NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

Pete Ricketts, Governor

February 20, 2018

ESMERALDA'S LOVING CARE
Esmeralda Cobian, Licensee
5301 W. Superior Street
Lincoln, NE 68524

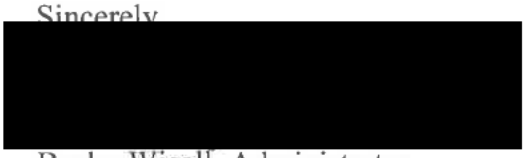
Dear Ms. Cobian:

In accordance with the Notice of Disciplinary Action that was issued on January 26, 2018, by Thomas L. Williams, MD, Chief Medical Officer and Director, Division of Public Health, Department of Health and Human Services, your original license to operate a Family Child Care Home II in the State of Nebraska has been placed on Probation. A license imprinted with the term "PROBATION" is enclosed. This status became effective February 13, 2018, and it will remain in effect until February 13, 2019. Upon completion of the Probation, a new license will be issued to you.

At this time we ask that you submit your current Family Child Care Home II License by return mail, within the next seven (7) days, to DHHS, Division of Public Health, Licensure Unit, Attn: Chris Kort, 301 Centennial Mall South, Lincoln, NE 68509-4986.

If you have any questions, please contact Kathee Sanchez, Child Care Licensing Supervisor, at (402) 471-9193.

Sincerely,



Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

BW/dcp

cc: Children's Services Licensing

This license shall be kept available in the establishment and such proof of credentialing shall be shown upon request.

State of Nebraska

PROBATION

Department of Health and Human Services
Division of Public Health

ESMERALDA COBIAN
Is hereby authorized in compliance with laws of the State of Nebraska to establish and conduct an
Operating **Family Child Care Home II**
located at: **5301 W SUPERIOR LINCOLN NE 68524**

A maximum of **12** children in ages **6 WKS** to **13 YRS** may be in attendance at any one time during the hours of **0000** to **2400** on **MTWTHFSSU**.

ESMERALDA'S LOVING CARE OWNED BY ESMERALDA COBIAN is hereby issued License No. **FII6757** which is
effective on **09/24/2003**

Amended: 02/23/2018

Given under the name and Seal of the Department of Health and Human Services Regulation and Licensure of the State of Nebraska at Lincoln on **February 23, 2018.**

[redacted]
Thomas L. Williams, MD Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

426315

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

Pete Ricketts, Governor

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

IN THE MATTER OF:	)	
THE OPERATING FAMILY CHILD CARE HOME II	)	**NOTICE OF**
LICENSE OF ESMERALDA'S LOVING CARE OWNED	)	**DISCIPLINARY ACTION**
BY ESMERALDA COBIAN	)	

LICENSED LOCATION: 5301 W. SUPERIOR, LINCOLN, NE 68524
LICENSE NUMBER: FII6757
CAPACITY: 12
AGES: 6 WEEKS TO 13 YEARS
HOURS AND DAYS: 12:00 AM TO 12:00 AM, MONDAY THROUGH SUNDAY
DATE INITIALLY LICENSED: SEPTEMBER 24, 2003

NOTICE:

Esmeralda's Loving Care, owned by Esmeralda Cobian (hereinafter referred to as "Cobian") is notified that the Department of Health and Human Services, Division of Public Health, (hereinafter referred to as "Department") is imposing disciplinary action against Cobian's Operating Family Child Care Home II License for violation of the following statutes and regulations:

AUTHORITY:

Nebraska Revised Statutes, section 71-1919, of the Child Care Licensing Act provides that "the Department may ... take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act; ...

(4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;"

Nebraska Revised Statutes, section 71-1920, of the Child Care Licensing Act provides that "...the Department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act:

(a) Issue a probationary license;

(c) Impose a civil penalty of up to five dollars per child, based on the number of children for which the program is authorized to provide child care on the effective date of the finding of violation, for each day the program is in violation." ...

391 NAC 2-008.01Grounds for Denial or Disciplinary Action: "The Department may deny the issuance of or take disciplinary action against a license on any of the following grounds:

1. Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the Act; ...

4. Conduct or practices detrimental to the health or safety of a person served by or employed at the program;" ...

391 NAC 2-006.01 Licensee Qualifications and Requirements: "The Family Child Care Home II licensee must: ...

7. Be in compliance with all regulations whenever any children are in care;

9. Not engage in any other employment that interferes with the care of children;

16. Not engage in or have a history of behavior injurious to or which may endanger the health or morals of children;" ...

391 NAC 2-006.04D Nebraska's Early Learning Guidelines Training: The primary provider must complete training in the seven domains of Nebraska's Early Childhood Learning Guidelines developed by the ECTC. Any proposed equivalent training must be approved by the Department. The domains are: Approaches to Learning, Creative Arts, Health and Physical Development, Language and Literacy Development, Mathematics, Science, and Social and Emotional Development. "1. In programs licensed on or after the operative date of these regulations, the primary provider must complete training in one domain within four years of the date of provisional licensure and one domain annually thereafter." ...

391 NAC 2-006.04E Annual Training: "The primary provider and each staff member, not including substitutes or volunteers, must obtain 12 clock hours of training annually. Staff who works 20 hours or less each week must complete six hours of training annually."

391 NAC 2-006.19 Transportation: "When transportation is provided for children in care, the licensee must ensure the following conditions are met: ...

5. The vehicle used to transport children must be properly registered and must contain a first aid kit and parent contact information for each child being transported;

6. The number of children transported must not exceed the seating capacity of the vehicle as indicated by the manufacturer;

7. All children transported must be properly secured in an appropriate restraint system as required by Neb. Rev. Stat. §§ 60-6,267 and 60-6,268;" ...

FACTS AND FINDINGS:

On October 3, 2017, Shonna Werth Child Care Inspection Specialist, Nebraska Department of Health and Human Services, Division of Public Health (hereinafter referred to as "Werth"), conducted an unannounced annual inspection of Cobian. Cobian was in violation of several regulations. Cobian was given until November 3, 2017 to correct the violations.

On November 6, 2017, Kathee Sanchez, Child Care Licensing Supervisor, Nebraska Department of Health and Human Services, Division of Public Health (herein after referred to as "Sanchez"), sent a letter to Cobian. The letter informed Cobian that all regulations needed to be corrected by December 3, 2017 to avoid disciplinary action against the license.

As of January 26, 2018, the following violations found at the October 3, 2017, inspection still need to be corrected:

- Esmeralda has not completed any of the seven domains of the Nebraska Early Learning Guidelines. At least one domain was required to be completed at the time of inspection.

