

**State of Oregon**  
**Department of Human Services**  
**Child Welfare Program**  
**500 Summer St. NE E62**  
**Salem, OR 97301-1067**

In the Matter of:

Northwest Behavioral Healthcare Services  
18000 SE Webster Rd.  
Gladstone, OR 97027,

Licensee.

Notice of Imposition of License Conditions  
and Opportunity for a Hearing

To: Jenny Eaton-McNabb and  
Becca Paust  
Interim Executive Directors  
Northwest Behavioral Healthcare Services  
18000 SE Webster Rd.  
Gladstone, OR 97027

## **I. Background**

The Oregon Department of Human Services (“DHS”) is the State agency authorized to issue licenses to operate Child Caring Agencies in Oregon. This is a Notice of Imposition of License Conditions and Opportunity for a Hearing (“Notice”) regarding the license held by Northwest Behavioral Healthcare (referred to hereafter as “NWBH” and/or “Licensee”).

This Notice is issued to you pursuant to Oregon Revised Statute (ORS) Chapter 183; ORS 409.050; ORS 418.005; ORS 418.205 through ORS 418.327; ORS 419B.005 to ORS 419B.015; Oregon Laws 2016, chapter 106; Oregon Laws 2017, Chapter 138; and Oregon Administrative Rules (OAR) OAR 413-215-0000 through OAR 413-215-0131 (Licensing Umbrella Rules), OAR 413-215-0501 through OAR 413-215-0586 (Licensing Residential Care Agencies).

These rules include, but are not limited to, Licensee’s responsibility for the supervision and training of staff to ensure the health, safety and welfare of the children served by NWBH. These rules also require Licensee to be in full compliance with all licensing rules and all laws, including mandatory child abuse reporting requirements. During all times mentioned in this Notice, NWBH was licensed to operate a residential care agency at 18000 SE Webster Rd. in Gladstone, Oregon. This Notice is based on reliable evidence that Licensee failed to operate its facility in full compliance with licensing rules.

## **II. Statement of Violation**

On November 2, 2017, DHS began investigating concerning incidents reportedly occurring at NWBH, including reports that the former Executive Director has continued to manage the program despite failing a required criminal records check, and that the program routinely accepts children into the program regardless of whether NWBH is able to meet the particular child's needs. Prior to DHS' current investigation, the program's identified Executive Director, Dan Mahler, submitted information required for a criminal records check and fitness determination. Mr. Mahler was not approved to work as NWBH's Executive Director in August 2017. DHS notified Mr. Mahler he could not perform any of the Executive Director's duties at that time. Mr. Mahler provided information regarding two individuals who would be performing those duties during the pendency of an appeal regarding his fitness determination. Nevertheless, Mr. Mahler reportedly has continued to act as NWBH's Executive Director, and staff have reported he is the program's sole decision maker regarding admissions to and discharges from the program.

DHS is investigating reports NWBH routinely employs improper and non-nationally-recognized behavior management techniques, including the use of seclusion for extended periods of time and administration of chemical restraints. For example, residents and staff indicate residents have been confined to a "quiet room" for upwards of two days. Although this area is not locked, residents are permitted to leave only to use the restroom, and there are consequences for leaving the area, which is marked with tape. DHS observed a child in seclusion during its investigation. Staff and program records indicate seclusion is being used in a punitive fashion. Some children have been placed into seclusion for acting out, failing to follow their treatment plans, or engaging in self-harm. Children and staff also report children have been given an injection to calm or sedate them while in a physical restraint or seclusion. At least one child was reportedly injected with an antipsychotic medication that was not prescribed to the child and was not part of the child's treatment plan.

DHS is also investigating reports NWBH has failed to appropriately address suicidal ideation, gestures, and/or behaviors displayed by children in its care. Staff have reported suicide protocols are inadequate and inconsistently applied, and that some staff are unsure how to respond to such behavior. Moreover, staff report increased supervision for suicidal behavior requires approval by a doctor and staff are unclear as to how this approval is obtained. DHS interviewed children who reported suicidal thoughts or actions while at NWBH, but little to no documentation, such as suicide risk assessments, was included in the children's files. DHS also interviewed staff who reported observations of suicidal behavior to a supervisor, but no further action was taken.

