

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 850

An Act to amend and reenact §§ 63.1-172, 63.1-179.1, and 63.1-180 of the Code of Virginia, relating to penalties for violations of licensing regulations for adult care residences.

[H 780]

Approved April 22, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-172, 63.1-179.1, and 63.1-180 of the Code of Virginia are amended and reenacted as follows:

§ 63.1-172. Definitions.

As used in this article, unless the context requires a different meaning:

"Adult care residence" means any place, establishment, or institution, public or private, operated or maintained for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed, and (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of eighteen and twenty-one, or twenty-two if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of this title, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

"Assisted living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Independent physician" means a physician who is chosen by the resident of the adult care residence and who has no financial interest in the adult care residence, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Independently mobile" means a resident of an adult care residence who is physically and mentally able to exit the residence without assistance in an emergency and who can ascend or descend stairs if present in any necessary exit path.

"Maintenance or care" means the protection, general supervision and oversight of the physical and mental well-being of the aged, infirm or disabled individual.

"Nonambulatory" means a resident of an adult care residence who by reason of physical or mental impairment is unable to exit the residence in an emergency without the assistance of another person.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of adult care residences, or any hospital which has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Residential living" means a level of service provided by an adult care residence for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. This definition includes independent living facilities that voluntarily become licensed.

"Semimobile" means a resident of an adult care residence who because of physical or mental impairment requires limited assistance, such as the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command, to exit the residence in an emergency.

"Special order" means an administrative order issued to any party licensed pursuant to this chapter that has a stated duration of not more than twelve months and that may include a civil penalty that shall not exceed \$500 for each inspection resulting in a finding of violation, a restriction or prohibition on admission of new residents to any adult care residence, and/or a reduction in licensed capacity of any adult care residence.

§ 63.1-179.1. Enforcement and sanctions.

The Board shall promulgate regulations for the Commissioner to use in determining when the imposition of administrative sanctions or initiation of court proceedings, severally or jointly, is appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Departments of Social

Services, Health, or Mental Health, Mental Retardation and Substance Abuse Services. *Notwithstanding any other provision of law, following a proceeding as provided in § 9-6.14:11, the Commissioner may impose such sanctions or take such actions as are appropriate issue a special order for violation of any of the provisions of this article, § 54.1-3408, or any rule or regulation promulgated under any provision of this article which adversely impacts, or is an imminent and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding, or abetting the commission of any illegal act in an adult care residence. Such sanctions or actions may include (i) reducing the licensed capacity of any adult care residence, (ii) restricting or prohibiting new admissions to any adult care residence, (iii) petitioning the court to impose a civil penalty against any adult care residence or to appoint a receiver for the adult care residence, and (iv) revoking or denying renewal of the license for the adult care residence. The issuance of a special order shall be considered a case decision as defined in § 9-6.14:4. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders. The Commissioner shall also have the power to revoke or deny the renewal of the license for any adult care residence for violation of any of the provisions of this article, § 54.1-3408, or any rule or regulation promulgated under any provision of this article which adversely impacts, or is an imminent and substantial threat to, the health, safety or welfare of the person cared for therein, or for permitting, aiding, or abetting the commission of any illegal act in an adult care residence.*

§ 63.1-180. Appeal from refusal, denial of renewal or revocation of license.

A. Whenever the Commissioner refuses to issue a license or to renew a license, *or revokes a license for an adult care residence or whenever the Commissioner revokes a license of an adult care residence, or imposes a sanction as provided in § 63.1-179.1, the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) shall apply, except that all appeals from notice of imposition of administrative sanctions, pursuant to § 63.1-179.1, the Commissioner's intent to refuse to issue or renew, or revoke a license shall be received in writing from the adult care residence operator within fifteen days of the date of receipt of the notice. Judicial review of a final review agency decision shall be in accordance with the provisions of the Administrative Process Act. No stay may be granted upon appeal to the Virginia Supreme Court.*

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

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

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