- Esmeralda needs two additional hours of annual training for calendar year 2016.

- Victoria and Ruby each need twelve hours of annual training for calendar year 2016.

The licensee has a history of noncompliance associated with annual training requirements. The licensee was issued a Notice of Suspension effective January 29, 2016 for failure to pay a civil penalty and failure to submit documentation of 12 hours of annual training. An inspection was conducted on October 18, 2016. Cobian was cited again for failing to provide documentation of annual training.

In addition to the failure to provide required documentation for annual training hours, the Department conducted a complaint investigation on January 3, 2018. The allegations stated that Cobian was transporting children who were not secured in proper restraints. The allegations also indicated the number of children being transported exceeded the capacity of the van. Justin Waddell, Child Care Inspection Specialist, Nebraska Department of Health and Human Services, Division of Public Health (hereinafter referred to as "Waddell"), substantiated that Cobian, by her own admission, was transporting children that were not enrolled in her child care. She was receiving compensation for transporting these children to and from school. Cobian admitted that she transported 16 children in a 15-passenger van and that she normally transports eight (8) children that are not enrolled in her childcare from school to home and is paid weekly by parents for this service.

Cobian has also demonstrated an inability to maintain complete and accurate children's records and documentation of fire and tornado drills. These violations were cited at inspections dated September 19, 2014, October 28, 2015, October 18, 2016, and October 3, 2017. Cobian made corrections, however, fails to maintain compliance with the regulations.

DISCIPLINARY ACTION IMPOSED:

Based upon the facts presented above, the Department intends to impose the following Civil Penalty and Probation:

1. Cobian is assessed a civil penalty in the amount of $ 36.00 per day ($3.00 times license capacity of 12 children) from the effective date of this Notice, February 13, 2018, and for each day thereafter, including Saturday and Sunday, that Cobian fails to submit corrections/documentation that all of the outstanding non-compliances noted at the inspection conducted on October 3, 2017 have been corrected.

Documentation must be submitted to Justin Waddell, PO Box 94986, Lincoln, NE 68509-4986, (402)471-9132, Justin.Waddell@nebraska.gov. Once Waddell has

received and verified the submitted written corrections/ documentation, which may require an on-site inspection, Cobian will be informed in writing of the total of the civil penalty, which will be due 30 calendar days from the date of the notification to Cobian.

Said penalty will then be payable to the Nebraska Department of Health and Human Services, Division of Public Health. Said penalty is to be sent to Chris Kort, Administrative Assistant, Nebraska Department of Health and Human Services, Division of Public Health, Licensure, PO Box 94986, Lincoln, Nebraska, 68509-4986.

2. Cobian's Operating Family Child Care Home II license is placed on probation for a period of one year from the effective date of February 13, 2018. The following terms and conditions will apply:

a. By February 26, 2018, Cobian must submit a verifiable list that shows which of the approved and required training Cobian and her staff have completed for 2017. Any shortage of training hours for calendar year 2017 will need to be completed by March 30, 2018.

b. By February 26, 2018, Cobian must provide to the Department a policy describing how Cobian will ensure the following:

1. Staff records are complete and available for Department review

2. Complete Children's Records are available for all enrolled children and available for Department review

3. Fire and tornado drills are conducted and documentation of completed drills are available for Department review

4. The policy is to include written documentation that Cobian must complete and submit to Waddell, no later than on February 26, 2018.

c. In order to ensure training for calendar year 2018 is completed, Cobian must provide written documentation to the Department of 6 hours of completed training by June 1, 2018 and the written documentation of the remaining 6 hours of completed training by December 1, 2018. This requirement applies to Cobian and any staff that work over 20 hours per week. Written documentation of 3 hours of completed training for staff working less than 20 hours a week must be submitted to the Department by December 1, 2018.

d. By March 30, 2018 Cobian will have completed Safe Kids Nebraska Childcare Transportation training. This training will not count toward the annual training hours.

This training must be approved by the Early Childhood Training Center as well as the Department of Health and Human Services, as meeting the requirements for acceptable training for childcare program staff.

Prior to participating in any training, Cobian will submit in writing the following to the Department, in order for the Department to determine if the training meets the requirements for which it is intended: training curriculum, date and time of training, name of the training, presenter/instructor's name, and the number of hours.

Upon receipt of the above information, the Department will either approve or require additional information in writing from Cobian within ten working days of the receipt of the letter requesting approval of the training. If additional information is required, Cobian must reply with the required information within ten calendar days of notice by the Department.

Cobian must submit verification of attendance and successful completion within fifteen calendar days after completion of the approved training.

e. Cobian is responsible for paying for all costs associated with compliance.

3. Cobian must comply with all of the terms of this Notice by submitting the required written corrections/ documentation as indicated above by or on February 12, 2018 to avoid a civil penalty.

4. Compliance will be monitored by Children's Services Licensing staff and may be monitored by other Department representatives (i.e., Fire Marshal or designated agent, Environmental Health Specialist/Scientist or designated agent, Resource Development Worker, Children and Family Services Specialist/Worker, etc.). The Licensee and any employees and/or agents must cooperate with the Department in these monitoring inspections.

5. A copy of this Notice of Disciplinary Action must be posted with the current childcare license so it is clearly visible to parents and agency representatives.

6. Failure to comply with the terms of this disciplinary action, the applicable Family Child Care Home II Regulations, and failure to correct the violations will be grounds for revocation or such other discipline as the Department may deem appropriate after notice to the licensee and an opportunity for a hearing.

7. If Cobian discontinues the child care program for any reason, the time the Cobian is not actively operating a licensed child care program will not count toward the probation period and any subsequent child care license issued by the Department indicating Cobian as licensee/director/owner shall be subject to the terms of this probation

including completion of the probation period. Cobian must notify the Department, in writing, within seven (7) working days of any period that it is not actively operating the program. Active operation is the provision of childcare for a minimum of forty (40) hours a week for fifty (50) weeks of a calendar year.

BE ADVISED:

Pursuant to Nebraska Revised Statutes, section 71-1922, this action becomes final on February 12, 2018 unless the Department receives a written request for a hearing on or before such date. The license shall continue in effect until the final order of the director if a hearing is requested. If the director does not receive such request on or before such date, the action of the Department is final.

