed for foster care, a person must be age of majority. If legally married, both spouses must be licensed, and meet all regulations in this section.

3-001.03 Application

3-001.03A Initial Application: The initial application must include the completed application form, completed references, and health information form.

3-001.03B Application for a Renewal License: The application for license renewal must include the application form and health information form.

3-001.03C Health Information: Each household member of the age of majority who will provide care, including each applicant, must present health information to document that she or he is physically and mentally capable of caring for children. For purposes of the initial license, the health information must include the signature of a health practitioner. For purposes of license renewal, a self-certifying report without the signature of a health practitioner is acceptable.

1. Prescribed Medications: If the Foster Care Licensee or applicant indicates that he/she is currently taking prescribed medications, they must be listed on the health report and signed by a health practitioner. The practitioner must describe any impact the medications may have on the applicant's ability to safely care for children.

2. Request for a Physical Exam: If the health information report indicates that an applicant has a potential health (physical, behavioral or emotional) problem that may interfere with the applicant's ability to care for children, or if for some other reason the licensing agent or agency has reason to believe such a health problem exists, the licensing agent or agency must request a report by a physician. This report must describe any impact the health problem may have on the applicant's ability to safely care for children. The Department will not pay for the examination or report. If the applicant does not supply the requested report, the license application will be denied.

If there is reason to believe that other persons in the household pose a health (physical or behavioral) related issue that could impact their ability to safely care for children, the applicant must present appropriate health information from a practitioner to allow determination that the condition does not impact the applicant's ability to safely care for children.

3-001.03D References: For purposes of the initial application, each applicant must provide the names and contact information of at least three individuals who can provide positive written references. No more than one of the individuals may be related to the applicant.

3-001.03E Time-Frame for Processing the Application: The licensing agent or agency must initiate action on an application within ten business days of receipt of the completed application. If an applicant fails to provide the complete application, or fails to cooperate in the licensing process, the application for a license will be denied. Applications that have been determined to be incomplete for three months or longer will be denied.

3-001.04 Character and Ability: All adults providing foster care must:

1. Be mentally and physically able to provide care and supervision to children;
2. Exercise reasonable judgment when caring for children; and
3. Not engage in or have a history of behaviors which would injure or endanger the physical, mental health, or safety of children.

3-001.04A Character and Ability of Others in the Home: A license may be revoked when it has been determined that any individual residing in the home of a licensed foster care provider has engaged in behaviors that have or would compromise the safety or well-being of a child.

3-001.05 Background Checks: The licensee and all other members of the household must submit to required background checks, as follows:

1. State Central Register or Registry of child protection for any state in which the applicant has lived within the past five years (if age 13 or older);
2. Adult Protective Services Central Registry (if age 13 or older);
3. Appropriate local law enforcement agency (if age 18 or older);
4. Sex Offenders Registry for any state in which the applicant has lived within the past five years (if age 18 or older);
5. State-level criminal history (if age 18 or older); and
6. Fingerprint-based National Criminal History Check with the Identification Division of the Federal Bureau of Investigation (if age 18 or older).

3-001.06 Release of Information: In order to perform the background checks, the licensing agent or agency must obtain a signed written release of information from each individual living in the home. The release must include all previous known names, including maiden names and aliases. A child's release of information must be signed by the child's parent or guardian.

3-001.07 Sharing Information: The Department is prohibited by federal rules and regulations from sharing the results of the national criminal history check with any person or entity, except as described below.

3-001.07A Sharing Information with the Applicant: The Department can share the results of the Criminal History Release of Information with the subject of the national criminal history check when legal identification is provided. The Department will provide the applicant with the opportunity to question the results and advise the applicant that there are procedures for obtaining a change, correction, or update of the FBI record.

3-001.07B Sharing Information with Attorneys or Courts: The Department can share all background check results except the National Criminal History Check with courts and attorneys.

3-001.07C Sharing Information Regarding Interstate Compact on the Placement of Children Licensure: The Department will include the results of all background checks except for the National Criminal History check when appropriate, or can state that there is no known criminal history.

