

Subpart C. LICENSING/APPROVAL

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CHAPTER 20. LICENSURE OR APPROVAL OF FACILITIES AND AGENCIES

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Authority

The provisions of this Chapter 20 issued under Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1001—1059), unless otherwise noted.

Source

The provisions of Chapter 20 adopted July 19, 1985, effective August 19, 1985, 15 Pa.B. 2648, unless otherwise noted.

Cross References

This chapter cited in 55 Pa. Code § 2380.11 (relating to licensure or approval of facilities); 55 Pa. Code § 2390.11 (relating to application); 55 Pa. Code § 2600.4 (relating to definitions); 55 Pa. Code § 2600.11 (relating to procedural requirements for licensure or approval of personal care homes); 55 Pa. Code § 2600.261 (relating to classification of violations); 55 Pa. Code § 2600.262 (relating to penalties); 55 Pa. Code § 3130.1 (relating to applicability and compliance); 55 Pa. Code § 3270.3 (relating to applicability); 55 Pa. Code § 3270.11 (relating to application for and issuance of a certificate of compliance); 55 Pa. Code § 3280.3 (relating to applicability); 55 Pa. Code § 3280.11 (relating to application for and issuance of a certificate of compliance); 55 Pa. Code § 3300.12 (relating to application); 55 Pa. Code § 3800.11 (relating to licensure or approval of facilities); 55 Pa. Code § 5200.5 (relating to application and review process); 55 Pa. Code § 5210.5 (relating to application review process); 55 Pa. Code § 5310.2 (relating to policy); 55 Pa. Code § 5310.4 (relating to certification of compliance); 55 Pa. Code § 5310.5 (relating to waiver of standards); 55 Pa. Code § 5320.3 (relating to definitions); 55 Pa. Code § 5320.11 (relating to prerequisites to licensure); 55 Pa. Code § 5320.12 (relating to sanctions); 55 Pa. Code § 6000.24 (relating to Chapter 20 requirements); 55 Pa. Code § 6400.11 (relating to licensure or approval of facilities and agencies); and 55 Pa. Code § 6500.11 (relating to licensure or approval of facilities and agencies).

GENERAL PROVISIONS**§ 20.1. Purpose.**

The purpose of this chapter is to specify:

- (1) Procedures for the application for a certificate of compliance.
- (2) Frequency and content of Departmental inspections.
- (3) Procedures for the preparation and issuance of a certificate of compliance.
- (4) Conditions under which a certificate of compliance may be denied, not renewed, or revoked.
- (5) Departmental licensure or approval decisions that may be appealed.

§ 20.2. Applicability.

(a) This chapter applies to facilities and agencies subject to licensure or approval under Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1001—1080).

(b) This chapter does not apply to family day care homes that are registered under the authority of Article X of the Public Welfare Code (62 P. S. §§ 1001—1080).

(c) This chapter applies in addition to applicable program licensure or approval regulations.

§ 20.3. Legal base.

The legal authority for this chapter is Articles IX and X of the Public Welfare Code (62 P. S. §§ 901—922 and 1001—1080).

§ 20.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Agency—An organization that operates facilities or provides services for which the Department has promulgated licensure or approval regulations.

Appeal—A signed and dated written request for reconsideration or modification of a Departmental decision that affects the certificate of compliance of a facility or agency.

Approval—Certification of compliance with program regulations promulgated under Article IX of the Public Welfare Code (62 P. S. §§ 901—922).

Certificate of compliance—A document issued to a legal entity permitting it to operate a specific type of facility or agency, at a given location, for a specified period of time, and according to appropriate Departmental program licensure or approval regulations.

Change of ownership—The sale or transfer of a facility or agency from one legal entity to another with the expectation that the facility or agency will con-

tinue to operate for the same purpose for which it is licensed or approved at the time of the sale or transfer.

Denial—Refusal to issue a certificate of compliance to a new applicant.

Department—The Department of Public Welfare of the Commonwealth.

Existing facility or agency—A facility or agency that has been licensed or approved by the Department within the preceding 12 months.

Facility—Individual premises for which the Department has promulgated licensure or approval regulations.