If you decide to request a hearing, your written request for hearing must be received by the Department on or by February 12, 2018. It should be addressed to:

Chris Kort, for DHHS
Children's Services Licensing – Licensure Unit
Division of Public Health
P.O. Box 94986
Lincoln, NE 68509-4986

If you request a hearing, you will be notified of the time, date and place of the hearing and other pertinent information, by separate notice. On the basis of such hearing, the director will affirm, modify, or rescind the determination of the Department. Be advised that pursuant to Nebraska Revised Statutes, section 71-1920, upon completion of any hearing held, the director may impose any or a combination of any of the following: probation, suspension, revocation, civil penalty, restrictions of new enrollment, restrictions or other limitations on the number of children or the ages of the children served in the program, or other restrictions or limitations on the type of service provided by the program. On the basis of the hearing, a modification by the director may include sanctions important to your program, up to and including the loss of your license.

Nebraska Revised Statutes, section 71-1911, provides that a person who has had their **"license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this action."**

Nebraska Revised Statutes, section 71-1920 of the Child Care Licensing Act, provides that "any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien

foreclosure or sued for and recovered in any proper form of action in the name of State of Nebraska in the district court of the county in which the program is located." In addition, section 71-1920, (2), states that "a person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years".

Nebraska Revised Statutes, section 71-1923 of the Child Care Licensing Act, provides that "a licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the Department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the Department has initiated disciplinary action against the licensee.

Dated: January 26, 2018

Thomas L. Williams, MD
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

CERTIFICATE OF SERVICE

COMES NOW, the undersigned and certifies that on the 26th day of January, 2018, a copy of the foregoing NOTICE OF DISCIPLINARY ACTION was sent by certified and first class United States mail, sufficient postage prepaid to ESMERALDA'S LOVING CARE OWNED BY ESMERALDA COBIAN, 5301 W. SUPERIOR, LINCOLN, NE 68524.

Chris Kort
Administrative Assistant

LICENSING AGREEMENT

I, Esmeralda Cobain, hereby state and declare:

I am the licensee of a Family Child Care Home II, Esmeralda's Loving Care FII6757 located at 5301 West Superior Street, Lincoln NE. 68524, licensed Monday through Saturday 24 hours.

I have read and understand the Regulations Governing Licensure of Family Child Care Home II Title 391 NAC Chapter 2.

I agree to comply with each of the Regulations Governing Family Child Care Home II as long as I am licensed by the State of Nebraska to provide child care services.

I understand that this Licensing Agreement is a result of an annual Licensing Inspection visit conducted by Children's Services Licensing on October 18, and follow-up visits on October 21 and 28, 2016 by Marvie Sullivan-CCIS which resulted in a violation of the following regulations.

391 NAC 2-006.03C Volunteers: All volunteers must:

3. Never be left alone with children other than their own.

391 NAC 2-006.08A Licensed Capacity: The number of children in care at any one time must not exceed the licensed capacity. Licensed capacity will be determined by the Department based on available space and the capacity authorized by the State Fire Marshal or delegated authority. Whichever number is smaller will be the licensed capacity of the child care home.

The maximum licensed capacity for a Family Child Care Home II is 12 children.

In determining whether the licensed capacity has been exceeded, any adults receiving care and supervision and all children at the program are counted, except:

1. Children who have left the child care home for an activity and will not be returning that day;
2. Children enrolled in the program and in attendance at school; and
3. Own children over age eight unless the licensee is receiving compensation directly or indirectly for own children over age eight.

391 NAC 2-006.08B Staff-to-Child Ratio: The appropriate staff-to-child ratio must be met at all times, as follows.

1. Infants only. If the program provides care to infants only, the following ratios apply:

Number of Infants in Care	Number of Staff Required
4	1
5-8	2
9-12	3

2. Mixed ages. If the program provides care to children of mixed ages, the following ratios apply:

Number of Children in Care	Number of Staff Required
1-10	1
11-12	2

a. Programs serving children of mixed ages may provide care for up to three infants if no more than two of the infants are under 12 months of age.
b. Programs serving ten children with one staff are limited to two infants and the ninth and tenth children must be school-age.

3. School-age only: If the program provides care to school-age children only, the following ratio applies:

Number of Children in Care	Number of Staff Required
1-12	1

During the licensing visits on October 18, Ms. Sullivan observed 16 childen in care with only a substitute. The Family Child Care Home II is licensed for 12 (over capacity by 4 children). The Family Child Care Home II needed to have 2 providers/staff on duty, and only the substitute was present(under staffed).

During the October 21, follow-up visit Ms. Sullivan observed 13 children(over capacity by 1 child) in care with the provider/licensee and substitute and volunteer(staff-to-child ratio met).

During the October 28, follow-up visit Ms. Sullivan observed 9 children in care with 1 volunteer. (under staffed). A volunteer can not be left alone with children.

I understand and agree that only qualified staff and or substitues will be left alone with children.

I understand and agree that the license capacity shall be met at all times.

I understand and agree that the staff-to-child ratio will meet at all times when children are in care.

I agree that this Licensing Agreement will be prominently posted with my Family Child Care Home II license so it is clearly visible to parents and Department representatives.

I understand that Child Care Licensing staff shall conduct announced or unannounced visits to my facility to determine compliance with this Agreement.

Any violation of this Agreement may be grounds for further negative action or discipline as the Nebraska Department of Health and Human Services, Division of Public Health, Children's Services Licensing may deem appropriate.

This Agreement shall be effect for six months from the signing of the Agreement after which time the Agreement will be reviewed and terminated, extended and/or modified.

Should the Family Child Care Home II license be amended because of change of address, this Agreement may transfer to the new address if appropriate to the conditions of the Licensing Agreement.

[redacted]

Owner/Licensee

11-9-16

Date

[redacted]

Child Care inspection Specialist

11-9-16

Date

Non-relative Witness OR Notary Public

Date

Department of Health & Human Services

DHHS

N E B R A S K A

Division of Public Health

State of Nebraska
Pete Ricketts, Governor

February 8, 2016

ESMERALDA'S LOVING CARE
Esmeralda Cobian, Licensee
5301 W. Superior Street
Lincoln, NE 68524

Dear Ms Cobian:

This letter is written to request that you submit to Marsha Wandersee in the Licensure Unit by return mail, within the next seven (7) days, your License to operate as a Family Child Care Home II in the State of Nebraska. This request is being made since said License has been Suspended, effective January 29, 2016, by the Notice of Suspension issued on January 12, 2016, by Courtney N. Phillips, MPA, Chief Executive Officer, Department of Health and Human Services. A new license will be issued upon reinstatement of your license.

Your license should be mailed to DHHS, Division of Public Health, Licensure Unit, Attn: Marsha Wandersee, 301 Centennial Mall South, Lincoln, NE 68509-4986.

If you have any questions, please contact Kathee Sanchez, Child Care Licensing Supervisor, at (402) 471-9193.

