

**Summary of Proposed Legislative Changes to Strengthen
Oversight of Children’s Licensed Out of Home Care –
Proposed Amendments to *Child, Youth and Family Services
Act, 2017***

Posting Date: July 13, 2023

Submissions Required by: September 2, 2023

Purpose

The purpose of this document is to seek feedback from Ontarians on proposed amendments to Part IX of *Child, Youth and Family Services Act, 2017* (CYFSA) which applies to licensed out of home care services¹ for children and young persons (e.g., group homes, staff-model homes, foster care agencies).

This is one of two summaries that the Ministry of Children, Community and Social Services (MCCSS or ministry) is posting to the Regulatory Registry. A summary of the proposed amendments to O. Reg. 155/18 and O. Reg 156/18 under the CYFSA has also been posted; please see *Summary of Proposed Regulatory Changes to Strengthen Oversight of Children’s Licensed Out of Home Care – Proposed Amendments to Ontario Regulation 155/18 – Lieutenant Governor in Council Regulation and Ontario Regulation 156/18 – General Matters Under the Authority of the Minister*.

Please provide feedback on the proposal by email to outofhomecare@ontario.ca no later than September 2, 2023. Please reference the proposed amendment number, page number, and CYFSA section number (if applicable) (e.g., proposed amendment #x, p. x, s. x(1),) in your feedback for clarity.

Context

Under the CYFSA, MCCSS has responsibility for licensing, and in some cases, funding and/or delivering out of home care to children and young persons in Ontario. Part IX of the CYFSA and its associated regulations (Ontario Regulations (O. Regs.) 155/18 and 156/18) set out the legal requirements for licensing. The licensing framework applies to various sectors and settings (e.g., child welfare, youth justice, anti-human trafficking, child and youth mental health, and special needs).

MCCSS staff (“inspector”) assess for compliance with licensing requirements under the CYFSA and its regulations, any conditions that have been placed on the licence, and ministry policies. Inspectors have the authority to enter and inspect any out of home care setting that is licensed or is required to be licensed.

When children and youth need to live away from their family of origin and are placed in licensed out of home care settings, they deserve to receive high quality care; the quality of care provided to them has a significant impact on their everyday experiences and long-term outcomes. The ministry continues to hear from reports, advocates and people with lived experience that some children and youth in our province do not always get the quality of care they deserve.

¹ In this policy intent summary, while the term “out of home care” is used wherever possible, the term “residential” is also used in various instances as it is the defined term used under the CYFSA and its regulations to describe the care provided to children and young persons in licensed settings. However, MCCSS recognizes the history of the residential school system in Canada experienced by First Nations, Inuit and Métis peoples and is exploring options for other language that could be used in the CYFSA and its regulations to describe “residential care” provided to children and young persons in licensed residential settings.

MCCSS is proposing new and enhanced legislative and regulatory amendments, that if passed, would improve the quality of care children and youth receive in licensed out of home care settings. This will be achieved through proposals that are intended to enhance timely access to information relevant to the health, safety and welfare of children receiving out of home care and increase the suite of oversight and enforcement tools available to MCCSS to deliver more meaningful consequences for findings of non-compliance. The proposed changes are intended to incentivize compliance and hold licensees accountable for fulfilling their legal obligations when caring for vulnerable children and youth.

Many licensees consistently comply with licensing requirements and provide high-quality care to children and young persons in their care. The impact of the proposed changes to the CYFSA and associated regulations will be minimal to licensees already complying with the licensing requirements.

The proposed amendments would provide the ministry with enhanced options to respond where a licensee does not comply with licensing requirements. The proposals enhance the ministry's progressive enforcement model which uses a range of low, medium and high-profile tools² that would be available to MCCSS inspectors and Directors to help bring a licensee into compliance. This effective model is both reactive to non-compliances and actively engages with its regulated entities to bring them back into compliance as quickly as possible.

