

THE BUREAU OF EARLY CHILDHOOD SERVICES

P O L I C Y S T A T E M E N T

ID NUMBER 06-2

TOPIC: The Status of Inactive

MODALITIES IMPACTED: All Modalities

APPLICABLE REGULATIONS: None

CONTACT: Kathleen Pickel

Phone: (518) 474-9454

EFFECTIVE: Immediately – March 8, 2006

THIS POLICY STATEMENT IS EFFECTIVE IMMEDIATELY AND CANCELS ALL PREVIOUS MEMOS OR STATEMENTS ON THIS TOPIC.

This policy statement will provide a definition for the Child Care Facility System (CCFS) licensing/registration status referred to as “inactive” and cover issues concerning this CCFS program status.

Definition:

Inactive is a licensing status used by the Office of Children and Family Services (OCFS) to refer to providers who have legitimately requested and been approved to temporarily shut down their child care programs. Inactive providers are not permitted to care for day care children. The program status in the Child Care Facility System (CCFS) will be changed from licensed or registered to inactive. The inactive status is also reflected on the OCFS website and shared with child care resource and referral agencies.

While statute and regulation do not address a licensed or registered provider becoming inactive, OCFS created and recognizes the inactive program status in CCFS primarily for promoting accuracy in child care resource and referral lists. Circumstances prompting providers to request the inactive status are numerous, but generally relate to building renovations, maternity leave, employment opportunities, and/or extended illness. The status of inactive, when approved by the regional office, allows a provider to stop providing day care services for the rest of the provider’s licensing or registration period.

Providers choosing to become temporarily inactive must make their request in writing to the appropriate regional office. All requests must include a date that the program will cease operating, a reason why the provider is requesting an inactive status, and a projected date that the program will reopen. Either date may be revised as needed and

approved by OCFS. Programs requesting to become inactive will be granted this status with the following restrictions:

- If a provider requests an inactive status while they are in their first year of a 2- year licensing/registration period they may be approved as inactive for the remainder of the 2 year license/registration. At the end of this licensing/registration cycle as inactive they may not renew their license/registration as inactive. They must choose between closing the program or reopening the program.
- If the provider requests an inactive status and is in their second year of the 2 year license/registration they may become inactive for the remainder of the second year and apply as inactive for a limited one year license/registration at renewal time. If the provider requests to become active again during the limited one year licensing/registration period, OCFS will change the one year license/registration to a 2 year license /registration. Training requirements would then revert back to the two-year/30 hour mandate.

A program that has exhausted their approved inactive status and chooses to close their program rather than reopen would have to reapply for a license or registration if they planned to provide day care at a later date. Programs that close and reapply for licensure or registration are no longer covered by any grandfathering benefits they may have had during any previous licensing/registration periods.

Regional office licensors/registrar must schedule an inspection of programs that are ready to reopen within thirty days after the expected reopening date. In cases where the provider has become inactive because of some issue that could have presented a risk to the children in care or in order to remodel, repair, or change the physical plant; a written agreement should be established with the provider at the time that the inactive status is granted. The provider will give reasonable notification of their intended date to reopen and will agree to delay reopening until OCFS can conduct an inspection. The regional office or registrar must make every effort to prioritize such inspections so as not to unnecessarily delay the reopening of the program. Typically, a licenser, registrar, or fire and safety representative should be able to be on site within five business days of being notified of a request to reopen where a pre-inspection has been agreed to.

If/When a licenser/registrar inspects the home and identifies health or safety risks that would rise to the level of serious or imminent danger, corrections must be made before the programs reopens. The Status of inactive is not an enforcement action. Therefore, a consultation with home office is required if a program opens without taking corrective action on identified safety issues prior to reopening. Enforcement action may be necessary. The status of inactive also does not put the licensing/registration time clock on hold. The license /registration will still expire two years from the date of issuance.

Questions and Answers:

The following questions and answers will provide some guidance on this issue.

Question: Is a provider permitted to become inactive and provide legally exempt care?

Answer: No, once a provider becomes licensed or registered, they must meet the applicable regulatory standards when providing child care regardless of how many children they care for, or how many hours a day they provide care. A licensed or registered provider cannot hold a day care license or registration and then decide that they are operating outside the license or registration on certain days.

Question: What would a provider need to do to change their status from licensed or registered to legally exempt?

Answer: A provider must surrender their license/registration in order to become a legally-exempt provider. This would also mean that this same provider, who surrenders their license to become legally-exempt, would need to reapply for a license or registration should they change their mind and request to reopen his/her family or group family day care program.

Question: Should a licensor/registrar continue to monitor or inspect day care programs that are listed as inactive?

Answer: A licensor/registrar has the authority to monitor an inactive provider to confirm their status as inactive. However, thorough inspections of the site are best completed after the provider has informed OCFS that they are planning to re-open the program. Safety concerns found at a program that is inactive due to remodeling would not be cited as violations during the inactive period. In this scenario, the safety concerns would not affect a child and may be the very reason the program asked to be inactive. Thus, if an inactive provider asks for an inspection to assess whether repairs they are making are consistent with child care regulations and standards, the inspection would not result in any regulatory violations **unless** children were discovered in care. Inspection results for a program that is legitimately inactive should be summarized from a technical assistance perspective.

Question: If a provider is caring for children despite their inactive status and the licensor finds violations, are they recorded in CCFS?

Answer: Yes, if a provider initiates care during the inactive period, all violations are recorded in CCFS and are handled consistently with the OCFS policy for open licensed or registered programs.

Questions: Does an inactive provider need to renew their license/registration at the end of their licensing/registration period if they wish to remain inactive?

Answer: Yes, inactive providers must comply with all regulatory requirements pertinent to renewal. If the modality is one that requires a renewal inspection, that inspection must be conducted prior to completing the renewal process. Since no children should be present, the inspection would only address the regulatory requirements pertaining to physical plant and training.

Question: Must an inactive provider continue to take training courses to meet the 30-hour requirement across the nine topics listed in regulation?

Answer: Yes, an inactive provider must be able to submit verification of the 30 hours of training across the nine topics at the time of renewal. A group family day care assistant, if they remain in this role during the inactive period, must also take the 30 hours of required training during that licensing period. If they find other employment and a new assistant is hired the new assistant may begin to obtain training as of their hiring date.

Question: What is the accepted procedure for a provider to either request an inactive status or to reopen their inactive program?

Answer: A provider must submit a written request to their licensor/registrar alerting them of their intention to become inactive. The request must explain the reason the inactive status is requested and an estimated time they wish to remain inactive. Either date may be revised as needed. Requests to become inactive must be received in writing prior to changing the CCFS status. It is bureau policy that an unannounced inspection be conducted of all programs within thirty days of the program informing OCFS of its intent to reopen. If there was a specific issue that the provider intended to resolve while the program was inactive, such as a repair to the physical plant, the licensor/ registrar must schedule this inspection prior to reopening the program.

OCFS will deny a provider the status of inactive if an enforcement action to suspend, deny, or revoke a license is in process. For example, if OCFS were in the process of issuing a suspension a licensor/registrar would not accept a request to become inactive as an alternative to the issuance of a suspension. OCFS will also deny a provider's request to become/remain inactive if they have exhausted the allowable time a provider may be in this status.

Question: Can a provider ever ask to be inactive more than once during their business years as a provider of day care?

Answer: Yes, as long as the terms explained in the bullets above are followed, a provider could request and be granted an additional time period as inactive. A provider, however, would have to demonstrate that they did reopen for business as a provider for at least a 3-month period before requesting another inactive period of time.

[X] approved by Suzanne Zafonte Sennett Date 3-22-06