3-001.08 Action Based on Criminal History and Child Abuse/Neglect Reports: If the individual has a criminal history or history of child abuse or neglect, the Department will determine if the criminal history allows or prohibits licensure, based on the following criteria:

3-001.08A Ineligible: A person convicted of a felony involving abuse or neglect of a child, spousal abuse, a crime against a child or children (including child pornography) or a crime of violence (including rape, sexual assault, or homicide, but not including other physical assault or battery) is ineligible to provide foster care. A person who is identified as a perpetrator on a Central Registry or equivalent in any state is ineligible to provide foster care.

3-001.08B Ineligible For Five Years: A person convicted of a felony involving physical assault (other than a crime of violence described in 3-001.08A), battery, or a drug-related offense is ineligible to provide foster care for five years after the date of conviction.

3-001.08C Eligible at Department's Discretion: If a person has been convicted of a crime or crimes that do(es) not otherwise result in ineligibility, the Department will review the facts and circumstances of the conviction(s) to determine whether the person is eligible to provide foster care.

3-001.09 Participation in Activities: The licensee must:

1. Permit each foster child to participate in age appropriate school, extracurricular, enrichment, cultural, and social activities;
2. Permit each child to practice and further his/her own religious beliefs; and
3. Exercise the Reasonable and Prudent Parent Standard when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.

3-001.10 Maximum Number of Persons for Whom Care Can Be Provided: A foster parent may provide care for adults and children, including foster children and children related by blood, marriage or adoption, according to the following maximum placement limits.

The applicable maximum placement limit for children will be reduced in an amount equal to the number of adults in the home for whom the foster parent(s) provide(s) 24 hour care and supervision.

3-001.10A Homes with Two Licensed Foster Parents: No more than six children may reside in a home with two licensed foster parents. No more than four children under age six may reside with two licensed foster parents.

3-001.10B Homes with One Licensed Foster Parent: No more than four children may reside in a home with one licensed foster parent. No more than two children under age six may reside with one licensed foster parent.

3-001.10C Exception: The Department in its discretion may allow a home to exceed the maximum placement limit when doing so is in the best interest of each child in the home.

3-001.11 Discipline: The foster parent(s) must provide age appropriate discipline for children in their home. The following are prohibited by foster parents or any caregiver of the foster children:

1. Denial of necessities;
2. Chemical or mechanical restraints;
3. Derogatory remarks, abusive or profane language;
4. Yelling, screaming or threats of physical punishment;
5. Physical punishment of any kind to include spanking, slapping, shaking, biting, striking, kicking;
6. Rough handling; and
7. Denial of visits or contact with parent(s), sibling(s), or others, as designated by the Department.

The foster parent shall not delegate discipline of a child to anyone who is not in a caregiver role.

3-001.12 Confidentiality: All information concerning a child and his or her family is considered confidential and will only be disclosed for purposes that benefit the child. Pictures and information regarding the child will not be posted on social media sites.

3-001.13 Cooperation: The licensee must cooperate with the licensing agent and licensing agency.

3-001.14 Records: The licensed caregiver is responsible for ensuring each child in their care has routine medical, vision and dental care necessary for the child's well-being. The licensed caregiver will maintain and keep the child's medical history to include the following accurate written information on each child in their care:

1. Full name of child;
2. Name, address, and phone number of the child's physician;
3. Name, address, and phone number of the person or agency holding legal custody of the child;
4. Past (if available) and current immunizations;
5. The administering of all medications;
6. Significant health problems;
7. Emergency medical treatment and intervention received; and

3-001.15 Transportation Safety: The licensee is responsible to transport and accompany children in their care to necessary medical, dental, vision and other health (physical or behavioral) related appointments. The licensee is responsible to ensure that safety restraints are available and used for each child transported, in compliance with Neb. Rev. Stat. §§ 60-6,267, 60-6,268, and 71-1907. Failure to comply with transportation safety will result in an action being taken against the licensee.