Sincerely

Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

BW/dcp

cc: Children's Services Licensing

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

IN THE MATTER OF:	)	
THE OPERATING FAMILY CHILD CARE HOME	)	**NOTICE OF**
II LICENSE OF ESMERALDA'S LOVING	)	**SUSPENSION**
CARE OWNED BY ESMERALDA COBIAN	)	

LICENSED LOCATION: 5301 W. SUPERIOR, LINCOLN, NE., 68524
LICENSE NUMBER: FII6757
CAPACITY: 12
AGES: SIX WEEKS TO 13 YEARS
HOURS AND DAYS: 24 HOURS A DAY, MONDAY THROUGH SATURDAY
DATE INITIALLY LICENSED: PRIOR TO 2003

NOTICE:

Esmeralda Cobian (hereinafter referred to as "Cobian") is notified that the Department of Health and Human Services, Division of Public Health, (hereinafter referred to as "Department") is suspending Cobian's Family Child Care Home II license for violation of the following statutes and regulations:

AUTHORITY:

Nebraska Revised Statutes, section 71-1919, of the Child Care Licensing Act provides that "the Department may … take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;" …

Nebraska Revised Statutes, section 71-1920, of the Child Care Licensing Act provides that "…the Department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act: … (b) Suspend or revoke a provisional, probationary, or operating license;" …

391 NAC 2-008.01 Grounds for Denial or Disciplinary Action: "The Department may deny the issuance of or take disciplinary action against a license on any of the following grounds:

1. Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the Act; …

391 NAC 2-006.01 Licensee Qualifications and Requirements: "The Family Child Care Home II licensee must: ...7. Be in compliance with all regulations whenever any children are in care;" ...

391 NAC 2-006.04E Annual Training: "The primary provider and each staff member, not including substitutes or volunteers, must obtain 12 clock hours of training annually. Staff who work 20 hours or less each week must complete six hours of training annually."

Nebraska Revised Statutes, section 71-1911.03, of the Child Care Licensing Act provides that "An applicant for a license under the Child Care Licensing Act shall provide to the department written proof of liability insurance coverage of at least one hundred thousand dollars per occurrence prior to issuance of the license." ...

FACTS:

On August 7, 2015, Cobian was assessed a civil penalty in the amount of $1,068.00 ($12.00 a day times eight-nine days, April 16, 2015 through July 28, 2015) because of her failure to submit the required liability insurance for her program. This penalty was due on September 7, 2015. (A copy of the letter notifying Cobian is herein attached.) As of the date of this Notice, Cobian has failed to pay the civil penalty.

In addition, on October 28, 2015, Marvie Sullivan (hereinafter referred to as "Sullivan"), Child Care Inspection Specialist, Children's Services Licensing, Licensure Unit, Division of Public Health, conducted an unannounced annual inspection of Cobian's program. At that time, Sullivan noted numerous non-compliances and required that they be corrected by November 28, 2015

On December 1, 2015, Cobian notified Sullivan that she would have the outstanding non-compliances completed the week of December 7, 2015. Sullivan conducted a follow-up inspection on December 10, 2015; however, Cobian remained in violation of numerous non-compliances.

On December 10, 2015, Kathee Sanchez, Child Care Supervisor, sent Cobian a letter indicating verification of compliance with regulations was required by December 28, 2015. As of this date, the following regulations remain in violation:

- Documentation of 12 hours of approved annual training for Cobian for 2014 was not available for review.

DISCIPLINARY ACTION IMPOSED:

Based upon the facts presented above, the Department is suspending Cobian's Family Child Care Home II license until Cobian pays the civil penalty in the amount of $1,068.00 **and** submits documentation of 12 hours of approved annual training for Cobian for 2014 to the Department. Such annual training documentation must be acceptable to the Department and must be sent to Marvie Sullivan, Child Care Inspection Specialist, Children's Services Licensing, Licensure, Division of Public Health, PO Box 94986, Lincoln, Nebraska, 68509-4986.

The civil penalty in the amount of $1,068.00 must be sent to Marsha Wandersee at the address listed below.

Cobian must send her Family Child Care Home II license to Marsha Wandersee at the address listed below seven (7) days after this action becomes final.

BE ADVISED:

Pursuant to Nebraska Revised Statutes, section 71-1922, this action becomes final on January 27, 2016 unless the Department receives a written request for a hearing on or before such date. The license shall continue in effect until the final order of the director if a hearing is requested. If the director does not receive such request on or before such date, the action of the Department is final.

If you decide to request a hearing, your written request for hearing must be received by the Department no later than January 27, 2016. It should be addressed to:

Marsha Wandersee, for DHHS
Children's Services Licensing – Licensure Unit
Division of Public Health
P.O. Box 94986
Lincoln, NE 68509-4986

If you request a hearing, you will be notified of the time, date and place of the hearing and other pertinent information, by separate notice. On the basis of such hearing, the director will affirm, modify or rescind the determination of the Department. Be advised that pursuant to Nebraska Revised Statutes, section 71-1920, upon completion of any hearing held, the director may impose any or a combination of any of the following: probation, suspension, revocation, civil penalty, restrictions of new enrollment, restrictions or other limitations on the number of children or the ages of the children served in the program, or other restrictions or limitations on the type of service provided by the program. On the basis of the hearing, a modification by the director may include sanctions important to your program, up to and including the loss of your license.

Nebraska Revised Statutes, section 71-1911, provides that a person who has had their **"license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this action."** In addition, section 71-1920, (2), states that "a person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years."

Nebraska Revised Statutes, section 71-1920 of the Child Care Licensing Act, provides that "any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of State of Nebraska in the district court of the county in which the program is located."

That Nebraska Revised Statutes, section 71-1923 of the Child Care Licensing Act, provides that "a licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time,

except that the Department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the Department has initiated disciplinary action against the licensee."

Dated: January 12, 2016

Courtney N. Phillips, MPA
Chief Executive Officer
Department of Health and Human Services

Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

CERTIFICATE OF SERVICE

COMES NOW, the undersigned and certifies that on the 12 day of January, 2016, a copy of the foregoing **NOTICE OF SUSPENSION** was sent by certified and first class United States mail, sufficient postage prepaid to Esmeralda Cobian, 5301 W. Superior, Lincoln, Nebraska, 68524.