The proposals would build on strategies to support improvements to quality of care in licensed out of home settings. In July 2020, MCCSS released [Ontario's Quality Standards Framework](#) (QSF), a resource guide to improve quality of care for children and youth across all sectors and settings that make up licensed out of home care services in Ontario. Requirements embedding the content of the QSF into regulations under the CYFSA, coming into effect July 1, 2023, will further support a child's safety and wellbeing. The proposed amendments described in this posting are intended to complement those regulatory changes by strengthening the range of enforcement powers available to the ministry where a licensee is unable or unwilling to comply with licensing requirements.

In developing the proposals, MCCSS has drawn from previous consultations, external reports³ and stakeholder advice recommending improvements to how the ministry assesses for compliance with its licensing requirements. MCCSS has also drawn from other best practice and experience of provincial progressive oversight and licensing approaches serving vulnerable populations (especially long-term care and child care).

² "Low, medium and high" refers to the seriousness of the non-compliance – as well as the degree of impact of the enforcement tool.

³ These reports include *Because Young People Matter: Report of the Residential Services Review Panel* (2016), *Envisioning Better Care for Youth: Our Input into the Blueprint* (2017) and *Safe with Intervention: The Report of the Expert Panel on the Deaths of Children and Youth in Residential Placements* (2018).

If these proposed amendments are passed, they would take effect on a date to be determined but not before January 1, 2024.

MCCSS is also proposing regulatory amendments to O. Reg. 155/18 and O. Reg. 156/18 and has also posted these proposals to Ontario's Regulatory Registry for public feedback. Some of the regulatory proposals are tied to the legislative proposals and are required to enable them.

Overall Intent

The overarching objective of the proposed amendments is to improve the quality of care children and youth receive in licensed out of home care settings. The proposed changes are intended to strengthen licensee compliance with licensing requirements by incentivizing compliance and better holding licensees accountable for fulfilling their legal obligations when caring for vulnerable children and youth.

MCCSS is proposing amendments to the CYFSA and to its regulations, in alignment with provisions in other legislative regimes in Ontario that support vulnerable populations (e.g., *Fixing Long-Term Care Act, 2021* (FLTCA), *Child Care and Early Years Act, 2014* (CCEYA)). The proposals are aimed at enhancing existing statutory provisions governing enforcement and providing new powers that strengthen ministry oversight, regulation and monitoring of children's licensed out of home care providers by:

- Embedding new enforcement powers (e.g., compliance orders and administrative monetary penalties) into the licensing framework and enhancing existing powers;
- Introducing tougher consequences for repeated non-compliance;
- Increasing licensee accountability for their operations;
- Enhancing the requirements applicable to the licensing application and renewal processes;
- Enhancing and clarifying rules respecting information sharing, including timely access to information relevant to the health, safety and welfare of children receiving out of home care; and
- Supporting service system planning and coordination.

Additionally, MCCSS is proposing to increase the responsibility of societies to provide oversight of children in society care by:

- Increasing required visits to children in care;
- Requiring information sharing between a home society placing a child in its care in the jurisdiction of another society and that local society; and,
- Requiring the home society to consider entering into an interagency service agreement with the local society for supervision and oversight of the child in the placement.

The pages that follow are organized by a description of the proposed legislative amendment, with each description providing a snapshot of the corresponding changes that MCCSS is proposing.

Description of Proposed Legislative Amendment #1: Mandatory Action for Non-Compliances

MCCSS is proposing a new provision requiring an inspector to take at least one of a set of defined actions if they find a licensee has not complied with a requirement under the CYFSA, its regulations, a directive or licence condition. In such circumstances, the inspector would be required to do one of the following as appropriate:

1. Issue a written notification to the licensee.
2. Make a compliance order.
3. Issue a notice of administrative penalty.
4. Issue a written notification to the licensee and refer the matter to the Director for further action by the Director.

The inspector would not be required to take this action in circumstances where the licensee remedies the non-compliance and the inspector is satisfied that the non-compliance caused no harm and created no risk or minimal risk of harm to a child or young person.

The proposal would not alter the inspector's existing statutory duty to document the non-compliance in the inspection report.

The proposed change is intended to enhance consistency of enforcement practices adopted in response to findings of non-compliance.

Description of Proposed Legislative Amendment #2: Compliance Order

Currently, there is no legislative provision authorizing the imposition of compliance orders as an enforcement tool under Part IX of the CYFSA.