3-001.16 On-Site Visits: The licensee must agree to on-site home visits by the licensing agent and agency having legal custody of a child.

3-001.17 Environmental Requirements

3-001.17A Facilities: The licensee shall assure that:

1. A minimum of 35 square feet per individual excluding bedrooms, bathroom(s), and kitchen;
2. Bedrooms or sleeping areas meet the following criteria:
 - a. At least 35 square feet for each child occupying the bedroom or sleeping area;
 - b. Each child must be provided with a bed, bedding, and a place to store his or her belongings; and
 - c. When required by the placing agency or the Department, the licensee must provide separate bedrooms for children of opposite sexes.

3-001.17B Water Supply: The licensee shall ensure that the water supply meets one of the following criteria:

1. If from a private well, water must be tested at initial application and annually thereafter by a DHHS-certified lab for bacteria and nitrates; or
2. Water comes from a municipal source.

3-001.17C Nutrition and Food Service: The licensee shall ensure that each child will be provided with a minimum of three meals per day which meet their daily nutritional needs.

3-001.17D Hazardous Materials and Equipment: The licensee shall ensure that:

1. Drugs, cleaning agents, poisons, and other potentially hazardous items, materials, or equipment are inaccessible to youth or are used by youth under supervision of a caregiver;
2. All weapons and firearms are unloaded and locked or stored in a locked cabinet or area; and
3. All ammunition is stored in a locked cabinet or area and stored separate from the firearms.

3-001.17E Outdoor Recreational Area: The licensee shall ensure that the grounds are clean, well-drained, and hazard-free.

3-001.17F Waste Disposal: The licensee shall ensure that:

1. Garbage that is stored outside the home must be stored in containers and disposed of regularly; and
2. A sewer system is used.

3-001.17G Pets: The licensee shall ensure that household pets:

1. Have no history of aggression;
2. Are licensed, if required by local or state statute or ordinance, and are current on any necessary or required vaccinations.

3-001.18 Fire Safety

3-001.18A Fire Safety for All Foster Homes: The licensee must assure that:

1. A plan for evacuation from fire or like hazards is formulated and practiced with foster children;
2. The home has:
 - a. At least two exits on grade level;
 - b. At least two means of escape from every level of the home that is used for sleeping. One of the exits may be a window that is at least 5.7 square feet of clear space and no more than 44 inches off the ground; and
 - c. Operable smoke detectors, maintained according to manufacturer's recommendations, which are located on each level of the home. For bedrooms located below grade level and used by foster children, the detectors must be single station approved detectors.

3-001.19 Fire Safety or Sanitation Requests: The licensing agent will submit all requests regarding fire safety or sanitation requirements to the state or local fire authority or to the state or local health department for a decision on suitability of the suggested alternative.

3-001.20 Compliance Checklist: Prior to licensure, re-licensure, or a license amendment, the licensing agent must complete a Department-designated compliance checklist. In order to complete the checklist for licensure or re-licensure, the licensing agent must make an on-site visit to the home.

3-001.21 Alternative Compliance: The Department may approve the request of an applicant or current licensee to comply with a licensing standard in a different way from what is stated in the standard but still meets the intention of the standard. The applicant/licensee must submit the request in writing. The licensing agent must approve prior to licensing. The applicant/licensee must resubmit the alternative compliance request for approval each time a license is requested to be issued, amended, renewed, or reinstated.

3-001.22 Waiver of Licensing Requirements for Relatives: The Department in its discretion may waive the following licensing requirements for an applicant who is related by blood, marriage, or adoption to the child requiring placement:

1. The requirement that no more than one relative may provide a reference;
2. The maximum number of persons for whom care can be provided;
3. The requirements regarding minimum square feet per child occupying a bedroom and per individual excluding bedrooms, bathrooms, and kitchen;
4. The requirement that a home have at least two exits on grade level; and
5. Training.