In addition to investigating the above allegations, DHS is investigating concerns that NWBH has not reported these incidents to DHS as required. NWBH has an ongoing obligation to report child abuse and critical incidents to DHS. DHS interviewed staff and children who reported potential incidents of child abuse or neglect that were known to the program but not reported to DHS. DHS notified NWBH at a licensing visit on July 25, 2017 it was required to report all critical incidents to DHS' licensing unit in accordance with rule. On October 31, 2017, staff experienced a major breakdown in control and supervision of the facility that required a substantial response from law enforcement. Law enforcement struggled to reestablish control of the facility and some children reporting being traumatized by the event. DHS has not received a critical incident report from NWBH from that event, nor has it received any critical incident

report in the past year. DHS has received external reports of alleged failures to comply with statutes and licensing rules described herein. These investigations are ongoing.

DHS' licensing unit has determined that NWBH is not in full compliance with the OARs governing Child Caring Agencies. NWBH's noncompliance places the health, safety, or welfare of children at risk.

### **III. Applicable Law and OARs**

This conduct constitutes violation(s) of the laws and licensing rules excerpted in italics below. Authority for DHS' action is also included in this section.

#### **Oregon Laws 2017, Chapter 138, Section 1**

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*(2)(a) The department may not issue or renew a license, certificate or other authorization to a child-caring agency unless the department finds the agency is or will be in full compliance with all of the following:*

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*(B) The agency complies with abuse reporting and investigation requirements.*

*(C) The agency engages in and applies appropriate behavior management techniques.*

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*(F) The agency ensures the safety of children.*

*(G) The agency utilizes approved procedures and protocols for use of medications for children receiving care or services from the agency.*

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*(b) The department may suspend, revoke or place conditions on a license, certificate or authorization of a child-caring agency if the department finds the agency is not in full compliance with any one or more of the full compliance requirements listed in paragraph (a) of this subsection.*

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#### **Oregon Laws 2016, Chapter 106, Section 36**

*(1) "Abuse" means one or more of the following:*

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*(b) Neglect of a child in care.*

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*(i) Involuntary seclusion of a child in care for the convenience of a child-caring agency or caretaker or to discipline the child in care.*

*(j) A wrongful use of a physical or chemical restraint of a child in care, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.*

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*(8) "Neglect" means:*

*(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a child in care;\*\*\*\**

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**ORS 419B.010 Duty of officials to report child abuse; exceptions; penalty.**

*(1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.015 (Report form and content).*

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**413-215-0001 Regulation of Child-Caring Agencies**

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*(5) All child-caring agencies, their governing boards, and executive director, and program director, employees, contractors, and agents shall ensure the following standards, procedures, and protocols are met:*

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*(b) The child-caring agency complies with abuse reporting and investigation requirements including, but not limited to, having and following abuse reporting procedures as required in OAR 413-215-0056 and providing training as required in OAR 413-215-0061.*

*(c) The child-caring agency engages in and applies appropriate behavior management techniques.*

\*\*\*\*

*(f) The child-caring agency ensures the safety of children.*

*(g) The agency utilizes approved procedures and protocols for use of medications for children receiving care or services from the child-caring agency.*

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*(m) The child-caring agency is in full compliance with the standards of care and treatment in these rules*

**413-215-0021 Governance**

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*(3) Executive director or program director requirements. A child-caring agency must operate under the direct supervision of an executive or program director appointed by the governing board. The executive director or program director must have all of the following qualifications:*

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*(g) Approval from the Department's Background Check Unit as required in OAR 407-007-0200 to 407-007-0370.*

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*(4) The executive or program director must be responsible for all of the following:*

*(a) The daily operation and maintenance of the child-caring agency and its facilities in compliance with the rules in Division 413-215 and the established program budget.*

*(b) Administration of policies and procedures to ensure clear definition of staff roles and responsibilities, lines of authority, and equitable workloads that ensure safe and protective care, supervision, and treatment of the children served by the child caring agency.*

*(c) Ensuring that only individuals whose presence does not jeopardize the health, safety,*

or welfare of the children in care served by the child-caring agency are employed or used as volunteers.

(d) Recruiting, employing, supervising, training, or arranging for training.

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(h) Complying with all laws, and ensuring that all child-caring agency employees, contractors, and agents comply with all laws, including mandatory child abuse reporting laws.