Legal entity—A person, society, corporation, governing authority or partnership legally responsible for the administration and operation of a facility or an agency.

Licensure—Certification of compliance with program regulations promulgated under Article X of the Public Welfare Code (62 P. S. §§ 1001—1080).

New facility or agency—A facility or agency that has not been licensed or approved by the Department within the preceding 12 months.

Nonprofit—Operating other than for profit.

Nonrenewal—Refusal to renew a regular or provisional certificate of compliance.

Profit—Operating with the expectation of providing a financial benefit to someone or something other than the facility or agency itself. The focus is upon the ultimate aim of the enterprise, not the financial results of a particular period of operation. The focus is also upon the particular premises involved and not the legal entity which operates the facility or agency. A nonprofit legal entity may be considered as operating a facility or agency for profit if the particular premises involved provide a financial benefit to the parent legal entity. A legal entity not possessing a certificate of tax exempt status from the Internal Revenue Service will be considered operating for profit unless it provides satisfactory proof otherwise.

Provisional certificate of compliance—A certificate of compliance indicating substantial, but not complete, compliance with program licensure or approval regulations.

Regular certificate of compliance—A certificate of compliance indicating compliance with program licensure or approval regulations.

Revocation—Retraction of a certificate of compliance prior to its expiration.

LEGAL ENTITY

§ 20.11. Responsibility.

In addition to complying with the procedural regulations set forth in this chapter, the legal entity shall comply with the Department's program licensure or approval regulations for the particular type of facility or agency which the legal entity operates.

§ 20.12. Corporations.

If the legal entity is a corporation, it shall submit a copy of the articles of incorporation to the Department at the time of initial application for a certificate of compliance.

§ 20.13. Responsible person.

The legal entity shall specify in writing at the time of application and reapplication the name of the person who is responsible for the daily operation of the facility or agency.

APPLICATION**§ 20.21. Application form.**

(a) The legal entity responsible for a facility or agency subject to approval under Article IX of the Public Welfare Code (62 P. S. §§ 901—922) shall submit an application for a certificate of compliance prior to the inspection and issuance of a certificate of compliance by the Department.

(b) The legal entity responsible for a facility or agency subject to licensure under Article X of the Public Welfare Code (62 P. S. §§ 1001—1080) shall submit an application for a certificate of compliance prior to commencing operation of the facility or agency and may not commence operation until notified that a certificate of compliance will be issued.

(c) The application for a certificate of compliance shall be completed and submitted on the form prescribed and provided by the Department.

(d) The legal entity shall complete and submit a separate application for a certificate of compliance for each facility or agency subject to licensure or approval.

(e) The legal entity shall report on the application for a certificate of compliance fictitious names which are required by statute to register with the Department of State under 54 Pa.C.S. §§ 301—332 (relating to fictitious names).

Cross References

This section cited in 55 Pa. Code § 20.22 (relating to reapplication).

§ 20.22. Reapplication.

(a) If the legal entity intends to continue operating the facility or agency, it shall complete and submit to the Department an application for a certificate of compliance at least 60 days prior to the expiration of the facility's or agency's existing regular or provisional certificate of compliance.

(b) Application for renewal of a certificate of compliance shall be made in accordance with § 20.21 (relating to application form).

INSPECTION**§ 20.31. Annual inspection.**

An authorized agent of the Department will conduct an on-site inspection of a facility or agency at least once every 12 months.

§ 20.32. Announced inspections.

The facility or agency will be advised in advance of the date of the annual inspection.

Cross References

This section cited in 55 Pa. Code § 2600.11 (relating to procedural requirements for licensure or approval of personal care homes).

§ 20.33. Other inspections.

- (a) The facility or agency is subject to both announced and unannounced on-site inspections.
- (b) The facility or agency is subject to complaint inspections.

§ 20.34. Access.

The facility or agency shall provide to authorized agents of the Department full access to the facility or agency and its records during both announced and unannounced inspections. The facility or agency shall provide the opportunity for authorized agents of the Department to privately interview staff and clients.