MCCSS is proposing a new provision authorizing the use of compliance orders as an enforcement tool.

The provision would authorize an inspector or Director to make a compliance order where they believe on reasonable grounds that a licensee or person providing residential care on behalf of the licensee has failed to comply with the Act, its regulations, a licence condition or a directive.

The compliance order would, if approved, require the person subject to it to:

- a. Do anything, or refrain from doing anything, to achieve compliance with a requirement under this Act, the regulations, a condition or directive;

- b. Prepare, submit and implement a written plan that is acceptable to the Director or inspector for achieving compliance with a requirement under the Act, the regulations, a condition or directive; or
- c. Arrange for a person specified in the order to complete specified educational courses or training.

The order might also specify the date or dates by which compliance must be achieved. Other procedural powers and rules would also be included if this order were approved, including powers to amend or revoke the order, a rule that the order takes effect upon the person receiving notice of the order and a requirement for the licensee to comply with the order.

The provision would also, if approved, authorize the Director or inspector to provide notice of the compliance order to the following:

- a. Placing agencies or other persons who have a child placed in the licensed out of home care setting; and,
- b. In the case of a child who is a First Nations, Inuk or Metis child, to a representative chosen by each of the child's bands or First Nation, Inuit or Metis communities.

Lastly, the proposed provision would, if approved, specify that compliance orders are within the sole discretion of the Director or inspector and are not subject to an appeal.

The proposed change would enhance the enforcement tools available to inspectors and Directors where they have identified non-compliances with licensing requirements. The proposal is consistent with other regulatory regimes serving vulnerable populations, such as that in place for child care and long-term care.

Description of Proposed Legislative Amendment #3: Restraining Order

Currently, there is no legislative provision under Part IX of the CYFSA that provides that a Director may apply to the Superior Court of Justice for an order restraining a person from providing residential care under the authority of a licence.

MCCSS is proposing a new provision providing that a Director may apply to the Superior Court of Justice for such an order where the Director has reasonable grounds to believe that the provision of residential care by a particular person poses a threat to the health, safety or welfare of children receiving residential care under the authority of the licence.

The proposed change would enhance the enforcement tools available when there are reasonable grounds to suspect that a specific person providing licensed out of home care is posing a threat to the health, safety or welfare of children receiving care.

Description of Proposed Legislative Amendment #4: Order Requiring Management

Currently, there is no legislative provision authorizing a Director to order a licensee to retain a person or persons to act as managers or to assist in managing the licensed residential setting. Currently, the Minister can apply to the Superior Court of Justice to appoint a person to occupy and operate a licensed residential setting but only when there is a proposal to refuse to issue, revoke or suspend a licence and the matter has not been finally disposed of (see s. 271 of the CYFSA).

MCCSS is proposing a new provision in Part IX authorizing a Director to order a licensee to retain, at the licensee's expense, a person or persons to act as managers or to assist in managing the licensed residential setting.

The proposed provision, if approved, would set out the grounds under which the order may be made, including that:

- a. There are reasonable grounds to believe that the licensee has not complied with a requirement under the Act, the regulations, a condition or directive.
- b. There are reasonable grounds to believe that the licensee cannot or will not properly manage the licensed residential setting, or cannot do so without assistance.
- c. There are circumstances present in the licensed residential setting that are prejudicial to the health, safety or welfare of children.
- d. There is an emergency in the licensed residential setting.

The proposed provision would also authorize the Director to collect information on the qualifications of the proposed person or persons to be retained as managers for the purposes of supporting the Director's assessment of whether the person or persons are acceptable to act as managers or to assist in managing the licensed residential setting. Other procedural powers and rules would also be included if this order were approved, including a rule that the order takes effect upon the licensee receiving notice of the order and a requirement for the licensee to comply with the order.

The provision would also, if approved, authorize the Director to provide notice of the order to the following:

- a. Placing agencies or other persons who have a child placed in the licensed out of home care setting; and,
- b. In the case of a child who is a First Nations, Inuk or Metis child, to a representative chosen by each of the child's bands or First Nation, Inuit or Metis communities.