3-001.23 Declaratory Ruling: An applicant/licensee may request a declaratory ruling regarding the application of a requirement to his/her particular situation. Both the applicant/licensee and the licensing agent must submit written statements to the Director, including the following information:

1. The requirement being questioned;
2. The decision being sought;
3. All pertinent facts about the specific situation; and
4. The rationale for his/her interpretation.

3-001.24 Amending a License: A license can be amended at the written request of the foster parent when the foster parent wants to change the number or age of children cared for, or the address, except that if the change requires application of additional or different regulations, those requirements must be met before the amended license is issued. If the reason for the request is change of address, a compliance checklist must be completed for the new residence to assure that it meets licensing requirements and a new license application is needed. Following the issuance of a license, if a foster parent makes changes in number of children for whom s/he is licensed or the ages of the children cared for, the license will be amended after the licensee requests a change. If the request results in a different licensing standard, a new license application is needed and the regular evaluation process conducted. Amending a license does not change the end date of the original license.

3-001.25 Renewal of License: In order for renewal of a license to occur, all licensing requirements and processes applicable to the original license must be applied, unless specified otherwise in the description of the individual requirement.

3-001.26 Extending a License: A current license can be extended for 90 days when the licensee has submitted a completed renewal application to the Department prior to the expiration of current license. A provisional license cannot be extended.

3-001.27 Provisional License: The Department may issue a time-limited, nonrenewable provisional license to an applicant who is unable to comply with all licensure requirements and standards, has a documented plan to comply, and is capable of compliance within the time period stated in the license as approved by the licensing agent and licensing agency.

3-001.28 Training: The licensee must complete training as follows:

1. Initial license: Not less than 21 clock hours of Department-approved pre-service training before initial licensure, with such training obtained within the 12 months immediately prior to licensure.
2. Renewal license: At least 12 clock hours of Department Approved Inservice Trainings annually within the effective dates of his/her license.

3-001.28A Activities Counted as Training: To be counted toward the pre-service or in-service training requirements, training must be approved by the Department.

3-001.28A1 Documentation: The applicant/licensee must provide written documentation of training received.

3-001.29 Licensing Action: A licensing action includes any of the following:

1. Denial;
2. Revocation;
3. Placing the license into provisional status;
4. Suspension; or
5. Closure.

The Department will provide written notice of all licensing actions, including the reason for the action and, when applicable, the right to appeal the action, to the applicant or licensee. The Department cannot take a licensing action for conduct solely involving a foster parent's exercise of the Reasonable and Prudent Parent Standard.

3-001.29A Revocation: The Department will revoke the license of any licensee who does not comply with requirements after having been given written notice in accordance with noncompliance procedures.

3-001.29B Provisional License: The Department may change an existing license to provisional status when:

1. The current licensee is unable to comply with licensing regulations that do not present an unreasonable risk to the health, safety, or well-being of the foster children in the care of the applicant;
2. The licensee provides a written plan for coming into compliance and agrees to that plan in writing; and
3. The time frame for coming into compliance does not exceed 180 days or extend beyond the end date of the license, whichever comes first.

The licensing agent must submit a request to the Department providing justification for the issuance of a Provisional License. The licensing agent must follow up to assure that compliance was met within the stated time frame. If it is not, the license will be revoked.

3-001.29C Suspension of a License: A license may be suspended when one of the following exists:

1. When a complaint of suspected child or adult abuse or neglect has been received but the Department has not yet made a finding.
2. When the licensee has been placed on the APS Central Registry or the Child Abuse and Neglect Central Register as a perpetrator and the licensee has appealed that decision.
3. When any Department representative observes conditions or behaviors that may indicate suspected child or adult abuse or neglect.
4. When a licensee or member of the household has a criminal charge filed against him or her involving a crime against children or other crimes, which may affect the care of children; or
5. When a child under care dies.

When a court action is taken or an appeal decision is made regarding the issue which resulted in the suspension, the license must be reinstated or revoked. In no case will a suspension extend beyond the end date of the current license. Suspension of a license is not an appealable action.

