

**Child and Family Services Policy Manual: Youth Foster Home  
Adverse Licensing Action**

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**Adverse Action**

Pursuant to ARM 37.51.216: Negative Licensing Action, the Department, after written notification to the applicant or licensee, may **deny, suspend, restrict, revoke or reduce to provisional status**, a license upon finding that the youth foster home:

- is not in compliance with fire safety standards (license must be suspended or revoked); or
- is not in substantial compliance with any licensing requirements established by rule; or
- has made misrepresentations to the Department, either negligent or intentional, regarding any aspect of its operations or facility; or
- has failed to use the foster care payments for the support of the foster child(ren); or
- has been named as the perpetrator in a substantiated report of abuse or neglect; or
- has failed to report an abuse or neglect to the Department or its local affiliate as required by §41-3-201, Mont. Code Ann.; or
- anyone living in the household may pose any risk or threat to the safety or welfare of any youth placed in the home.

**Written Notice**

Prior to notifying a foster home of an adverse licensing action, the FRS must consult with his or her supervisor and the Regional Administrator prior to contacting the Office of Legal Affairs (OLA). Whenever an adverse licensing action is taken against a youth foster home, the Family Resource Specialist (FRS) must send written notice to the home including

- a statement of the proposed adverse action;
- the reason for the proposed adverse action;
- the specific regulations supporting the proposed adverse action;

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- an explanation of the claimant's right to a hearing;
- how to obtain a hearing;
- applicable statutes and ARMS for the hearing process and a link to access them;
- that the hearing may be waived and resolved through settlement; and
- a telephone number to call for additional information.

If the rationale to the proposed adverse action includes a history of licensing violations from previous reports, those reports and the corresponding rules must be cited to the licensee/ applicant in the letter of notification.

**NOTE: The letter must be sent by certified mail, return receipt requested.**

### Hearing Request

A foster parent or applicant to become a foster parent who is dissatisfied with the Department's adverse licensing action must request a hearing as provided in ARM 37.5.307 **within 30 days** of the date of mailing of the certified letter notifying the person or provider of denial, suspension or revocation of his or her license.

### Fair Hearing Procedure

The Hearing Officer assigned to the case will schedule the fair hearing and notify the parties of the date and time set for the hearing. Notification will be sent by certified mail at least 10 days prior to the scheduled hearing. The hearing will be held by telephone conference unless one of the parties specifically requests an in-person hearing.

Detailed information regarding the hearing procedure may be found in ARM 37.5.325 and detailed information regarding the powers and duties of a Hearing Officer are found in ARM 37.5.322.

### Settlement Conference

A settlement conference is an informal meeting or meetings between Department representatives and the party against whom the adverse action was taken. A settlement conference is held with the intention of resolving the adverse action in a manner that is acceptable to both parties. A settlement may be

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reached at any time following notice of adverse licensing action (including following the fair hearing) up until the issuance of a proposal for decision by a Hearings Officer.

Following review of the specifics of a case, the FRS Supervisor and Regional Administrator will decide if a settlement conference is appropriate and possible settlement terms may be identified prior to the actual settlement conference.

**NOTE: If the aggrieved party is represented by an attorney the Department must also be represented by its attorney.**

If successful resolution of the adverse action is reached during a settlement conference, a written document that can be signed by all parties must be drafted. The document must spell out the terms of the agreement reached by the parties, and **must** include a statement that the aggrieved party agrees to withdraw the request for a fair hearing.

**The Regional Administrator has final approval authority of the settlement agreement for the Department, whether or not he/she participated in the actual settlement conference(s). The Regional Administrator's signature on the settlement agreement is required on all settlement agreements.**

The Regional Administrator then submits the results of the settlement agreement to the Department Attorney who will forward this document along with an order requesting dismissal of the fair hearing to the Fair Hearings Officer.

### Proposal for Decision

The proposal for decision is the formal document issued by a Hearing Officer following a fair hearing. The proposal for decision consists of proposed findings of fact, proposed conclusions of law and a recommended order. It also includes a statement of a party's right to appeal, **which is within 15 days after the date of the mailing of the proposed order.** If either party does not appeal the proposal for decision, it is the final agency decision.

### Appeal Process Department Director

Appeals of the proposed decision are sent to the Department Director. If the Department's position was not upheld, and an appeal is planned, approval from the Regional Administrator must be obtained before proceeding with an appeal.

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A notice of appeal must be made in writing to the Department director and sent to:

**Director  
DPHHS  
111 N. Sanders  
P.O. Box 4210  
Helena, MT. 59604-4210**

The Director must receive the appeal within 15 days of the mailing of the proposal for decision. The 15 day time limit can be extended if good cause for the delay can be shown, up to a maximum of 45 days.

If a request is received within the specified time period, the Director (or the Director's designee) will review the proposal for decision, the exceptions filed, briefs and oral arguments presented and the record of the hearing.

**Judicial Appeal**

The Director, or Director's designee, will notify the parties of the decision and also of the right to pursue the appeal to district court.

Within 30 days of the decision of the Director or Director's designee, a party may request judicial review in District Court. The court will only review what constitutes the hearing record.

It is unlikely that judicial review will be pursued by the department when the decision of the Director or Director's designee upholds the proposal for decision made by a hearings officer. In any case, approval must be obtained from the Division Administrator and the Legal Unit before appealing to District Court.

**References**

Mont. Code Ann. § 41-3-201  
Mont. Code Ann § 52.2.622  
Admin. Rule Mont. 37.51.216  
Admin. Rule Mont. 37.51.217  
Admin. Rule Mont. 37.5.307  
Admin. Rule Mont. 37.5.322  
Admin. Rule Mont. 37.5.325  
Admin. Rule Mont. 37.5.331

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