Notes of Decisions*Access to Facility and Records*

Adoption agency violated Department of Public Welfare (Department) regulations by refusing to allow the Department access to agency records as required by regulation; evidence that supported administrative law judge's finding of the violation included fact that agency refused to allow Department inspectors to confidentially copy agency files at county office and that inspectors were eventually required to obtain an administrative search warrant for the files. *1st Steps v. Department of Public Welfare*, 880 A.2d 24, 35—36 (Pa. Cmwlth. 2005)

§ 20.35. Fire safety approval.

(a) A facility shall have written fire safety approval from either the Department of Labor and Industry or the Department of Health of the Commonwealth—or the local Department of Public Safety in the cities of Scranton and Pittsburgh or the local Department of Licensing and Inspection in Philadelphia—if applicable.

(b) A facility shall have written fire safety approval, if applicable, prior to issuance of a certificate of compliance. If fire safety authorities do not carry out their mandated functions in a timely fashion, the Department, prior to fire safety approval, may issue a certificate of compliance if the health and safety of the clients are not in jeopardy.

(c) Authorized agents of the Department will request additional fire safety inspections by the appropriate agency if, during an inspection, an authorized agent observes possible fire safety violations.

§ 20.36. Civil rights compliance.

A facility shall comply with the following statutes and regulations that prohibit discrimination on the basis of race, color, religious creed, ancestry, sex, handicap, age or national origin:

- (1) The Pennsylvania Human Relations Act (43 P. S. §§ 951—962.2).
- (2) The Age Discrimination Act of 1975, 42 U.S.C.A. §§ 6101—6107.

(3) Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000d—2000d-4, if applicable.

(4) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794, if applicable.

(Editor's Note: See Appendix A (relating to civil rights compliance—statement of policy).)

§ 20.37. Emergency removal of residents.

If the Department finds evidence of gross incompetence, negligence, misconduct in operating the facility or agency, or mistreatment or abuse of clients, likely to constitute an immediate and serious danger to the life or health of the clients, the Department will take immediate action to remove the clients from the facility or agency. If physical obstruction is offered to prevent removal of the clients the Department will request law enforcement authorities to assist in the removal of the clients.

Notes of Decisions

Emergency Removal

Testimony by a Department of Health employe that an emergency and health crisis existed at a care facility, in which patients were confused, unidentified and unkept, constituted substantial evidence as a matter of law to support an emergency finding thereby requiring the immediate removal of the patients. *Colonial Manor Personal Care Boarding Home v. Department of Public Welfare*, 551 A.2d 347 (Pa. Cmwlth. 1988).

Inconsistency

The remedy of emergency removal of patients under this section is not inconsistent with a statutory license suspension and both may be imposed. *Colonial Manor Personal Care Boarding Home v. Department of Public Welfare*, 551 A.2d 347 (Pa. Cmwlth. 1988).

FEES

§ 20.41. Payment of fees.

The legal entity shall pay the applicable fee, if any, prior to the issuance of a certificate of compliance.

§ 20.42. Amount of fees.

(a) The following fees shall be paid for a regular certificate of compliance:

<i>Type of Facility</i>	<i>Public or</i>	
	<i>Profit</i>	<i>Nonprofit</i>
Adult Day Care Center	\$15	0
Maternity Home	\$15	0
Community Residential Mental Retardation Facility or Agency	\$50	0

<i>Type of Facility</i>	<i>Public or</i>	
	<i>Profit</i>	<i>Nonprofit</i>
Psychiatric Clinic	\$50	0
Partial Hospitalization Programs	\$50	0
Private Psychiatric Hospital	\$50	0
Vocational Facility Serving Primarily Mental Health, Mental Retardation or Mental Health and Mental Retardation Clients	\$50	0

(b) No fee is required for a facility or agency not listed in subsection (a).

(c) The fee for a provisional certificate of compliance is 1/12 of the fee for the annual certificate of compliance multiplied by the number of months for which the certificate of compliance is issued.

(d) The application fee for personal care homes applies regardless of profit or nonprofit status and is based on the number of beds licensed, as follows:

<i>Number of Beds</i>	<i>Fee</i>
0-20	\$15
21-50	20
51-100	30
101 beds and over	50

Authority

The provisions of this § 20.42 amended under sections 1006 and 1021 of the Public Welfare Code (62 P. S. §§ 1006 and 1021).