Marsha Wandersee

Department of Health & Human Services

DHHS

NEBRASKA

Division of Public Health

State of Nebraska
Pete Ricketts, Governor

August 7, 2015

CERTIFIED AND FIRST CLASS MAIL

Esmeralda's Loving Care
Esmeralda Cobian, Owner
5301 W Superior Street
Lincoln, NE 68524

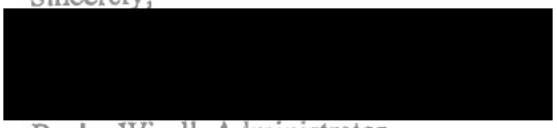
Dear Ms. Cobian:

Since you have complied with the Notice of Disciplinary Action dated March 31, 2015 and the Notice of Suspension dated July 17, 2015 by coming into compliance as of July 29, 2015, you have been assessed a civil penalty in the amount of $1068.00 ($12.00 a day times eighty-nine days, April 16, 2015 through July 28, 2015). This penalty must be received by or on September 7, 2015.

Your check or money order should be payable to the Nebraska Department of Health and Human Services and sent to Marsha Wandersee, Administrative Assistant, Nebraska Department of Health and Human Services, Division of Public Health, Licensure, P.O. Box 94986, Lincoln, Nebraska, 68509-4986.

If you have questions, please contact Kathee Sanchez, Child Care Licensing Supervisor at 402-471-9193.

Sincerely,



Becky Wisell, Administrator
Licensure Unit
301 Centennial Mall South
Lincoln, NE 68509-4986

BW/rk

State of Nebraska

Dave Heineman, Governor

April 14, 2014

Esmeralda Cobian

Esmeralda's Loving Care

5301 W. Superior

Lincoln NE 68524

Dear Ms. Cobian:

This letter is to inform you that Children's Services Licensing reviewed documentation regarding Mr. Cobian , April 14, 2014.

Based on this information the Licensing Agreement you signed on March 21. 2014 has been terminated effective Aril 14, 2014.

If you have any questions, please contact me at 40-2471-9274 or e-mail Marvie.sullivan@nebraska.gov

Sincerely,

[redacted]

Marvie Sullivan-Child Care Inspection Specialist

Licensure Unit-Division of Public Health

LICENSING AGREEMENT

I, Esmeralda Cobian, hereby state and declare:

I am the licensee of a Family Child Care Home II, located at 5301 W. Superior, Lincoln NE 68524.

I agree to comply with all the Regulations Governing Licensure of a Family Child Care Home II, effective May 20, 2013 as long as I am licensed by the State of Nebraska to provide child care services.

I understand and agree to comply with:

391 NAC 2-004.05B(4) Notification of Changes:
The following additional information must be submitted with the Amendment to Application:
2-004.05B An Amendment to Application must be submitted at least five working days before the planned effective date for a change:
4. In household members age 13 or older, if the child care home is located in a private residence.

391 NAC 2-006.02A(4) Criminal History Record Check:
The applicant/licensee must complete a pre employment criminal history record check through a governmental law enforcement agency on him/herself, each staff member and volunteer age 19 or older, and each household member age 19 or older if the child care home is a private residence.

391 NAC 2-006.02B Registry Checks:
1. The applicant/licensee, staff, volunteers, and household members if the home is a private residence, must not be listed as a perpetrator of abuse or neglect on Nebraska's:
   1. Child abuse/neglect central register, if the individual is age 13 or older;

   The individual must provide enough information for an accurate check of the registries and must authorize the release of registry information. The Department will conduct the child and adult registry checks and provide the results to the applicant/licensee.

391 NAC 2-006.02D Notification of Law Enforcement Contact: "As soon as the licensee becomes aware of the occurrence, the licensee must notify the Department of any arrest, misdemeanor ticket other than a traffic violation, pending criminal charges, and any felony/misdemeanor convictions of him/herself, staff, volunteers or household members. Failure to notify the Department of law enforcement contacts as described may result in disciplinary action."

391 NAC 2-006.02F Health Information Report:
... All staff who are responsible for the care and supervision of children more than 20 hours per week must complete the report within 30 days of hiring. The Health Information Report must be completed annually.

NAC 2-0062-006.03 Primary Provider, Staff, Volunteer, and Household Member Qualifications and Requirements:

391 NAC 2-006.03D Household Members: "1. Obtain a completed Report of Law Enforcement Contact on household members age 19 or older; 2. Obtain documentation of a criminal history record check on household members age 19 or older; and 3. Not allow any household member who engages in behavior injurious to or which may endanger the health or morals of children to provide care or be on the premises."

391 NAC 2-006.05B Substitutes and Volunteers. Records for each substitute and volunteer must include:
5. A completed Report of Law Enforcement Contact;
6. Documentation of a criminal history record check;
7. Documentation of Nebraska registry checks with no adverse findings

I understand and agree that under no circumstances, because of his criminal history and being listed on the Child Abuse and Neglect Central Registry as a perpetrator will Jose R Cobian, household member, be allowed on the child care premises of my Family Child Care Home II during the hours and days listed on my license, which is from 5:30 AM to Midnight, Monday through Sunday. Premises is defined as "the home, including areas of the home not used for child care/preschool, all attached and all outbuildings, and all areas included within the lot boundaries."

I agree to provide information in writing to the Department within ten calendar days from the signing of this Agreement that includes: the name, address, and telephone of the primary and secondary location of Mr. Jose R Cobian and where he will stay if he is unable to be at the primary or secondary location and where he will stay should he be ill. Information shall be sent to: Marvie Sullivan, Child Care Inspection Specialist, Children's Services Licensing, Division of Public Health, Licensure Unit, - Gold's Building Suite 540, 1033 O Street, Lincoln, NE 68509-8933.

I agree that I will not use Richards Castillo as a secondary provider, staff, or substitute until all required background checks identified in this agreement have been completed, the Department has reviewed the background checks, and approved Ms. Castillo as a staff. If Ms Castillo is approved as a staff and works more than 20 hours per week, she will be required to have a Health Information Report.

In addition, I agree to notify all parents of children enrolled in my program and parents of future enrollees by providing the Department a copy of the Acknowledgment of Licensing Agreement signed by the parent(s) of all children in care within ten calendar days from the signing of this Agreement. Acknowledgments from parents of future enrollees are due to the Department within fifteen calendar days from the date of enrollment. A copy of this Acknowledgment is attached to this Agreement. These Acknowledgments will be sent to the Department at the following address:

DHHS - Child Care Licensing
Marvie Sullivan - Gold's Building Suite 540
1033 O Street
Lincoln NE 68509-8933

I understand that Children's Services Licensing staff shall conduct announced or unannounced visits to my program to determine compliance with this Agreement.

I understand that I may request to change my hours and days of operation by indicating those changes on my application to amend my Family Child Care Home II license.

