

Monitoring Appendix K

Enforcement Tools – Details and Procedures

The following is additional information about the enforcement tools referenced on pages 15-16.

- ◆ **Plan of Correction** - When you have found a problem during an inspection often the first step is to do a plan of correction. This is a plan that you and the provider develop that will correct the violation(s) found during the visit.
 - The provider can help you determine what it will take to correct the problem and how long it will take to do it.
 - The plan should be realistic so that the provider will be successful in making the correction and also feel good that the plan is hers/his (feels empowered).
 - Usually the provider offers to fix the problem even quicker than you ask, but this can be negotiated if you think she/he is taking too long to fix something that poses a risk to children.
 - Part of the plan should be how to ensure that this problem doesn't keep happening; e.g., have enough substitutes when a teacher calls in sick.
 - The plan with the time frame for completion will be in writing giving the provider usually no more than 90 days to come into compliance.
 - You can and should offer assistance if you can to help the provider – part of this may be explaining why the correction is important to meet the standard – in this way you are providing more teaching of the standard.
 - Most of the time, you will make a follow-up visit to see if the standard is met. This is important and can also be a time to offer more helpful hints to the provider.
- ◆ **Administrative Review** - If the provider does not meet the standard at your follow-up visit, you can do an “administrative review” of the licensing record (with your supervisor) to determine if the provider is still eligible (in compliance enough) to receive the subsidy payments. You will send a written decision to the family child care home.
- ◆ There are other tools, listed below, that you can use when the provider continues to have problems meeting a particular standard(s) – it is important to make sure that children are being properly cared for and not harmed. You will need to know these tools and the policy and procedures will outline the steps of when and how to use them.
 - **Non-compliance Letter** - Used when you find more serious non-compliance that puts children at greater risk of harm.
 - The non-compliance letter outlines the standard with the non-compliance that you found, what actions need to be taken, the time frame for correction, and what the consequences are if they are not made.
 - If the provider does not meet the time frame, you can consider stronger enforcement action.
 - **Witnessed Visits** - An inspection you do with you supervisor or another staff person when there is more serious non-compliance or if the provider does not seem willing or able to correct the non-compliance.

- The supervisor or other staff can serve as a second set of eyes if there are lots of problems or if it's a complicated complaint investigation, provide support for what you observe and the action you give provider if it's a tense situation and back-up your documentation in case of conflicting stories.
 - It is often used if the licensing staff feels threatened or uncomfortable going to the home alone – she/he may be afraid of possible harm to them. The witness can also see the technical assistance offered (helpful advice for correcting the problems).
 - After each program visit, a monitoring report is left with the child care home.
- **Office Conference** - When the non-compliance is serious and/or the provider does not seem to be able to correct the problems or stay in compliance with all the standards even after much help from you, you can schedule an office conference with you and your supervisor (or director of the agency) to discuss the non-compliance and the importance of correcting the problem.
- In an office conference, the licensing staff and supervisor/director will go over the history of non-compliance to help the provider understand how serious it is. You also let the provider know that she/he may not be allowed to continue providing care if the problem is not corrected.
 - At the conference, you let the provider discuss what she/he has done to correct the problem or the problems she/he is having with the child care home.
 - After reviewing the meeting, the agency will make a decision on whether to continue to approve the home for licensing (if applicable) and/or continue the contract for subsidy.
 - The written decision is sent to the child care program. If the program is no longer used, children may have to be removed to an approved/licensed program (s).
- **Consent Agreement** - Sometimes at the office conference or with a non-compliance letter the provider agrees to meet a specific set of conditions to avoid license revocation.
- The consent agreement provides written directions for what the provider must do to keep her/his license with a deadline for the correction or plan of correction. For example: “build a four foot fence for the play area” or “take training in how to discipline children.”
 - The consent agreement will say that if the provider does not meet what is required revocation of license may occur.
 - Usually, the licensor will do more frequent monitoring of the home during the period of the consent agreement.
 - Consent agreements are extremely useful actions to help providers correct problems without having to revoke the license – they are examples of “intermediate sanctions.”
- **Cancel the Contract** - Often when there is serious non-compliance that could result in a strong enforcement action or revocation, the Tribal licensing/approval office instead cancels the subsidy contract - takes away the subsidy payment.
- Thus the provider cannot care for children who are paid with federal money for children eligible for subsidy but may still provide care for them and/or other children as the license is not taken away.
- **Revocation and Denial** - Sometimes after the home has been given a license/approval, you will have to take the license/approval away - this is revocation and it happens when the home has such serious non-compliance that the children are or could be severely harmed.
- Revocation and denial are the most serious enforcement actions you can take when needed to protect the health and safety of children. At times, you will find non-compliance over a period of visits that is not corrected or is repeated making it clear that the provider cannot or is not willing to meet the standards; at times it's due to a one time very serious incident such as physical or sexual abuse.

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- You will need detailed procedures on how this is done, how parents are notified and the provider's right to appeal the decision.
- Denial is used when an applicant for a license or approval has such serious non-compliance that the person is not able or likely to meet the standards - the license/approval is not issued or is not renewed.
- Decisions on these actions are difficult and at times uncomfortable to make but we must remember that the safety of children is the priority.
- **Emergency Order** –When the children are in immediate danger of harm, an emergency order can be issued which means the provider must stop care right away.
 - Examples of situations for an emergency order are: no heat on a cold, snowy day; power turned off for several days; sexual abuse by the provider or someone living in a child care home. The provider must be given a hearing very quickly after this action.
 - With an emergency order, the child care program must be removed from the program at that time. Often you and/or staff will help parents find child care to use during the time the facility is closed.
- **Due Process and Appeals** - This is the legal opportunity for a provider to “be heard” (tell he/his side of the story) before a strong enforcement action takes effect.
 - The “right to be heard” usually involves a meeting in which the Tribe explains why the license is taken away and the provider has a chance to say why she/he should be able to keep that license or to continue to receive federal child care subsidy.
 - Due process really means “fair procedure” – being fair to the provider by allowing her/him to be heard before pulling the license or the subsidy.
 - The 14th Amendment of the US Constitution gives citizens this right to be heard.

The process is usually called an “appeal process” which gives the provider the opportunity to defend her/his right to keep that license or subsidy when the Tribe feels the non-compliance is so severe that the Tribe has made a decision to let a provider know that the license will be “revoked” or the contract for subsidy “cancelled.”
 - It is important for the Tribe to give the provider “notice” of any enforcement action - a written letter explaining the action to be taken, the reason for that action and the right of the provider to an “appeal hearing.” A sample letter is included in Appendix K.
 - You will need written policy and procedures explaining this hearing process for providers. The following questions will help you to develop the appeal process:
 - How much detail will be in the standards – in the part that explains enforcement policy and procedures?
 - How much time will the provider have to ask for an appeal after she/he receives the notice of the action (revocation or cancellation of the subsidy contract)
 - Which appeals will result in hearings?
 - Where will hearings take place?
 - Who will be involved in the hearings – legal staff, others?
 - Who will be the hearing officer – does the Tribe have such staff?

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