Source

The provisions of this § 20.42 amended December 19, 1986, effective December 20, 1986, 16 Pa.B. 4886. Immediately preceding text appears at serial page (99292).

(Editor's Note: Fees for Personal Care Homes were changed by the act of December 21, 1988 (P. L. 1885, No. 185).)

CERTIFICATE OF COMPLIANCE

§ 20.51. Issuance.

A certificate of compliance will be issued to the legal entity by the Department if, after an inspection by an authorized agent of the Department, it is determined that requirements for a certificate of compliance are met.

§ 20.52. Plan of correction.

If, during an inspection, authorized agents of the Department observe items of noncompliance with licensure or approval regulations, the legal entity shall submit an acceptable written plan to correct each noncompliance item and shall establish an acceptable period of time to correct these items.

§ 20.53. Regular certificate of compliance.

A regular certificate of compliance is issued if the facility or agency is in compliance with applicable statutes, ordinances and regulations.

Notes of Decisions*Regular License*

In order to receive a regular license, petitioner was required to be in compliance in the first instance as opposed to responding and correcting violations cited under provisional license reviews. *Holmes Constant Care Center v. Department of Public Welfare*, 555 A.2d 282 (Pa. Cmwlth. 1989).

§ 20.54. Provisional certificate of compliance.

(a) A provisional certificate of compliance is issued if the facility or agency is in substantial, but not complete, compliance with applicable statutes, ordinances, and regulations.

(b) A provisional certificate of compliance is issued for a specified length of time, not to exceed 6 months.

(c) A maximum of four consecutive provisional certificates of compliance may be issued to the legal entity for each specific facility or agency.

Notes of Decisions*Provisional License*

Since the number of regulatory violations had increased since the first inspection of the day care facility, the applicant had not demonstrated substantial compliance to be issued a provisional license. *Boroughs v. Department of Public Welfare*, 606 A.2d 606 (Pa. Cmwlth. 1992).

§ 20.55. Preparation of certificate of compliance.

(a) The certificate of compliance is issued to the legal entity.

(b) The certificate of compliance lists the name of the legal entity, the name and address of the facility or agency, satellite sites, if applicable, type of service provided, maximum capacity, title and chapter of applicable licensure or approval regulations, the date the regulations were adopted, certificate number, effective and expiration dates of the certificate, and restrictions, if applicable.

(c) A provisional certificate of compliance also contains the word "Provisional" and indicates whether it is the first, second, third or fourth provisional certificate issued.

§ 20.56. Posting of the certificate of compliance.

The facility or agency shall post the current certificate of compliance in a public place in the facility or agency.

§ 20.57. Restrictions on certificate of compliance.

(a) A certificate of compliance is issued to a legal entity for a specific facility or agency and is not transferrable.

(b) A certificate of compliance is void without notice if one of the following conditions exist:

- (1) There is a change in the ownership of the legal entity of the facility or agency. A transfer of stock of a corporation does not, for purposes of this chapter, constitute a change of ownership of a legal entity.
- (2) There is a change in the name of the facility or agency.
- (3) There is a change in the location of the facility or agency.
- (4) There is a change in the profit or nonprofit status of the facility or agency.

§ 20.58. Notification of change.

(a) The legal entity shall notify the Department at least 30 days in advance of the intention to change the legal entity, name, location or profit or nonprofit status of the facility or agency.

(b) If the facility or agency is to be operated under a new legal entity, new name, new location, or different status, the legal entity shall complete and submit a new application for a certificate of compliance at least 30 days in advance of the change.

(c) If a change occurs which is not included in subsections (a) and (b)—for example, change in responsible person—the legal entity shall notify the Department within 30 days after the change occurs.

NEGATIVE SANCTIONS**§ 20.71. Conditions for denial, nonrenewal or revocation.**

(a) The Department may deny, refuse to renew or revoke a certificate of compliance for any of the following:

- (1) Failure to comply with this chapter.
- (2) Noncompliance with the Department's program licensure or approval regulations.
- (3) Failure to submit an acceptable plan to correct noncompliance items.
- (4) Failure to comply with the acceptable plan to correct noncompliance items.
- (5) Mistreatment or abuse of clients being cared for in the facility or receiving service from the agency.