I agree that this Licensing Agreement will be prominently posted with my Family Child Care Home II License so that it is clearly visible to parents and agency representatives.

Any violation of this Agreement may be grounds for further negative action or discipline as the Nebraska Department of Health and Human Services, Division of Public Health, Licensure, Children's Services Licensing may deem appropriate.

This Agreement shall be effective from the signing of this Agreement for as long as Mr.Cobian is a household member
and the Department is reviewing Mr. Cobian's criminal history.

In addition, should a change of address occur or should I reapply for a different type of child care license, this Licensing Agreement may transfer to the new license and/or address if appropriate to the conditions of this Licensing Agreement.

[redacted]

Witness

3-27-14

Date

[redacted]

Provider/Licensee

5301 W. Superior

Street Address

Lincoln, NE 68524

City and Zip Code

3-31-14

Date

Division of Public Health, Licensure Unit
301 Centennial Mall South, 3rd Floor, P.O. Box 94986
Lincoln, NE 68509-4986
Phone (402) 471-2115 FAX (402) 471-3577

Division of Public Health

Nebraska Department of Health and Human Services

State of Nebraska

Dave Heineman, Governor

March 28, 2008

Esmeralda's Loving Care
2501 NW 55th St
Lincoln NE 68524

Dear Esmeralda Murillo:

In accordance with the Findings of Fact Conclusions of Law and Order, issued by the Director, Dr. Joann Schaefer, on March 12, 2008, your original License to operate a Family Child Care Home II in the State of Nebraska has been placed on probation. A license imprinted with the term "PROBATION" is enclosed, this status became effective March 12, 2008; and it will remain in effect until March 12, 2009. Upon completion of the probation a new license will be issued to you.

At this time we ask that you return your current license, within the next ten (10) days, to Marsha Wanderscc in the Licensure Unit. If you have any questions please contact Child Care Licensing, at (402) 471-9302

Sincerely,

Helen L. Meeks, Administrator
Licensure Unit

HLM/clb

cc: Child Care Licensing

Your application for Nebraska Family Child Care Home II has been approved and your licensure document is attached. You will receive a new licensure document each time you amend your license.

This license shall be kept available in the establishment and each proof of credentialing shall be shown upon request.

State of Nebraska

PROBATION

Department of Health and Human Services
Regulation and Licensure

ESMERALDA MURILLO
is hereby authorized in compliance with laws of the State of Nebraska to establish and conduct an
Operating **Family Child Care Home II**
located at 2591 NW 55TH ST LINCOLN NE 68524

A maximum of 12 children in ages 6 WKS to 13 YRS may be in attendance at any one time during the hours of 0600 to 1800 on MTWTF

ESMERALDA'S LOVING CARE is hereby issued License No FH6757 which is effective on 09/24/2003

Amended: 03/12/2008

Given under the name and Seal of the Department of Health and Human Services Regulation and Licensure of the State of Nebraska at Lincoln on March 28, 2008.

SEAL

[redacted]

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

IN THE MATTER OF THE REQUEST FOR HEARING BY	)	94 - 070435
ESMERALDA MURILLO Family Child Care Home II	)	FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

On December 17, 2007, the Nebraska Department of Health and Human Services Division of Public Health (Department) sent a Notice of Suspension and Disciplinary Action by certified mail to Esmeralda Murillo. On December 20, 2007, the Department received a request for hearing. On December 26, 2007, Notice of Hearing was issued by the Hearing Officer, setting forth the date, time and location for the hearing. The Notice of Hearing set forth the appropriate statutes and regulations related to the hearing.

SUMMARY OF THE HEARING

Pursuant to the Notice of Hearing, the hearing was held on February 19, 2008. Appearing on behalf of the Department was Mr. Brad Gianakos. Ms. Murillo appeared pro se. In addition to witnesses, eleven (11) exhibits were offered and received.

FINDINGS OF FACT

1. Pursuant to the testimony and exhibits, Ms. Murillo is the licensee of an operating Family Child Care Home II license. The facility's license is for a maximum capacity of twelve (12) children, six weeks to 13 years of age, Monday through Friday, 6 a.m. to 6 p.m. The facility has been licensed at the current address since September 24, 2003 and prior to this has been licensed as either a Family Child Care Home I or II since August of 1998.

2. Upon receipt of a complaint, Department staff investigated and found Ms. Murillo's facility on November 6, 2007, to have fourteen (14) children in care. Subsequent inspections on November 14, 2007 and November 19, 2007, also found up to eighteen (18) children in care on November 14, and fourteen (14) children in care on November 19, all in violation of the capacity of Ms. Murillo's license. The Fire Inspector issued a Fire Marshall disapproval based upon the violation of the child care licensing capacity regulations at the November 19, 2007 inspection.

3. Exhibit nine (9) also shows that Ms. Murillo was over capacity on several days during the week of October 22 through 26, 2007, for which she was required to make a repayment of $220.50 to the Department for being over capacity with fourteen (14) children in care.

4 Ms. Murillo testified that she thought she could have two extra children pursuant to the Child Care Resource Guide in which a footnote stated that a Family Child Care Home II provider serving mixed ages may provide care for no more than two additional school-age children during non-school hours as long as no more than two children are under 18 months of age. She failed to understand the guide which showed this to be a footnote to the mixed age provision for nine to ten children, which allowed two more only if the required age mix was met. Even assuming Ms Murillo misunderstood the regulations, she is not only required to read and understand the regulation, but also had been advised on inspection of the problem of over capacity. She did not have the right to continue to ignore the Inspector's admonitions of over capacity in view of her own interpretation.

5 The Lincoln Bureau Fire Inspector, Mr. Darrell Cox, testified as to the fire safety disapproval being based upon the over capacity and the history for over capacity. When asked by Mr. Gianakos what it would take for Ms. Murrillo to regain approval, he testified there was nothing that she could do to get approval due to her history.

6 I find Ms. Murillo has been over capacity on the occasions stated above and has shown a careless disregard for the regulation on over capacity. She has attempted to excuse the over capacity on occasion due to overlaps in care, but that is a matter subject to her control which she does need to handle according to the regulations.

CONCLUSIONS OF LAW

The Department may take disciplinary action against the licensee of a child care license for any violation of the Child Care Licensing Act and the rules and regulations adopted there under Neb. Rev. Stat. §71-1919. The evidence shows that Ms. Murillo was in violation of 391 NAC 6-001 and 391 NAC 6-006.01, in regard to the maximum license capacity for a Family Child Care Home II. While Ms. Murillo also appears to be in violation of 391 NAC 4-001.04 in regard to a fire safety inspection disapproval, I do not find the violation due to the unreasonable position of the Fire Inspector.

