

**DPHHS Policy Manual: Child Care Licensing Staff
Approval and Administrative Reconsideration**

Purpose	<p>The purpose of this policy is to define the process for approving individuals who provide care to children in child care facilities. Further, this policy defines the process for administrative reconsideration when individuals desiring to be approved as caregivers in a child care facility do not meet the criteria for approval as outlined in administrative rule.</p>
Background Checks and Disqualifiers	<p>A satisfactory criminal background, motor vehicle and child and adult protective services check is required for each day care provider, on all staff, including caregivers, administrative staff, aides, volunteers, kitchen and custodial staff and all persons over the age of 18 residing in the facility or who stays in the day care facility regularly or frequently.</p> <p>The department shall not grant approval to any day care facility for any director, caregiver, volunteer or support staff person who has been convicted of a crime identified in ARM 37.95.176 (1).</p> <p>The department shall not grant approval to any caregiver, volunteer or support staff person who has been convicted by a court of competent jurisdiction of a crime identified in ARM 37.95.176 (2)(a), or named as a perpetrator of child abuse and neglect as identified in (2)(e) of the same rule, unless the provider (registrant/licensee) has requested an administrative reconsideration and through that process, the department has determined the individual has been sufficiently rehabilitated to warrant the public's trust.</p>
Appealing the Accuracy of the Criminal History Record	<p>Individuals, who have been denied approval as a caregiver in a licensed or registered day care facility and believe that their criminal record is not accurate, can appeal the accuracy of their criminal record directly to the Department of Justice. If the individual is successful in getting an otherwise disqualifying conviction overturned or expunged, or if they are able to validate that the record is inaccurate, the department will then rescind the prohibition.</p>
Procedure	<p>Based upon the results of the criminal background and child protective services check, the department will notify the facility provider in writing. This notification will inform the provider that the individual for whom the background check was requested either meets the qualifying criteria or does not meet that criteria.</p>

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If the individual has a disqualifying event, the written notice from the department will inform the facility provider that the individual does not meet criteria for approval and allowing that individual to provide care to children could have negative impacts upon the provider registration or license; however, should the facility provider feel that in spite of the disqualifying event, the applicant should be given an opportunity for reconsideration, the notice will inform the facility provider the manner in which this is to be accomplished.

Administrative Reconsideration

If the licensed or registered provider feels that the individual involved in the disqualifying event has attained sufficient rehabilitation to warrant the public's trust, and desires that individual to be approved as a caregiver, volunteer or other support staffperson in the facility, a request for reconsideration can be made to the Licensure Bureau by the provider. Along with this request, the following information shall be submitted:

- A comprehensive rationale for why the reconsideration should be granted; the rationale should include information that in spite of the disqualifying factor, the health, safety and welfare of children will not be impacted;
- A signed release form from the potential employee authorizing the Department to access all civil, criminal and other reports relevant to the disqualifying history;
- Three (3) Letters of recommendation from credible persons who are not related to the individual;
- The age of the individual at the time of the disqualifying event;
- Any mitigating circumstances when the event occurred;
- If the disqualifying event involved a criminal conviction, the individual shall submit information concerning all court imposed sentences or punishment, plea agreements, dismissals or amended charging documents; all psychological assessments, opinions and reports; sentencing documents and probation history; and criminal history involving prior state and federal offenses. If the event involved a child protective services record, any terms brought forth by the agency. If circumstances were completed, the date of completion should also be

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provided;

- Any successfully completed rehabilitation programs since the event;
- Full employment history, including name, address and phone numbers of prior employers;
- Other relevant information the individual chooses to submit.

**Factors in making
the determination**

In reviewing this material and reconsidering the disqualifier, the department must consider the following:

- The severity or nature of the crime or other finding;
- Total number of disqualifying events and pattern of incidents;
- Time elapsed since the last disqualifying event, or if event was criminal conviction, the time since the discharge of the sentence;
- Aggravating or mitigating circumstances surrounding the incident that would determine whether a risk of repetition is likely;
- Circumstances of the event and whether violence was involved;
- Relationship of the incident to the care of children;
- Activities evidencing rehabilitation (substance abuse or other rehab programs);
- Age of the individual at the time of event;
- Clear and convincing evidence that the individual is sufficiently rehabilitated to warrant the public's trust.

**Grounds for
Reconsideration:
Approval
Determination**

Approval can be granted when the request for reconsideration and the accompanying documentation clearly demonstrates that the individual has satisfied one of the following grounds for such approval:

- If the disqualifying factor involved a criminal conviction, the individual was able to show that the criminal record inaccurately reflects a disqualifying event;

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- Individual was able to show with clear and convincing evidence that he/she has attained sufficient rehabilitation to warrant the public's trust.

Notification to the Facility

Notification of the decision regarding reconsideration will be communicated back to the facility provider. Approval decisions are specific to the individual facility who requested the administrative reconsideration; in other words, if the individual is given approval after the reconsideration process, that decision applies *only* to the facility that requested the appeal/reconsideration. The reconsideration decision cannot apply to another facility. Any approval granted by the Licensing Bureau is not to be considered a 'blanket approval.' In other words, the facility cannot utilize the individual approval toward other potential staff persons with similar background.

Opportunity for Fair Hearing:

All administrative reconsideration denials will be provided the right to appeal that decision and request a "Fair Hearing." The requirements as outlined in ARM 37.5.318 pertaining to an administrative review will be bypassed and the matter will proceed directly to fair hearing.

The Fair Hearing will be conducted by the DPHHS Office of Fair Hearings in accordance with the Montana Administrative Procedure Act (MAPA) found at MCA 2-4-612 and the department's administrative rules. The Hearing Officer will have the ability to uphold the denial or overturn the denial based upon the evidence presented in accordance with 2-4-612, MCA.

A party who is aggrieved by the final Fair Hearing decision may seek a review by the department director. The decision at the department director level is not satisfactory for the aggrieved party, that party may seek judicial review.

References:

37.95.166, ARM	52-2-731, MCA
37.95.161, ARM	2-4-612, MCA
37.95.176, ARM	
52-2-723, MCA	