Lastly, the ministry is proposing that a licensee subject to such an order may request a hearing before the Licence Appeal Tribunal (LAT) respecting the order, and that the order is not stayed by (i.e., remains in effect during) the request for a hearing.

The proposed change would provide a Director with an additional tool to respond where there are compliance and/or competency concerns with a licensee's delivery of residential care, including in cases where a licensee's non-compliance(s) is not severe

enough to warrant a licence suspension, and/or where revoking or refusing to renew the licence would pose significant placement disruptions (e.g., the program being offered is specific and not readily available), but where the licensee requires additional management expertise and support in the delivery of residential care.

Description of Proposed Legislative Amendment #5: Order that funding be returned or withheld

Currently, there is no legislative provision authorizing a Director to make an order requiring the return of public funds provided to or collected by the licensee for the provision of residential care. There is also no corresponding provision authorizing a Director to make an order that public funds that would otherwise be provided to the licensee for the provision of residential care be withheld from the licensee.

MCCSS is proposing a new legislative provision that would permit a Director under Part IX of the CYFSA to make such orders where the licensee has received public funds from placing agencies that are ministry transfer payment recipients, including societies, and there has been a finding that the licensee has:

- a. Failed to use all or part of that funding in accordance with the terms of an agreement for the provision of residential care, or
- b. Misused that funding in circumstances to be prescribed in regulation.

The proposed changes are intended to provide Directors with an additional enforcement tool that would:

1. Encourage compliance with any agreements or arrangements in place respecting public funds to be provided to the licensee for the provision of residential care.
2. Encourage the proper expenditure of public funds provided by ministry transfer payment recipients, including societies, to licensees.

Description of Proposed Legislative Amendment #6: Administrative Monetary Penalties

Currently, there is no legislative provision authorizing inspectors and Directors to issue a monetary penalty to a licensee for non-compliance.

MCCSS is proposing new provisions authorizing an inspector or Director under Part IX of the CYFSA to issue a monetary penalty to a licensee for non-compliance with requirements under the Act, its regulations or a directive.

The proposed statutory provision would, if approved, provide that the penalty does not exceed a specified amount (i.e., \$100,000) and that it would be determined in accordance with the regulations (to be developed at a later time).

Other procedural powers and rules would also be included if this order were approved, including rules governing review processes available should an order for payment of a monetary penalty be made.

The new provisions would provide authority to establish regulations governing administrative penalties and all matters concerning the administration of a system of administrative penalties under the Act.

The proposed changes are intended to provide inspectors and Directors with an additional enforcement tool to encourage compliance with the CYFSA and its regulations. They are also intended to prevent a licensee from deriving, directly or indirectly, any economic benefit as a result of not complying with licensing requirements. The proposed new power is consistent with other regulatory regimes in place in Ontario that serve vulnerable populations, including child care and long-term care. The enabling regulations will be developed in the future and the regulatory proposal will be posted for public consultation.

Description of Proposed Legislative Amendment #7: Form and Service of Orders, Decisions and Notices

MCCSS is proposing a new provision that consolidates all rules governing the form and service of orders, decisions and notices issued under Part IX. The provision would include consolidated rules that the orders, decisions and notices be in writing, include reasons, and include (where applicable) information on appeal or review rights. It would also include rules requiring service on the person against whom the order, decision or notice is made.

This is a technical amendment being proposed in conjunction with the newly proposed enforcement powers described above. It would support consistency in processes and compliance with principles of procedural fairness.

Description of Proposed Legislative Amendment #8: Rules on Service

MCCSS is proposing a new provision setting out rules on service of orders, notices, decisions, or other documents under Part IX. The rules would set out the methods for service of documents, including for personal service, service by registered mail, email or courier. They would apply to service of documents by (1) a Director or inspector, and (2) the licensee.

The proposed changes would support consistency in processes and compliance with principles of procedural fairness.

Description of Proposed Legislative Amendment #9: Filing Orders and Notices with Court

There are currently no legislative provisions allowing for a Director's decision or order made under Part IX to be filed with a local registrar of the Superior Court of Justice and providing that, on filing, it is deemed to be an order of that court and is enforceable as an order of that court.