It is clear that Ms Murillo has violated her capacity requirement many times. While she may have believed that she was entitled to two children over the license capacity of twelve (12) due to her misreading of a guide, she was still required to know the regulations and her misreading does not change the regulations. She had also been told on inspections the Department's view of the regulations, so she is again without excuse for continued violations. Whether it's disorganization on overlap or intentionally, Ms. Murillo's continued actions caused the violations of the capacity regulations several times.

The Fire Safety Inspector for the city of Lincoln has disapproved the home due to over capacity. The Department had decided to suspend Ms. Murillo's license until approval is obtained, which normally would be a reasonable requirement. However, the Inspector made it quite clear that there was nothing Ms. Murillo could do to gain approval. In his subjective judgment, based upon her history of non-compliance, he felt she was incapable of compliance and therefore not entitled ever to fire safety approval. I find no support for such authority in the fire safety regulations, and indeed find this to be a capricious and unreasonable usurping of the

Department's licensing authority over day care facilities. A subjective character judgment of Ms. Murillo to say that she is incapable in the future of complying with capacity regulations after discipline has been imposed by the Department is overreaching. To require fire safety approval in regard to capacity at this time would, by the inspector's own testimony be futile and remove the Department's authority to restore licensure to this provider.

ORDER

The action of the Department is hereby affirmed except in regard to the Order of Suspension and the amount of the penalty. Therefore, the discipline to be imposed shall be that Ms. Murillo's license shall be placed on probation for a period of one year, under the terms that she must comply with the maximum licensing capacity as stated on her license; that she will be limited to the total enrollment of the last licensed capacity as stated in her license for a period of six months from the effective date of this Order and she must maintain daily attendance and enrollment records on the premises for review upon request by Department staff; that she is assessed a civil penalty in the amount of $180.00 (rather than the $500.40 assessed previously by the Department) on the basis of $5.00 times licensed capacity of twelve times three times it being in non-compliance with the licensing capacity. While I realize there appears to have been a week in October during which she was over capacity, I believe the penalty should apply to the three times of the inspection by the Department. The penalty will be due 30 days from the effective date of this Order and shall be payable to the Nebraska Department of Health and Human Services, Division of Public Health and sent to the Department at its address of PO Box 94986, Lincoln, Nebraska 68509-4986 in care of the Administrative Assistant Carmen Bachle. In addition, Ms. Murillo shall notify the parents of all children enrolled in her program of the Notice of Probation and Disciplinary Action by prominently posting a copy of this Order with the current Family Child Care Home License where it is clearly visible to parents and agency representatives. Failure to comply with the terms of this probation and disciplinary action may be grounds for revocation or such other discipline as the Department may deem appropriate. Any portion of the probationary period during which the child care facility is not operating shall not count towards completion of the probationary period.

DATED this 12 day of March, 2008.

[redacted]

Joann Schaefer, M.D.
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

CERTIFICATE OF SERVICE

COMES NOW the undersigned and certifies that on the 17 day of March, 2008, a copy of the foregoing **FINDINGS OF FACT/ CONCLUSIONS OF LAW AND ORDER** was sent by certified United States mail, postage prepaid, return receipt requested, to **Esmeralda Murillo, 2501 NW 55th Street, Lincoln NE 68524** and hand-delivered to Agency Counsel, **Brad Gianakos**, Department of Health and Human Services, Lincoln, Nebraska.

[redacted]

Jo Seefeld, Contested Case Hearing Program
DHHS Division of Public Health
P.O. Box 95026
Lincoln NE 68509-5026
P. (402) 471-0384, F. (402) 471-0383

THE NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH
STATE OF NEBRASKA

IN THE MATTER OF:	)	
	)	
THE OPERATING FAMILY CHILD CARE HOME II LICENSE OF ESMERALDA MURILLO D/B/A ESMERALDA'S LOVING CARE	)	NOTICE OF SUSPENSION AND DISCIPLINARY ACTION
	)	

LICENSED LOCATION: 2501 NW 55TH STREET, LINCOLN, NE, 68524

NOTICE:

Esmeralda Murillo is hereby notified that the Department of Health and Human Services, Division of Public Health (hereinafter referred to as "department") intends to suspend and impose disciplinary action against the operating Family Child Care Home II of Esmeralda Murillo (hereinafter referred to as "Murillo") for violation of the following.

AUTHORITY:

Nebraska Revised Statutes, section 71-1919, provides that "the department may ... take disciplinary action ... against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act; ...

(4) Conduct or practices detrimental to the health and safety of a person served by or employed at the program; ..."

(7) Failure to meet requirements relating to sanitation, fire safety, and building codes;"...

391 NAC 4-001.04 Suspension or Revocation. "The Department may initiate suspension or revocation proceedings under any of the following circumstances: ...

9. When there is a fire safety (inspection) disapproval; ..."

391 NAC 6-001 Provider: "The child care provider shall ensure that the maximum number of children stated on the license is not exceeded at any time.". (Page 3, Standard 9, Family Child Care Home Standards)

391 NAC 6-006.01 License Capacity: ... "(2) The maximum license capacity for a Family Child Care Home II is 12 children " ... (Page 6, Standard 35, Family Child Care Home Standards)

FACTS:

Murillo is the licensee of an operating Family Child Care Home II. This facility is licensed for a maximum capacity of 12 children, six weeks to 13 years of age, Monday through Friday, 6:00 a.m. to 6:00 p.m. This facility has been licensed as a Family Child Care Home II at this address since September 24, 2003. Prior to this Murillo has been licensed as either a Family Child Care Home I or II since August of 1998.

On November 6, 2007, department staff conducted a complaint investigation to Murillo's facility regarding allegations that on October 18, 2007, Murillo had 14 children in care. At the time of the inspection, two children were in care; however, according to Murillo's own record of arrival and departure times of children, it proved that more than 12 children were present on October 18, 2007. In addition, Murillo's child care subsidy billings for October 18, 2007 reveal that Murillo billed for 13 to 14 children. Department staff were able to substantiate that the maximum licensing capacity of 12 was violated.

On November 14, 2007, department staff conducted a follow-up investigation to Murillo's facility. Department staff observed 14 children in the basement area which only has enough space for seven children. In addition, four children were observed on the first floor, making a total of 18 children in care. Department staff substantiated for a third time that the maximum licensing capacity of 12 was violated.