- (6) Gross incompetence, negligence or misconduct in operating the facility or agency.
 - (7) Fraud or deceit in obtaining or attempting to obtain a certificate of compliance.
 - (8) Lending, borrowing or using the certificate of compliance of another facility or agency, or knowingly aiding or abetting the improper granting of a certificate of compliance.
- (b) The Department will review and may deny, refuse to renew or revoke a certificate of compliance if a legal entity, owner, operator or staff person:
- (1) Has been convicted of a felony.
 - (2) Has been convicted of a crime involving child abuse, child neglect, moral turpitude or physical violence.
 - (3) Has serious mental illness which might create a risk to the clients, which shall be determined and documented by a licensed physician or a licensed psychologist.
 - (4) Has evidenced drug or alcohol addiction within the past year, which shall be determined and documented by a licensed physician.
 - (5) Has been named as a perpetrator in an indicated or founded report of child abuse in accordance with the Child Protective Services Law (11 P. S. §§ 2201—2224).

Notes of Decisions

Plan to Correct Noncompliance Items

A personal home care provider's failure to submit an acceptable plan to correct noncompliance items warranted nonrenewal of a license; proof of noncompliance. Items need not be presented by the Department. *Clites v. Department of Public Welfare*, 548 A.2d 1345 (Pa. Cmwlth. 1988).

This section does not require that the failure to file a plan of correction be willful and failure to file is grounds for refusal to renew a certificate of compliance. *McFarland v. Department of Public Welfare*, 551 A.2d 364 (Pa. Cmwlth. 1988).

APPEALS

§ 20.81. Decisions that may be appealed.

The legal entity has the right to appeal any of the following:

- (1) The denial of a certificate of compliance.
- (2) The nonrenewal of a certificate of compliance.
- (3) The revocation of a certificate of compliance.
- (4) The issuance of a provisional certificate of compliance.
- (5) The length of time for which a provisional certificate of compliance is issued.
- (6) The reduction in the maximum capacity of the facility or agency.
- (7) The denial of an increase in the maximum capacity of the facility or agency.

Cross References

This section cited in 55 Pa. Code § 20.82 (relating to written request for appeal).

§ 20.82. Written request for appeal.

The legal entity may appeal a Departmental decision specified in § 20.81 (relating to decisions that may be appealed) under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law) and § 9003 of the DPW Manual to be codified at Chapter 30 (relating to licensure or approval appeal procedures).

APPENDIX A**CIVIL RIGHTS COMPLIANCE—STATEMENT OF POLICY**

(a) A facility shall comply with the following statutes and regulations thereunder that prohibit discrimination on the basis of race, color, religious creed, disability, handicap, ancestry, national origin, age or sex:

(1) The Pennsylvania Human Relations Act (43 P. S. §§ 951—962.2).

(2) The Age Discrimination Act of 1975 (42 U.S.C.A. §§ 6101—6107).

(3) Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000d—2000d-4), if applicable.

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794), if applicable.

(5) Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e—2000e-17), if applicable.

(b) A Certificate of Compliance will not be granted to a provider unless there has been compliance with civil rights laws and applicable regulations.

(c) Applicants, clients or staff will not be discriminated against because of race, color, religious creed, disability, handicap, ancestry, national origin, age or sex and shall observe applicable State and Federal statutes and regulations.

(d) The facility shall develop and implement civil rights policies and procedures for clients and staff in accordance with applicable civil rights laws and regulations which include the following:

(1) A nondiscrimination policy which states that admissions, referrals, services and employment actions are provided without regard to race, sex, color, national origin, ancestry, religious creed, disability, handicap or age.

(2) Reasonable physical accommodations and program accessibility to staff or clients with physical disabilities.

(3) A procedure by which staff and clients can file complaints alleging discrimination and have their complaints investigated and resolved objectively which includes the name of the person assigned to investigate the complaint.

Source

The provisions of this Appendix A adopted March 16, 1990, effective March 17, 1990, 20 Pa.B. 1516.

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