MCCSS is proposing a new provision allowing for a Director's decision or order made under Part IX to be filed with a local registrar of the Superior Court of Justice, so that if it is filed, it is deemed to be an order of that court and is enforceable as an order of that court.

The proposed changes are intended to provide an additional enforcement power to MCCSS, specifically providing for access to enforcement powers available under the rules of civil procedure where a licensee continues to operate in contravention of orders or decisions made under the CYFSA.

Description of Proposed Legislative Amendment #10: Publication of Information

Currently, s. 253 of the CYFSA includes a list of information the Minister may publish with respect to licences and applications for licences, including conditions on the licence, the maximum number of children on the licence, and a summary of refusals to issue or renew a licence, and to revoke or to suspend a licence.

MCCSS is proposing amendments to s. 253 to provide the Minister with the power to publish information about the proposed new orders and notices that may be issued against licensees, and which are described in the sections above.

These proposed amendments are intended to support enhanced transparency and information sharing about a licensee's compliance with licensing requirements.

Additionally, the proposed changes would provide consistency in the type of information that should be publicly released about a licensee, to further enhance licensee compliance with the CYFSA and its regulations and to support effective placement decisions.

Description of Proposed Legislative Amendment #11: Revocation or Refusal to Issue or Renew Licence – Honesty and Integrity

Currently, sections 261 and 262 set out a list of grounds upon which a Director may propose to refuse to issue or renew, or propose to revoke, a licence. However, concerns regarding honesty and integrity in the operation of a children's residence or in the provision of out of home care in licensed settings are not expressly listed in the grounds.

MCCSS is proposing amendments to sections 261 and 262 to clarify that a Director may propose to refuse to issue or renew, or propose to revoke, a licence if the Director is of the opinion that the delivery of residential care will not be carried out with honesty and integrity.

Additionally, MCCSS is proposing amendments that would replace the reference to "employee" in sections 261 and 262 with broader language that would capture all persons engaged by the licensee to provide residential care, including persons engaged

pursuant to a contract or agreement with the licensee or pursuant to a contract or agreement between the licensee and an employment agency or other third party.

The proposed changes are intended to clarify the grounds on which a Director may propose to refuse to issue, renew or revoke a licence.

Description of Proposed Legislative Amendment #12: Prohibition on Application for a New Licence when an Existing Licence is the Subject of a Notice of Proposal Pursuant to Sections 261 or 262

There are currently no legislative provisions prohibiting a person from applying for a new licence during the time when their current licence is the subject of a Director's notice of proposal pursuant to sections 261 or 262 of the CYFSA (i.e., subject of a proposal to refuse to issue a licence or proposal to revoke or refuse to renew a licence).

MCCSS is proposing a new provision that prohibits a person whose licence has been the subject of a Director's notice under sections 261 or 262 from applying for a new licence until the timeframe for requesting an appeal of the notice has expired, or, if there is a request for a hearing respecting the notice before the Licence Appeal Tribunal, until the Tribunal has made an order and all other appeal rights have been exhausted.

The proposed amendments would align with existing rules governing licence suspensions pursuant to subsection 264(5) of the CYFSA which prohibits a person whose licence is suspended from applying to a Director for a licence during the suspension.

Description of Proposed Legislative Amendment #13: Licence Suspensions

Currently, s. 264 of the CYFSA allows a Director to suspend a licence to provide out of home care if there is an imminent threat to the health, safety or welfare of any children receiving care. While the statute is clear that the suspension takes effect immediately, it is not explicit that the licensee must immediately cease operating a children's residence or providing out of home care upon receiving notice of a licence suspension. MCCSS is proposing amendments to clarify this requirement.

Description of Proposed Legislative Amendment #14: Notice to placing agency or other person; removal of children

Section 270 of the CYFSA sets out certain action that must be taken by the licensee and by placing agencies where a licence has been revoked or suspended or renewal of it refused, or if a licensee ceases to operate a children's residence or to provide residential care. This includes requirements for the licensee to notify placing agencies or persons who have children placed in the licensed setting of the revocation, refusal, suspension or cessation. It also includes requirements for the placing agency or person who placed the child to arrange for the child's removal from the licensed setting as soon as is practicable, having regard to the child's best interests.