3-001.30 Appeal of Negative Licensing Actions: The licensee has the right to appeal the revocation or denial of a license within ten days of delivery of a letter from the Department that provides notice of the intention to take the action. If the Licensee submits a written appeal within ten days of delivery of notice, the licensing action will not be taken until the appeal decision is issued by the Director of the Division of Children and Family Services. Such appeals will be carried out in accordance with the Administrative Procedure Act and 465 NAC 6.

3-002 APPROVAL OF FOSTER HOMES: Prior to placement of a child who is a ward of the Department into a foster home, the Department will approve the home, or will obtain approval through the ICPC process when applicable.

3-002.01 Emergency Approval of Relative and Kinship Homes: Emergency approval of a relative or kinship is allowed when approval prior to placement is unfeasible, subject to the following requirements. A relative is defined as being related by blood, marriage or adoption. Kinship is defined when at least one of the primary caretakers has previously lived with or has had significant contact with the child or children or sibling of a child and has a bond with the child.

3-002.01A Emergency Approval Requirements

1. Visit to the home of the potential caregiver, including a face-to-face meeting with at least one of the prospective adult caregivers (If the placement is made by law enforcement, the visit by the worker must be made no later than the following working day);
2. Assurance that there is adequate housing;
3. Assurance that the adult caregiver is able to adequately meet the needs of the child;
4. Completion of relevant background checks on all household members:
 - a. For household members age 13 through 17 the background check must include a check of the:
 - 1) CPS Central Register for all states in which the individual has lived within the past five years; and
 - 2) Adult Protective Services Central Registry.
 - b. For household members age 18 and older the background check must include:
 - 1) CPS Central Register check;
 - 2) Adult Protective Services Central Registry check;
 - 3) Sex Offender Registry check for all states in which the individual has lived within the past five years;
 - 4) Local law enforcement agency check; and
 - 5) Emergency, name-only check with the NE State Patrol;

3-002.01B Emergency Approval Time Limit: Emergency approval will not extend beyond sixty days from the date of placement without an extension done by the Department.

3-002.02 Non-Emergency Approval of Relative and Kinship Homes

3-002.02A Requirements

1. Completion of relevant background checks on all household members:
 - a. For household members age 13 through 17 the background check must include a check of the:
 - 1) CPS Central Register; and
 - 2) Adult Protective Services Central Registry.
 - b. For household members age 18 and older the background check must include:
 - 1) CPS Central Register for all states in which the individual has lived within the past five years;
 - 2) Adult Protective Services Central Registry check;
 - 3) Sex Offender Registry check;
 - 4) Local law enforcement agency check; and
 - 5) National fingerprint-based criminal history check.
2. Completion of the appropriate home study.

3-002.02B Action Based on Required Checks: If a person living in the potential relative or kinship foster home has a felony conviction, is on the Sex Offender Registry or has a substantiated finding on the CPS Central Register or APS Central Registry, non-emergency approval shall be denied, unless an exception is given, by the Department.

If a household member's background check reveals a criminal conviction other than a felony, or there is reason to believe the individual is currently charged, or under indictment for a crime, or has any other criminal record, approval can be granted only in writing, by the Department.

3-003 HOME STUDIES

3-003.01 Home Study: The Department will complete a home study when one of the following conditions exists:

1. An individual or legally married couple has applied to the Department to become a licensed foster or adoptive home;
2. An individual or legally married couple is renewing their foster care license;
3. The individual or legally married couple is being considered for placement of a child related to the child by blood, marriage, or adoption on an approval basis;
4. The Department may complete a home study if the individual is the non-custodial parent of a child in the custody of the Department;
5. The Department is requested through the ICPC to complete a home study for a potential foster or adoptive person or parent of a child in the custody of an agency or under the jurisdiction of a court in another state; or
6. The Department is ordered by a court to complete a home study on a stepparent desiring to adopt his or her stepchild.

3-003.02 Age of Majority: The applicant must be the age of majority in order to be considered eligible for a home study, unless an exception is made by the Department.

