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HOUSE BILL NO. 2881

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 25, 2005)

(Patron Prior to Substitute—Delegate Nixon)

A BILL to amend and reenact §§ 37.1-185 and 37.1-189.1 of the Code of Virginia, relating to summary suspension of licenses of children's group homes and residential facilities; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-185 and 37.1-189.1 of the Code of Virginia are amended and reenacted as follows:

§ 37.1-185. Revocation, suspension or refusal of licenses; resumption of operation; penalty.

(a) A. The Commissioner is authorized to revoke or suspend any license issued hereunder, or refuse issuance of a license, on any of the following grounds: ~~(1)~~(i) violation of any provision of this chapter or of any applicable and valid rule or regulation made pursuant to such provisions; ~~(2)~~(ii) permitting, aiding, or abetting the commission of an illegal act in services delivered by such provider; or ~~(3)~~(iii) conduct or practices detrimental to the welfare of any individual receiving services from such provider.

~~(b)~~B. Whenever the Commissioner revokes, suspends or denies a license, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply.

~~(c)~~C. If a license is revoked or refused as herein provided, a new application for license may be considered by the Commissioner when the conditions upon which such action was based have been corrected and satisfactory evidence of this fact has been furnished. In no event, however, may an applicant reapply for a license after the Commissioner has refused or revoked a license until a period of six months from the effective date of such action has elapsed unless the Commissioner in his sole discretion believes that there has been such a change in the conditions causing refusal of the prior application or revocation of the license as to justify considering the new application. When an appeal is taken by the applicant pursuant to § 37.1-186, the six-month period shall be extended until a final decision has been rendered on appeal. A new license may then be granted after proper inspection has been made and all provisions of this chapter and applicable rules and regulations made thereunder have been complied with and recommendations to such effect have been made to the Commissioner upon the basis of an inspection by any authorized inspector or agent of the Department.

~~(d)~~D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines, upon basis of such an inspection, that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

E. Pursuant to the procedures set forth in subsection F and in addition to the authority provided in subsections A through D, the Commissioner may issue a summary order of suspension of the license of a group home or residential facility for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation should be suspended during the pendency of such proceeding.

F. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Department had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to children.

§ 37.1-189.1. Cooperation of Department with other state departments; penalty.

60 A. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall assist
61 and cooperate with other state departments in fulfilling their respective licensing and certification
62 responsibilities and in reducing and simplifying the regulations involved in such licensing and
63 certification. The State Board ~~may~~ shall promulgate regulations ~~which will~~ that shall allow the
64 Department of Mental Health, Mental Retardation and Substance Abuse Services to so assist and
65 cooperate with other state departments.

66 B. Pursuant to the procedures set forth in subsection C, the Commissioner may issue a summary
67 order of suspension of the license of a group home or residential facility for children licensed pursuant
68 to the Board's regulations under subsection A, in conjunction with any proceeding for revocation,
69 denial, or other action, when conditions or practices exist in the home or facility that pose an
70 immediate and substantial threat to the health, safety, and welfare of the children who are residents and
71 the Commissioner believes the operation should be suspended during the pendency of such proceeding.

72 C. The summary order of suspension shall take effect upon its issuance and shall be served on the
73 licensee or its designee as soon as practicable thereafter by personal service and certified mail, return
74 receipt requested, to the address of record of the licensee. The order shall state the time, date, and
75 location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no
76 later than three business days after the issuance of the summary order of suspension and shall be
77 convened by the Commissioner or his designee.

78 After such hearing, the Commissioner may issue a final order of summary suspension or may find
79 that such summary suspension is not warranted by the facts and circumstances presented. A final order
80 of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to
81 the appropriate circuit court no later than 10 days following issuance of the order. The sole issue
82 before the court shall be whether the Department had reasonable grounds to require the licensee to
83 cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The
84 concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing
85 on the appropriateness of the summary suspension.

86 The willful and material failure to comply with the summary order of suspension or final order of
87 summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the
88 cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who
89 are residents of a home or facility whose license has been summarily suspended pursuant to this section
90 and in any other actions necessary to reduce the risk of further harm to children.

91 **2. That the State Mental Health, Mental Retardation and Substance Abuse Services Board shall**
92 **promulgate regulations to implement the provisions of this act to be effective within 280 days of its**
93 **enactment.**

94 **3. That the Executive Secretary of the Supreme Court and the Department of Mental Health,**
95 **Mental Retardation and Substance Abuse Services shall establish a protocol for the expedited**
96 **appointment of a hearing officer for the summary suspension of licenses in accordance with the**
97 **provisions of this act.**