#### **413-215-0076 Discipline, Behavior Management, and Suicide Prevention (Excluding Adoption Agencies)**

(1) A child-caring agency, except a child-caring agency licensed only to provide adoption services under OAR 413-215-0401 to 413-215-0481, must adopt and adhere to written policies and procedures on discipline, behavior management, and suicide prevention that meet all of the requirements of this rule. Copies of the policies must be provided to the Department as provided in OAR 413-215-0081 and any time policies are adopted or amended.

##### **(2) Discipline Policy.**

(a) A child-caring agency must incorporate into the program's care-giving practices positive non-punitive discipline and ways of helping a child in care build positive personal relationships, self-control, and self-esteem.

(b) The discipline policy must prohibit all of the following:

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(F) Using physical restraint (see paragraph (3)(d)(A) of this rule) or seclusion as discipline.

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##### **(3) Behavior Management.**

(a) The behavior management policy of the child-caring agency must identify appropriate and positive methods of behavior management based on a child's needs, developmental level, and behavior.

(b) The policies must include a description of the model, program, or techniques used and its use of each of the following:

(A) Non-violent crisis intervention. For purposes of this rule, "non-violent crisis intervention" means a nationally recognized, holistic system for defusing escalating behavior and safely managing physically aggressive behavior. The agency's choice of a "non-violent crisis-intervention system" must be conveyed to and approved by the Department.

(B) Use of time out, if applicable.

(C) Use of restraints, if applicable.

(i) Chemical restraint, meaning the administration of medication for the management of uncontrolled behavior, is prohibited. Chemical restraint is different from the use of medication for treatment of symptoms of severe emotional disturbances or disorders.

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(e) Seclusion.

(A) For the purposes of this rule, "seclusion" means that a child in care is involuntarily confined to an area or room, and is physically prevented from leaving.

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*(C) Seclusion may only be used to ensure the safety of the resident or others during an emergency safety situation.*

*(D) Episodes of seclusion are limited to two hours for children in care age nine and older and one hour for children in care under the age of nine.*

*(E) Visual monitoring of a child in care in seclusion must occur and be documented at least every 15 minutes.*

*(F) Each incident of seclusion must be documented in the child in care's clinical record, and must include the clinical justification for its use.*

*(G) If incidents of seclusion used with an individual child in care cumulatively exceed five hours in five days, or a single episode of more than two hours for children in care age nine and older or more than one hour for children in care under age nine, the executive director or designee must review the case with those with clinical leadership responsibilities to evaluate the child in care's plan of care and make necessary adjustments.*

*(f) If the child-caring agency utilizes seclusion and restraint as part of its behavior management practices, its use of seclusion and restraint must be in compliance with all applicable federal and state regulations and rules.*

*(4) Suicide Prevention. The policy must include the following:*

*(a) How the child-caring agency will respond in the event a child in care exhibits self-injurious, self-harm, or suicidal behavior;*

*(b) Warning signs of suicide;*

*(c) Emergency protocol and contacts;*

*(d) Training requirements for staff, including suicide prevention training and suicide risk assessment tool training;*

*(e) Procedures for determining implementation of additional supervision precautions and for determining removal of additional supervision precautions;*

*(f) Suicide risk assessment procedures on the day of intake;*

*(g) Documentation requirements for suicide ideation, self-harm, and special observation precautions to ensure immediate communication to all staff;*

*(h) A process for tracking suicide behavioral patterns; and*

*(i) A "post-intervention" plan with identified resources.*

#### **413-215-0091 Responsibilities of Licensees**

*A licensee is responsible to do all of the following:*

*(1) Ensure that children in care are well cared for and safe from self-harm, physical harm, and abuse from others.*

*(2) Adhere to and comply with all policies and procedures of the licensee and ensure that the licensee's employees and volunteers adhere to and comply with the licensee's policies and procedures.*

*(3) Comply with all federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the licensee and ensure that the licensee's employees and volunteers comply with all federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the licensee.*

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(6) Make reports to the Department as required by these rules and upon request to ensure that the requirements for licensing are met.

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(11) Notify the Department in the following circumstances:

(c) Within one business day if a critical event occurs. As used in this section, "critical event" means a significant event occurring in the operation of a child-caring agency that is considered likely to cause complaints, generate concerns, or come to the attention of the media, law enforcement agencies, first responders, Child Protective Services, or other regulatory agencies. Compliance with this notification requirement does not satisfy the mandatory reporting requirements under ORS 419B.005 to 419B.045 and Oregon Laws 2016, chapter 106.