MCCSS is proposing amendments to these rules under the CYFSA to:

1. Clarify that the licensee must discharge the obligation to provide notice of the revocation, refusal, suspension or cessation within 24 hours.
2. Introduce a new requirement applicable in the case of a child who is a First Nations, Inuk or Metis child, for notice of the revocation, refusal, suspension or cessation to be provided to a representative chosen by each of the child's bands or First Nation, Inuit or Metis communities.
3. Introduce a new requirement for the licensee to provide notice to the Director confirming that they have complied with their obligations to provide notice to the required persons, entities and agencies.
4. Provide that, in the case of a licence suspension, the placing agency or person who placed the child shall arrange for the child's removal from the licensed setting "immediately".

The proposed changes are intended to support and enhance existing provisions relating to licence suspensions by making explicit their immediate impact and who needs to be provided notice and within what time frame. Doing so would better support the safety and welfare of children in out of home care in circumstances where the Director has determined that there is an immediate threat to the health, safety and welfare of the children.

Description of Proposed Legislative Amendment #15: Hearings by the Licence Appeal Tribunal (LAT)

Currently, an applicant or licensee can request a hearing before the LAT under Part IX of the CYFSA in respect of certain notices or decisions made by a Director, namely: decisions to impose conditions on the licence, notices of proposals to refuse to issue, renew or revoke a licence and licence suspensions.

MCCSS is proposing amendments to provide for other orders that may be the subject of a hearing before the LAT. This includes the proposed new orders for management described above.

Other amendments being proposed in respect of hearings before the LAT include:

1. New rules for information that must be submitted to a Director by an applicant or licensee who is requesting a hearing before the LAT, including reasons why the applicant or licensee thinks the notice, order or decision of the Director is incorrect and any provisions the applicant or licensee has put into place to protect the health and safety of children receiving residential care.
2. Amendments to clarify the orders that the LAT may make after holding a hearing.
3. Amendments to revoke the rule under subsection 266(8) of the CYFSA requiring the LAT to make a final decision and notify the parties of it within 90 days after the LAT receives the applicant's or licensee's request for a hearing. Additionally, consequential amendments would be made to apply revocation of this 90-day

requirement to LAT and Child and Family Services Review Board (CFSRB) decisions reviewing ministry Director decisions relating to adoption licensing, approval of prospective adoptive parents, and approval of proposed adoption placements under Part VIII of the CYFSA and the *Intercountry Adoption Act* (IAA). These provisions apply to private domestic adoptions and intercountry adoptions.

4. Amendments to section 267 of the CYFSA to:
 - a. Provide that an appeal to the Divisional Court from a decision of the LAT does not automatically stay the decision appealed from unless the Divisional Court orders otherwise upon being satisfied that a stay will not cause harm or risk of harm to the health, safety or welfare of a child.
 - b. Provide the Director with the authority to apply for the removal of a stay ordered by the Divisional Court in specified circumstances.
 - c. Additionally, consequential amendments would be made to Part VIII of the CYFSA and the IAA to apply the changes relating to automatic stays, to appeal of LAT decisions reviewing the ministry Director's adoption licensing decisions, but not to appeal of CFSRB decisions reviewing the ministry Director's decisions relating to approval of prospective adoptive parents or proposed adoption placements. This would mean that the effect of the CFSRB decision would continue to be stayed if it was appealed to the Divisional Court until the disposition of the appeal unless the CFSRB or Court ordered otherwise (i.e., the effect of the CFSRB decision is automatically paused during the appeal process unless the CFSRB or the Court decided to make an order that it should not be paused during the appeal process.

The proposed changes are intended to clarify the decisions, notices or orders that may be the subject of a hearing before the LAT under the CYFSA and set out new requirements on information that must be provided to the Director when a hearing is requested. With respect to this proposed legislative amendment, there is no proposal to withdraw any notices or orders about which a licensee can request a review/hearing by the LAT; rather, it is proposed that this list be expanded to also include orders requiring management. The provisions would also clarify the orders that the LAT may make after holding a hearing. These changes are intended to support transparency and procedural fairness. Additionally, the changes are intended to remove the current 90-day timeframe for decisions to be made, and to establish as the default position that the decisions of the LAT would remain in place during an appeal process.

