

20102192D

HOUSE BILL NO. 1286

Offered January 8, 2020

Prefiled January 8, 2020

A *BILL to amend and reenact §§ 37.2-418 and 63.2-1710 of the Code of Virginia, relating to group homes and children's residential facilities; limit on number of license applications.*

Patron—Murphy

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That §§ 37.2-418 and 63.2-1710 of the Code of Virginia are amended and reenacted as follows:****§ 37.2-418. Revocation, suspension, or refusal of licenses; resumption of operation; summary suspension under certain circumstances; penalty.**

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: (i) violation of any provision of this article or of any applicable regulation made pursuant to such provisions; (ii) permitting, aiding, or abetting the commission of an illegal act in services delivered by the provider; or (iii) conduct or practices detrimental to the welfare of any individual receiving services from the provider.

B. Whenever the Commissioner revokes, suspends, or denies a license, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply. Any person aggrieved by the final decision of the Commissioner to refuse to issue a license or by his revocation or suspension of a license is entitled to judicial review in accordance with the provisions of the Administrative Process Act.

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 the action was based have been corrected and satisfactory evidence of this fact has been furnished. In no event 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 that 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. *In the case of group homes, upon the Commissioner's third refusal or revocation of a license, the applicant shall be prohibited from reapplying for a license for a period of two years.* When an appeal is taken by the applicant pursuant to this section, the ~~six-month~~ waiting 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 article and applicable regulations made thereunder have been complied with and recommendations to that effect have been made to the Commissioner upon the basis of an inspection by any authorized inspector or agent of the Department.

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, based on 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 Commissioner had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent

INTRODUCED

HB1286

59 revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the
60 appropriateness of the summary suspension.

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

66 G. The Commissioner shall inform other public agencies that provide funds to a provider, including
67 the Departments of Social Services and Medical Assistance Services, when a provider's license is
68 suspended, revoked, or denied in accordance with this section.

69 **§ 63.2-1710. Appeal from refusal, denial of renewal, or revocation of license.**

70 A. Whenever the Commissioner refuses to issue a license or to renew a license or revokes a license
71 for an assisted living facility, adult day care center, or child welfare agency operated by an agency of
72 the Commonwealth, the provisions of § 63.2-1710.2 shall apply. Whenever the Commissioner refuses to
73 issue a license or to renew a license or revokes a license for an assisted living facility, adult day care
74 center, or child welfare agency other than an assisted living facility, adult day care center, or child
75 welfare agency operated by an agency of the Commonwealth, the provisions of the Administrative
76 Process Act (§ 2.2-4000 et seq.) shall apply, except that all appeals from notice of the Commissioner's
77 intent to refuse to issue or renew, or revoke a license shall be received in writing from the assisted
78 living facility, adult day care center or child welfare agency operator within fifteen days of the date of
79 receipt of the notice. Judicial review of a final review agency decision shall be in accordance with the
80 provisions of the Administrative Process Act. No stay may be granted upon appeal to the Virginia
81 Supreme Court.

82 B. In every appeal to a court of record, the Commissioner shall be named defendant.

83 C. An appeal, taken as provided in this section, shall operate to stay any criminal prosecution for
84 operation without a license.

85 D. When issuance or renewal of a license as an assisted living facility or adult day care center has
86 been refused by the Commissioner, the applicant shall not thereafter for a period of one year apply
87 again for such license unless the Commissioner in his sole discretion believes that there has been such a
88 change in the conditions on account of which he refused the prior application as to justify considering
89 the new application. When an appeal is taken by the applicant pursuant to subsection A, the one-year
90 period shall be extended until a final decision has been rendered on appeal.

91 E. When issuance or renewal of a license for a child welfare agency has been refused by the
92 Commissioner, the applicant shall not thereafter for a period of six months apply again for such license
93 unless the Commissioner in his sole discretion believes that there has been such a change in the
94 conditions on account of which he refused the prior application as to justify considering the new
95 application. *In the case of children's residential facilities, upon the Commissioner's third refusal, the*
96 *applicant shall be prohibited from reapplying for a license for a period of two years.* When an appeal is
97 taken by the applicant pursuant to subsection A, the ~~six-month~~ waiting period shall be extended until a
98 final decision has been rendered on appeal.