#### **413-215-0106 Investigation of Complaints**

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(2) The Department will immediately investigate and take appropriate action when the Department becomes aware that any suspected or founded abuses, deficiencies, violations, or failures to comply with the full compliance requirements described in ORS 418.240 and these rules are occurring in a child-caring agency.

(3) The Department will immediately investigate when the Department becomes aware that a child-caring agency, or an owner, operator, or employee of a child-caring agency, is the subject of an investigation by another state, federal, or law enforcement agency and take action as provided in Oregon Laws 2016, chapter 106, section 4.

(4) Upon determination of a level of threat or risk to children in care, the Department will take appropriate steps to protect and ensure the health, safety, and welfare of children in care.

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#### **413-215-0121 Denial, Suspension, or Revocation of License and Placing Conditions on a License**

(1) The Department may suspend, revoke, or place conditions on the child-caring agency's license, certificate, or other authorization in the following circumstances:

(a) The child-caring agency is not in full compliance with the requirements of OAR 413-215-0001(5) or other applicable requirement in OAR chapter 413, division 215.

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(2) Conditions placed on a license under section (1) of this rule include, but are not limited to, the following:

(a) Placing full or partial restrictions on admission of children;

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(3) The Department may immediately deny, suspend, revoke, or place conditions on the child-caring agency's license in the following circumstances:

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(c) If at any time during or after an investigation[it finds] that abuses, deficiencies, violations or failures to comply are or threaten a serious danger to any child or to the public, or place a child in care at risk with respect to the child in care's health, safety, or welfare.

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#### **413-215-0551 Medication**

(2) Program staff may not dispense medication to a child in care in any of the following situations:

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(b) For disciplinary purposes.

(c) For the convenience of staff.

(d) As a substitute for appropriate treatment services.

(3) A prescription, signed by a physician or qualified medical professional, is required before any prescription medication is administered to, or self-administered by a child in care.

Medications prescribed for one child in care may not be administered to, or self-administered by another child in care or staff.

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(5) A written order, signed by a physician or qualified medical professional, is required for any medical treatment, special diet, physical therapy, aid to physical functioning, or limitation of activity.

#### **413-215-0561 Minimum Staffing Requirements**

A residential care agency must meet all of the following requirements:

(1) Minimum staffing patterns. The residential care agency must establish staff-to-child ratios that will provide adequate supervision and protection for children in care. The ratios must be adequate for the type of program, location of program, the age and type of children in care served, physical plant design, location and ability of the supervisor to respond, electronic backup systems, and other means available to ensure a high standard of supervision and protection.\*\*\*\*

#### **413-215-0581 Information About Children in Care**

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(2) Service planning

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(d) Assessment. A comprehensive assessment must be completed within the first 30 days of placement. This assessment must include relevant historical information, current behavioral observations, any identified needs for services, and a description of how the residential care agency will provide or coordinate services.

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#### **IV. Statement of Conditions**

Pursuant to OAR 413-215-0106 and 413-215-0121 and based upon the findings above, DHS finds that Licensee has failed to comply with the applicable standards described in the statutes and OARs governing Child Caring Agencies. Further, DHS finds Licensee's failure to comply with the OARs are or threaten a serious danger to any child or to the public, or place a child in care at risk with respect to the child in care's health, safety, or welfare. NWBH's license is amended by imposing the following conditions:

1. Restriction of Admissions. NWBH may not admit any new residents into its facility until further notice.

2. Seclusion. Utilization of the “SPP – special program plans” or any other action which secludes a child as discipline or punishment is prohibited and must cease immediately. All seclusion that does occur must be in compliance with 413-215-0076(2)(e), and documentation of seclusions must be provided to DHS within 24 hours of each occurrence.
3. Chemical Restraints. The use of chemical restraints is prohibited pursuant to 413-215-0076(3)(b)(C)(i). The use of chemical restraints must cease immediately.
4. Governance. Former Executive Director Dan Mahler must immediately cease all function as the program’s Executive Director, including providing direction to staff, volunteers, and all others. If Mr. Mahler wishes to fill any other role within the program, he must submit the appropriate information to the Department’s Background Check Unit, including the job description.
5. Assessments. Each child in care must receive an updated comprehensive assessment as required in 413-215-0581(2)(d). The assessment must include how the suicide prevention policy required by 413-215-0076(4)(a-i) will apply with each child. These must be submitted to DHS no later than 5pm November 6, 2017.
6. Behavior Management. NWBH must identify a nationally recognized, holistic system for non-violent crisis intervention for defusing escalated behavior and safely managing physically aggressive behavior as required in 413-215-0581(2)(d). NWBH must identify a new system that meets this rule and present a plan with timelines to retrain all staff accordingly. The plan must be submitted to the department no later than November 8, 2017.
7. Suicide Protocol. NWBH must submit a copy of its suicide prevention policy to DHS by 5:00 p.m. on November 6, 2017 for DHS approval. Once DHS approves the suicide prevention policy, NWBH must demonstrate compliance with its suicide prevention and protocol procedures, including but not limited to: training staff according to the policy; completing suicide risk assessments and including them in every client file; documenting suicidal behavior in compliance with OARs; and implementing procedures for additional supervision precautions.
8. Reduce Census. NWBH must submit a plan to DHS outlining how it will prioritize discharging children in its care whose needs it is unable to meet, with a focus on children exhibiting suicidal ideation and/or behavior. NWBH must submit discharge summaries to DHS for every child discharged from NWBH with information about when and why the child was discharged.
9. Staff Training on Reporting Requirements. All employees must complete mandatory child abuse training and critical incident reporting within 7 days. All staff must comply with mandatory abuse reporting laws and critical incident reporting as required by rule.

**V. Effective Immediately**

These license conditions are effective immediately and are a final order of DHS unless later rescinded by DHS or through the hearing process. Failure to comply with these conditions may result in further sanctions up to and including revocation of the facility’s license. This Notice of Imposition of License Conditions must be posted with your License/Certificate of Approval to Operate a Child Caring Agency.

These conditions will remain in effect until the expiration of NWBH's license or until such earlier time as DHS documents, in writing, that all licensing rules are met and the condition is lifted. If the condition is still in effect at the time of the license renewal, DHS will review the reason for the condition at that time and determine if the condition should be continued.

#### **VI. Notice of Opportunity for a Hearing**

Pursuant to the Administrative Procedures Act (ORS Chapter 183) you have the right to a contested case hearing in this matter. **Licensee's request for a hearing does not delay enforcement of the license conditions.** To request a hearing, you must submit your request in writing to the Department of Human Services' Licensing Unit within 30 days of the date DHS mailed the notice of imposition of conditions. The hearing would be held before an administrative law judge pursuant to the Administrative Procedures Act described in the contested case procedures (ORS 183.310 through 183.550) and the Attorney General's Model Rules of Procedure (OAR 137-003-0000 through 137-005-0070).

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation, and other rights of parties related to the conduct of the hearing before commencement of the hearing. You may request a hearing by sending your request to:

Harry Gilmore, Manager, Children's Care Licensing Unit  
Department of Human Services Licensing Unit  
PO Box 14530  
Salem, OR 97309

If you do not request a hearing within 30 days of the mailing of this notice, you will have waived your right to hearing and DHS may issue a final order by default and the conditions on your license will become permanent until otherwise rescinded by DHS. If you waive your right to a hearing, withdraw a hearing request, or notify DHS or the Administrative Law Judge that you will not appear at the hearing as scheduled, DHS may also issue a final order by default. DHS has designated the relevant portion of its files on this matter, including all materials that you have submitted relating to this matter, as the record in this case for the purposes of proving a prima facie case upon default.

#### **VII. Notice of Right to Legal Representation**

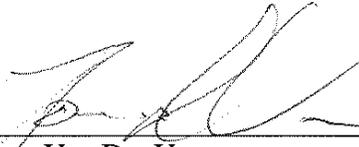
You have the right to be represented by counsel. Legal aid organizations may be able to assist those with limited financial resources. If you are an agency, corporation, partnership, Limited Liability Company, trust, government body or an unincorporated association, you must be represented by an attorney licensed in Oregon.

#### **VIII. Notice to Active Duty Service members**

Active duty service members have a right to stay these proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260,

the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces  
Legal Assistance Office through <http://legalassistance.law.af.mil>.

Dated this 3<sup>rd</sup> day of November 2017.



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Tom Van Der Veen  
Manager, Children's Care Licensing Program  
Department of Human Services