Proposed consequential amendments made to Part VIII of the CYFSA and the IAA would apply the proposed changes under Part IX s to similar LAT and CFSRB review processes and requirements under Part VIII, with the exception of 4(c) noted above. This exception is being proposed to maintain the status quo of preventing the adoption process from proceeding in situations where the ministry Director decides to appeal a CFSRB decision that has found in the applicant's favour. The intent is to protect the child's best interests and their safety while the matter is still under appeal unless the CFSRB or court orders otherwise, in situations where the ministry may continue to have

concerns about the adoptive applicants' suitability or eligibility to adopt or a proposed adoption placement that had led to the ministry's decision not to approve.

Description of Proposed Legislative Amendment #16: Cessation of Operations

Currently, s. 269 of the CYFSA provides that if a licensee ceases to operate a children's residence or to provide out of home care the licensee will deliver back to the Minister the licence and all records in their possession relating to the children who received services. However, there are some licensees who continue to hold a licence even when they only provide out of home care to one or two children, which is not subject to a requirement for a licence pursuant to section 244 of the CYFSA. In these instances, it is the ministry's position that the licensee has ceased providing residential care requiring a licence under the CYFSA and must surrender the licence in accordance with section 269.

MCCSS is proposing to amend s. 269 to clarify that the provision applies in circumstances where the licensee has ceased to provide out of home care *requiring a licence* pursuant to section 244 of the CYFSA.

The proposed change is intended to provide needed clarity and reduce the unnecessary expenditure of government resources in the regulation of a licensee that does not meet the criteria for a licence under the legislation.

Description of Proposed Legislative Amendment #17: Requirements Respecting the Issuance of a Licence & Proposed New Provision Restricting Issuance of a Licence based on Public Interest

Currently, paragraphs 3 and 4 subsection 80(3) of O. Reg. 156/18 set out certain documentation the applicant or licensee is required to maintain when applying for a licence to operate a children's residence or staff-model home.

MCCSS is proposing to amend s. 254(1) of the CYFSA in order to set out the above noted documentation requirements of licensees or applicants within the CYFSA as opposed to within the regulations, with some modification. The proposed changes would mean that the information set out would apply consistently across all licence types and would be required to be provided to the Director as part of the application process, as opposed to the current obligation for an applicant or licensee to simply keep the information on file.

Additionally, there is currently no legislative provision indicating that MCCSS can restrict issuance of a licence based on what the Minister considers to be in the public interest, including based on consideration of whether there is a need, demand or capacity for out of home care in a particular area.

MCCSS is proposing a new legislative provision providing the Minister with the authority to restrict who may be issued a licence based on what the Minister considers to be in

the public interest, based on factors set out within the new proposed legislative provision. The decision would be within the discretion of the Minister and not be subject to an appeal.

The factors that would be considered in determining whether issuance of the licence is in the public interest would include:

- The number of licensed residential placements available in the area where the applicant proposes to deliver residential care and the maximum number of children for whom residential care may be provided in those placements.
- The number of licensed residential placements available in Ontario and the maximum number of children for whom residential care may be provided in those residential placements.
- The other services (as defined in CYFSA s. 2(1)) available in the area where the applicant proposes to deliver residential care and any other area in Ontario.
- The other residential placement options available in the area where the applicant proposes to deliver residential care and any other area, where that information is available to the Minister.
- Any other matters that may be provided for in the regulations; and
- Any other matters that the Minister considers to be relevant

This proposed change is intended to support integrated service system planning and the efficient use of government resources in the regulation and oversight of licensed residential care.

Description of Proposed Legislative Amendment #18: Power to Exclude Persons from Questioning During Inspection

Currently, under s. 276(6), an inspector questioning a person on matters relevant to the inspection may exclude any other person from questioning except a lawyer for the person being questioned.

MCCSS is proposing to amend s. 276(6) to permit an inspector to exclude any person from questioning except a lawyer for a child being questioned. This proposal aligns with rules established pursuant to other similar legislative schemes, namely the *Fixing Long-Term Care Act, 2021* (at s. 150(5)), which provides that an inspector who questions a person “may exclude any person from the questioning”.