3-003.03 Completed Home Study: In order to be complete, a home study must be in writing, include information regarding all required elements, and have the written approval of the Department. If at any point, the Department determines that the subject of the home study is unable or unwilling to provide the required care, the home study will be considered incomplete, and approval of placement will be denied.

3-004 PROVISION OF LIABILITY AND DAMAGE INSURANCE: The Department will provide insurance coverage for foster parents for liability and damage. Any foster home or adoptive home licensed or approved by the Department or Indian Tribal Councils within Nebraska are covered by insurance for the period of time that an HHS or HHS/OJS ward is placed in the home. This insurance coverage also exists for any foster or adoptive home licensed or approved by the Department, or Indian Tribal Councils within Nebraska, for the period of time that a child covered under a IV-E contract is placed in the home. The foster parent(s) in the home are considered as 'the insured'. The Department covers the cost of the insurance premium for each foster home. When a foster parent requests reimbursement for damages to property incurred by the ward the Department will:

1. Provide the foster parent with the claims adjustor's phone number; and
2. Provide information to the claims adjustor when requested.

3-005 NATIVE AMERICAN FOSTER CARE LICENSING: Native American Foster Homes are foster homes which are licensed through a tribal entity and are located on tribal ground.

3-005.01 Number of Children: The maximum number of children in Native American Foster Homes shall be based on tribal traditions and customs, not number of persons in the home, without compromising the safety of children, adults in care, and others in the household.

3-005.02 Initial Application

3-005.02A Emergency Approval Requirements: Native American Foster Family Homes will comply with the following:

1. Each household member of the age of majority who will provide care including each applicant must present health information to document that she or he is physically and mentally capable of caring for children. For purposes of the initial license, the health information must include the signature of a health practitioner. For purposes of license renewal, a self-certifying report without the signature of a health practitioner is acceptable, unless there is reason to believe that a health practitioner's statement is warranted.
2. If the individual indicates that he/she is currently taking prescription medications, the licensing agency must assess the need for a written physician's statement regarding the medication's effect on the individual's ability to care for children.
3. Additional information regarding the physical and/or psychological condition of the Native American foster parent(s) is warranted only when such conditions may adversely affect the care, nurturance and training of the children.

3-005.03 License Renewal: Native American Licensees must complete the renewal process under the same terms and conditions as the original license. The Native American Foster family may request to have a liaison person present for the on-site visit.

3-005.04 Requirements of Native American Foster Families: Principal consideration will be given to the foster family's capacity to provide nurturance, understanding, Native American culture to children, a stable environment, supervision, and protection of children.

3-005.05 Environmental Requirements: The foster home shall have:

1. Adequate toilet facilities;
2. Adequate bathing facilities;
3. Safe heat sources in each room used by children;
4. Refrigeration for perishables;
5. Adequate sleeping arrangements;
6. Working smoke detectors;
7. All weapons and ammunition stored in a locked cabinet or area; and
8. Grounds around the foster home that are safe and free of hazards considering the age and development of children in care.

3-006 COMPLAINTS

3-006.01 Licensing Violations: The Department will investigate any licensed foster home after receiving an allegation of violation of licensing regulations.

1. The Department will accept complaints from anyone who witnessed a violation.
2. The identity of a complainant is not public information.
3. Only if found credible by the Department can such an allegation or complaint result in a negative licensing action.

3-006.02 Suspected Child Abuse or Neglect: Upon receipt of a complaint alleging child abuse/neglect, or when suspecting abuse or neglect in the foster home, the licensing agent must:

1. Inform the complainant of his/her responsibility to report the situation to the proper law enforcement agency and to the Department; and
2. Immediately report the alleged abuse/neglect to the proper law enforcement agency and the Department.

3-006.03 Complaints Concerning Practice: When a foster or adoptive parent has a complaint regarding a the Department casework decision or implementation of a policy or regulation involving himself or herself, the complaint will be addressed through the informal process of a meeting between the foster or adoptive parent, CFS Specialist, and CFS Supervisor. If possible, a plan to resolve the complaint will be developed. The foster parent will be advised in writing of the plan or reason for no action.