On November 19, 2007, department staff and Darrell Cox, Fire Inspector, Bureau of Fire Prevention, conducted an investigation to Murillo's facility and observed 14 children in care. Murillo also had eight children in the basement area when the most children Murillo can have in that area is 7. Department staff and Inspector Cox advised Murillo to reduce license capacity immediately. Department staff was for the third time able to substantiate that the maximum licensing capacity of 12 was violated.

It is the position of the City of Lincoln, Building and Safety Division, that a violation of child care licensing capacity regulations may serve as the basis for a fire marshal disapproval. A fire marshal disapproval was therefore issued on that basis.

DISCIPLINARY ACTION IMPOSED:

Based on the facts presented above, the department intends to suspend Murillo's operating Family Child Care Home II license until the following condition is met:

1. Written documentation of fire safety approval is submitted.

Upon the presentation of said documentation, the operating Family Child Care Home II license will be issued and placed on probation for a period of one year. Additional terms include:

2. Murillo must maintain compliance with the maximum licensing capacity as stated on her license.

3. Murillo will be limited to a total enrollment of the license capacity as stated on her license for a period of six months from the effective date of the fire safety approval. Murillo must maintain daily attendance and enrollment records on the premises for review upon request by department staff.

4. Murillo is assessed a civil penalty in the amount of $540.00 ($5.00 times license capacity of 12 times nine times of being in non-compliance with the licensing capacity of 12 children - October 18, 2007, October 19, 2007, October 22, 2007, October 23, 2007, October 24, 2007, October 25, 2007, October 26, 2007, November 14, 2007 and November 19, 2007)

Said penalty will be due 30 calendar days from the effective date of this Notice, which is February 1, 2008. Said penalty will be payable to the Nebraska Department of Health and Human Services, Division of Public Health and sent to Carmen Bachle, Administrative Assistant, Nebraska Department of Health and Human Services, Division of Public Health, P.O. Box 94986, Lincoln, Nebraska, 68509-4986.

5. Murillo agrees to notify the parent(s) of all children enrolled in her program of the Notice of Suspension and Disciplinary Action or final order by having the parent(s) complete the attached Parent Acknowledgment and submitting it to Lori Pflanz at the address listed on the Parent Acknowledgment. In addition, Murillo will notify all parent(s) wishing to enroll their children in her facility by having the parent(s) complete the attached Parent Acknowledgment and submitting it to Lori Pflanz at the address listed on the Parent Acknowledgment

6. Murillo must prominently post a copy of this Notice of Suspension and Disciplinary Action with the current Family Child Care Home license so it is clearly visible to parents and agency representatives.

7. Failure to comply with the terms of this suspension and disciplinary action and the Family Child Care Home Standards may be grounds for revocation or such other discipline as the department may deem appropriate.

8. Any portion of the probationary period during which the child care facility is not operating shall not count towards completion of the probationary period.

BE ADVISED:

That pursuant to Nebraska Revised Statutes, section 71-1922, the action in this Notice shall become final on January 2, 2008, which is fifteen days after the mailing of the Notice unless the department, within such fifteen-day period, receives a written request for a hearing. The license shall continue in effect until the final order of the director if a hearing is requested. If the director does not receive such request within such fifteen-day period, the action of the department is final.

If you decide to request a hearing, your written request for hearing must be received by the department on or by January 2, 2008, which is fifteen days after the mailing of this Notice. It should be addressed to:

Marsha Wandersee, for HHS F&S
Legal Services, Child Care Licensing
P.O. Box 95007
Lincoln, NE 68509-5007

Nebraska Revised Statutes, section 71-1911, provides that a person who has had their "license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this action." In addition, section 71-1920, (2), states that "a person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years."

Nebraska Revised Statutes, section 71-1920 of the Child Care Licensing Act, provides that "any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of

action in the name of State of Nebraska in the district court of the county in which the program is located."

Nebraska Revised Statutes, section 71-1923 of the Child Care Licensing Act, provides that "a licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the department has initiated disciplinary action against the licensee."

Title 391 of the Nebraska Administrative Code, section 4-001.04, also provides that the "licensee shall not transfer the license to a household member or current staff member while a . . revocation action is still pending." In addition, Title 391 of the Nebraska Administrative Code, section 3-001.08, provides that "amended applications will not be processed whenever a negative license action is pending."

Dated: DECEMBER 12, 2007

Joann Schaefer, M.D.
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

[redacted]

By: Patricia Urzedowski, Administrator
Office of Children's Services Licensing
Division of Public Health
Nebraska Department of Health and Human Services
P.O. Box 94986
Lincoln, NE 68509-4986

CERTIFICATE OF SERVICE

COMES NOW, the undersigned and certifies that on the 12 day of December, 2007, a copy of the foregoing Notice of Suspension and Disciplinary Action was sent by certified and first class United States mail, sufficient postage prepaid, to Esmeralda Murillo, Esmeralda's Loving Day Care, 2501 NW 55th Street, Lincoln, Nebraska, 68524.

[redacted]

ACKNOWLEDGMENT OF NOTICE OF SUSPENSION AND DISCIPLINARY ACTION

I, _____

[printed name(s)]

[address and phone number]

have received a copy of the Notice of Suspension and Disciplinary Action and understand that Esmeralda Murillo must follow the requirements of the Notice of Suspension and Disciplinary Action and the child care licensing statutes and regulations

Name, ages of my child(ren) that is/are enrolled in Esmeralda Murillo's Family Child Care Home II according to the following schedule:

Day:	(enter time and circle "a.m." or "p.m.")	Name of Child(ren)
Sunday:	_____ a.m./p.m. to _____ a.m./p.m.	
Monday:	_____ a.m./p.m. to _____ a.m./p.m.	
Tuesday:	_____ a.m./p.m. to _____ a.m./p.m.	
Wednesday:	_____ a.m./p.m. to _____ a.m./p.m.	
Thursday:	_____ a.m./p.m. to _____ a.m./p.m.	
Friday:	_____ a.m./p.m. to _____ a.m./p.m.	
Saturday	_____ a.m./p.m. to _____ a.m./p.m.	

Date: _____ Signed _____

Date: _____ Signed _____

A signed and dated copy of this acknowledgment must be completed and signed by at least one parent. The Acknowledgment will be mailed by Esmeralda Murillo to the Department. The Department's mailing address is:

Lori Pifanz, Child Care Resource Specialist
Office of Children's Services Licensing
P.O. Box 98933
Lincoln, NE 68509-8933

Received: _____

You as a parent may contact these individuals: Lori Pifanz, Child Care Resource Specialist, 471-9102; Rene Tiedt, Child Care Resource Supervisor, 471-9193; or Pat Urzednowski, Program Administrator, 402-471-9431.