The proposed amendment is intended to support more effective and efficient interviews and inspections, while still providing a child being questioned with the ability to have a lawyer present if they wish, thereby maintaining safeguards for this vulnerable population.

Description of Proposed Legislative Amendment #19: New Offences and Penalties under the Act

Part IX of the CYFSA (s. 280) sets out certain offences and their penalties. MCCSS is proposing to include new offences Under Part IX that would hold individuals/licensees accountable for not complying with important requirements under the CYFSA, and to deter others from contravening these requirements. This proposal would also better align the offences and penalties under Part IX of the CYFSA with the FLTCA and CCEYA. The amendments, if passed, would help keep children and young persons safe and strengthen MCCSS' ability to oversee and hold licensees accountable.

Third-party reports and child welfare advocacy groups have called for improvements to oversight and licensing of settings that provide residential care. They have called for these improvements to keep children and youth safe and to address instances of children and youth receiving low quality care that results in negative outcomes.

The proposed amendments would support these improvements and strengthen MCCSS' current enforcement options.

The following are new offences being considered under Part IX:

1. Contravention of s. 249 of the CYFSA (duty to provide licence and other information),
2. Contravention of s. 4 of the CYFSA,
3. Contravention of s. 5 of the CYFSA,
4. Contravention of s. 6 of the CYFSA, and
5. Contravention of s. 7 of the CYFSA.

Currently, under s. 280(2) of the CYFSA, in terms of a monetary fine, a person convicted of an offence under s.280(1) of the CYFSA is liable to a fine of not more than \$1000 for each day on which the offence continues.

MCCSS is considering amendments so that a maximum fine of \$250,000 could be imposed by a court on the conviction of an offence under Part IX of the CYFSA.

There are corresponding amendments related to offences being proposed under O. Reg. 155/18 (please see *Summary of Proposed Regulatory Changes to Strengthen Oversight of Out of Home Care – Amendments to Ontario Regulation 155/18 – Lieutenant Governor in Council Regulation* for more details).

Description of Proposed Legislative Amendment #20: Requirement to Report Information to the Ministry Director

Currently, s. 250 of the CYFSA sets out an obligation for certain prescribed persons to report to a Director where they have reasonable grounds to suspect that there is an immediate threat to the health, safety or welfare of a child in a licensed residential setting. This provision is currently not in effect as no persons who are subject to this reporting requirement have been prescribed in regulation.

MCCSS is proposing to amend s. 250 to specify in the statute the persons who would be subject to this reporting obligation, which may include:

1. The licensee
2. A person employed or otherwise engaged by the licensee to provide direct care to a child, including a foster parent.
3. A society
4. The child's probation officer, if any.
5. Any other prescribed person.

The proposed changes are intended to strengthen ministry oversight and regulation of licensed residential settings by enhancing and clarifying information that must be reported to MCCSS specific to child safety.

No changes are proposed for subsection 250(4), which is included to clarify that the reporting obligation to MCCSS does not affect the duty to report to a society pursuant to section 125 of the CYFSA — so that duty to report obligation would remain in effect.

Description of Proposed Legislative Amendment #21: Decisions on Maximum Capacity fall within the sole discretion of the Director

MCCSS is proposing a housekeeping amendment to sections 259 and 260 to clarify that decisions made by a Director respecting the maximum number of children that may receive residential care under the authority of the licence fall within the sole discretion of the Director and are not subject to an appeal.

Conclusion

All interested parties are encouraged to provide feedback on the proposed legislative provisions. MCCSS values the unique and diverse perspectives from children and youth, families and broader sector partners.

Please provide MCCSS with your comments on the proposal by email to outofhomecare@ontario.ca no later than September 2, 2023. Please reference the proposed amendment number, page number, and CYFSA section number (if applicable) (e.g., proposed amendment #x, p. x, s. x(1),) in your feedback for clarity.

Please note that you will not receive a formal response to your comment. MCCSS will review all feedback received and consider revisions to the proposed legislative changes as appropriate.

Thank you for taking the time to review this document and provide feedback.