

**NYS Office of Children and Family Services
Bureau of Early Childhood Services
Policy Statement**

ID Number: 02-1

Topic: Appropriate actions to take when a provider fails to renew their license/registration on a timely basis.

Modalities Impacted: All Modalities

Applicable Regulations: 414.2 (e), 416.2(d), 417.2(d), 418-1.2(e), 413.3(e)

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Effective:

This policy statement is effective immediately and cancels all previous memos or statements on the topic.

On September 6th 2000, the Quality Child Care and Protection act was signed into law. This law, followed by the filing of the emergency regulations, strengthened the type of enforcement actions the Office is permitted to take against providers who do not comply with day care regulation.

This policy statement is intended to clarify what actions are appropriate when a program has not followed regulation in renewing its license /registration in a timely manner. There are cases in which an enforcement action such as a Cease and Desist (C&D) or denial is appropriate and other situations in which sending a voluntary surrender letter or a “closing file” letter is the correct choice.

The following scenarios are shared as a method of illustrating real situations and the appropriate manner in which all regional offices should respond to similar situations.

Scenario # 1

If a program’s renewal date is imminent or past due and the licensor/registrar has mailed the required State Administrative Procedure Act (SAPA) notices, either in full or in part, and the provider fails to take **all** the necessary steps to begin or complete the renewal process, (provider may have filed one or more parts of the application but is still

delinquent with others), a visit to the site or a phone call to the provider by the licensor/registrar is the next step a licensor/registrar should take.

Determination

If these contacts result in a determination that:

- the program has stopped operating
- and the provider is making statements that they no longer wish to renew the license/registration,

Required Action:

The licensor/registrar must ask for the return of the license/registration document. The licensor/registrar must also follow up by sending a letter to the provider acknowledging the voluntary surrender of their license/registration and instructions not to resume caring for children until a new license/registration application is submitted in full and approved by the regional office and a license or registration has been issued.

Scenario # 2

If a program's renewal date is imminent or past due and the licensor/registrar has mailed the required State Administrative Procedure Act (SAPA) notices, either in full or in part, and the provider fails to complete **all** the necessary steps in the renewal process (may have filed one or more parts of the application but is still delinquent with others), a visit to the site or a phone call to the provider by the licensor/registrar would become the next step.

Determination

If the contacts result in a determination that:

- the program is still operating,
- the provider intends to remain open
- but has, for whatever reason, has not complied with the regulations governing renewal

Required Action

Barring any extenuating circumstances that are out of the control of the provider (death in the family, fingerprinting delay, disaster, etc.), the licensor/registrar must now begin a formal **Denial Action**. An enforcement tracking referral (ENFTR) should be completed, and approved by the regional office manager (or designee) and mailed to the BECS – Deposit Box for review by home office staff and counsel's office.

Scenario # 3

If a program's renewal date is imminent or past due and the licensor/registrar has mailed the required State Administrative Procedure Act (SAPA) notices, either in full or in part, and the provider fails to complete **all** the necessary steps in the renewal process (may have filed one or more parts of the application process but is still delinquent with others), a visit to the site or a phone call to the provider by the licensor/registrar would become the next step.

Determination

If the contacts result in a determination that:

- the provider is making claims that they no longer plan to continue as a licensed/registered provider,
- but the licensor has information that leads them to believe the provider is still and will continue to operate a program that requires a license/registration,

Required Action

The licensor/registrar should make certain that the provider understands the criteria that are used to judge whether a program must be licensed or registered. If the provider still claims to be closing:

- the licensor/registrar should ask the provider to surrender the license/registration.
- the licensor/registrar must then follow up by sending the provider the voluntary surrender letter .
- the program must be monitored to determine compliance.
- When and if there is a determination that the provider is operating a day care program after the license/registration has expired, a C&D enforcement action must be started. Follow established procedures for this enforcement action.

Scenario # 4

If a program's renewal date is imminent or past due and the licensor/registrar has mailed the required State Administrative Procedure Act (SAPA) notices, either in full or in part, and the provider fails to complete **all** of the necessary steps in the renewal process, (may have filed one or more parts of the application but is still delinquent with others), a visit to the site or a phone call to the provider by the licensor/registrar would become the next step.

Determination

The provider cannot be contacted

- she/he fails to return phone calls or answer SAPA letters
- visits to the home and monitoring is conducted but provider cannot be located and children are not seen at the program site.

Required Action

The licensor/registrar must now begin a formal **Denial Action**. An enforcement tracking referral (ENFTR) should be completed and given to the regional office manager (or designee) for approval and mailed to the BECS –Deposit Box for review by home office staff and counsel’s office.

Scenario # 5

If a program’s renewal date is imminent or past due and the licensor/registrar has mailed the required State Administrative Procedure Act (SAPA) notices, either in full or in part, and the provider fails to complete **ANY** of the necessary steps in the renewal process, (provider has not filed even a single paper), a visit to the site or a phone call to the provider by the licensor/registrar would become the next step.

Determination

The provider cannot be contacted

- she/he fails to return phone calls or answer SAPA letters
- visits to the home and monitoring is completed but provider cannot be located and children are not seen at the program site.

Required Action

A “Close Out” letter should be issued when the license /registration expires. Monitoring of the program is necessary to insure that the program has indeed closed.

Enforcement action such as a C&D, denial or revocation is not necessary, as they are no longer operating as a licensed/registered program; their license/registration for all practical purposes is null and void if not renewed as required by regulation.

If you learn that they are operating without a license/registration a C&D enforcement action becomes the next step in the process.

Scenario # 6

If a program’s renewal date is imminent or past due and the licensor/registrar has mailed the required State Administrative Procedure Act (SAPA) notices, either in full or in part, and the provider fails to take **any** steps to begin or complete the renewal process (provider has not filed even a single paper), a visit to the site or a phone call to the provider by the licensor/registrar would become the next step.

Determination

If the contacts result in a determination that:

- the program is still operating,
- the provider intends to remain open
- but has, for whatever reason, not complied with regulation to renew,

Required Action

A C&D letter should be issued on the date that the **license /registration expires**. Licensors and registrars must follow normal policy and procedure actions to begin a C&D enforcement action.

Enforcement action to deny or revoke the license/registration is not necessary, as they are no longer operating as a licensed/registered program; their license/registration for all practical purposes is null and void if not renewed as required by regulation.

Scenario # 7

If a program's renewal date is imminent or past due and the **licensor/registrar has received all the required application components** but a visit to the site or a complaint call results in verified violations, the program must rectify the violations prior to receiving the renewal certificate. (This presumes that the regional office has deemed that a regulatory waiver, either for the entire licensing period or some limited duration is not an acceptable alternative.)

- A letter of violations is sent to the program.
- The program is required to submit a corrective action plan. The corrective action plan must have specific time frames for completion. Such time frames should not exceed one month's time except in extenuating circumstances. For example, if the corrective action requires the action of an outside entity or contactor and there is a documented and reasonable schedule for the completion of the work by this party, even if it extends beyond one month, such a corrective action plan could be accepted.
- The regional office must accept the corrective action plan and all outstanding violations must be corrected within the time frame specified in the corrective action plan.
- If the violations are not corrected within the specified time frame, the regional office should begin a denial action.

