

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 449

An Act to amend and reenact §§ 63.2-1709, 63.2-1709.1, 63.2-1710.1, 63.2-1712, and 63.2-1737 of the Code of Virginia, relating to child welfare agencies and assisted living facilities; summary suspension.

[S 1435]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1709, 63.2-1709.1, 63.2-1710.1, 63.2-1712, and 63.2-1737 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1709. Enforcement and sanctions; assisted living facilities and adult day care centers; interim administration; receivership, revocation, denial, summary suspension.

A. Upon receipt and verification by the Commissioner of information from any source indicating an imminent and substantial risk of harm to residents, the Commissioner may require an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators, to be either selected from a list created and maintained by the Department of Medical Assistance Services or selected from a pool of appropriately licensed administrators recommended by the owner of the assisted living facility, to administer, manage, or operate the assisted living facility on an interim basis, and to attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved by the Commissioner. Such contract shall require the interim administrator to comply with any and all requirements established by the Department to ensure the health, safety, and welfare of the residents. Prior to or upon conclusion of the period of interim administration, management, or operation, an inspection shall be conducted to determine whether operation of the assisted living facility shall be permitted to continue or should cease. Such interim administration, management, or operation shall not be permitted when defects in the conditions of the premises of the assisted living facility (i) present ~~imminent~~ immediate and substantial risks to the health, safety, and welfare of residents, and (ii) may not be corrected within a reasonable period of time. Any decision by the Commissioner to require the employment of a person to administer, manage, or operate an assisted living facility shall be subject to the rights of judicial review and appeal as provided in the Administrative Process Act (§ 2.2-4000 et seq.). Actual and reasonable costs of such interim administration shall be the responsibility of and shall be borne by the owner of the assisted living facility.

B. The Board shall adopt 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 in assisted living facilities and adult day care centers involving noncompliance with state law or regulation as discovered through any inspection or investigation conducted by the Departments of Social Services, Health, or Behavioral Health and Developmental Services. The Commissioner may impose such sanctions or take such actions as are appropriate for violation of any of the provisions of this subtitle or any regulation adopted under any provision of this subtitle that adversely affects the health, safety or welfare of an assisted living facility resident or an adult day care participant. Such sanctions or actions may include (i) petitioning the court to appoint a receiver for any assisted living facility or adult day care center and (ii) revoking or denying renewal of the license for the assisted living facility or adult day care center for violation of any of the provisions of this subtitle, § 54.1-3408 or any regulation adopted under this subtitle that violation adversely affects, or is an ~~imminent~~ immediate 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 assisted living facility or adult day care center.

C. The Commissioner may issue a *notice of summary order of suspension* of the license to operate the assisted living facility pursuant to (i) for assisted living facilities operated by agencies of the Commonwealth, the procedures set forth in § 63.2-1710.1 or (ii) for all other assisted living facilities, the procedures hereinafter set forth in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an ~~imminent~~ immediate and substantial threat to the health, safety, and welfare of the residents. ~~Before a summary order of suspension shall take effect, the Commissioner shall issue to the assisted living facility a~~ *The notice of summary order of suspension setting shall set forth* (a) the ~~procedures for the summary order of suspension procedures,~~ (b) hearing and appeal rights as provided under this subsection, ~~and~~ (c) facts and evidence that formed the basis for which the summary order of suspension is sought, ~~and~~ (d) *the time, date, and location of the hearing to determine whether the suspension is appropriate.* Such notice shall be served on the assisted living facility or its designee as soon as practicable thereafter by personal service or certified mail, return

receipt requested, to the address of record of the assisted living facility. ~~The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such~~

The summary suspension hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 15 business days following service of the notice of hearing; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 10 business days, for good cause shown. After Within 10 business days after such hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended; whereupon the.

Within 10 business days of the receipt of the hearing officer's findings, conclusions, and recommendation, the Commissioner may issue a final order of summary suspension or an order that such summary suspension is not warranted by the facts and circumstances presented. The Commissioner shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. Any final agency case decision in which In the event that the Commissioner rejects a hearing officer's findings, conclusions, or recommended decision, the Commissioner shall state with particularity the basis for rejection. The In issuing a final order of summary suspension, the Commissioner shall issue (1) a final order of summary suspension or (2) an order that summary suspension is not warranted by the facts and circumstances presented may suspend the license of the assisted living facility or suspend only certain authority of the assisted living facility to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, and welfare of the residents receiving care. A final order of summary suspension shall include notice that the assisted living facility may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following service of the order. A copy of any final order of summary suspension shall be prominently displayed by the provider at each public entrance of the facility, or in lieu thereof, the provider may display a written statement summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying the location within the facility where the final order of summary suspension may be reviewed.

Upon appeal, the sole issue before the court shall be whether the Department had reasonable grounds to require the assisted living facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. Any concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary order of suspension. ~~Failure~~ *The willful and material failure to comply with the summary final order of summary suspension shall constitute an offense under subdivision 3 of § 63.2-1712. All At the request of the Commissioner, all agencies and subdivisions of the Commonwealth shall cooperate with the Commissioner in the relocation of residents of an assisted living 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 residents.*

D. Notice of the Commissioner's intent to revoke or deny renewal of the license for an assisted living facility or to summarily suspend the license of an assisted living facility shall be provided by the Department and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. In determining whether to deny, revoke, or summarily suspend a license, the Commissioner may choose to deny, revoke, or summarily suspend only certain authority of the assisted living facility to operate; and may restrict or modify the assisted living facility's authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the residents. Such proposed denial, revocation, or summary suspension of certain services or functions may be appealed (i) if the assisted living facility is operated by an agency of the Commonwealth, in accordance with the provisions of § 63.2-1710.2 and (ii) for all other assisted living facilities; as otherwise provided in this subtitle for any denial, revocation, or summary suspension.

§ 63.2-1709.1. Enforcement and sanctions; child welfare agencies; revocation, denial, and summary suspension.

A. The Commissioner may revoke or deny the renewal of the license of any child welfare agency that violates any provision of this subtitle or fails to comply with the limitations and standards set forth in its license.

B. *Pursuant to the procedures set forth in subsection C and in addition to the authority for other disciplinary actions provided in this title, the Commissioner may issue a notice of summary suspension of the license of any child welfare agency, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the child welfare agency that pose an immediate and substantial threat to the health, safety, and welfare of the children receiving care and the Commissioner believes the operation of the child welfare agency should be suspended during the pendency of such proceeding.*

C. A notice of summary suspension issued by the Commissioner to a child welfare agency shall set forth (i) the summary suspension procedures; (ii) hearing and appeal rights as provided in this

subsection; (iii) facts and evidence that formed the basis for the summary suspension; and (iv) the time, date, and location of a hearing to determine whether the summary suspension is appropriate. Such notice shall be served on the child welfare agency or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the child welfare agency.

The summary suspension hearing shall be presided over by a hearing officer selected by the Commissioner from a list prepared by the Executive Secretary of the Supreme Court of Virginia and shall be held as soon as practicable, but in no event later than 15 business days following service of the notice of summary suspension; however, the hearing officer may grant a written request for a continuance, not to exceed an additional 10 business days, for good cause shown. Within 10 business days after such hearing, the hearing officer shall provide to the Commissioner written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended.

Within 10 business days of the receipt of the hearing officer's findings, conclusions, and recommendation, the Commissioner may issue a final order of summary suspension or an order that such summary suspension is not warranted by the facts and circumstances presented. The Commissioner shall adopt the hearing officer's recommended decision unless to do so would be an error of law or Department policy. In the event that the Commissioner rejects the hearing officer's findings, conclusions, or recommendation, the Commissioner shall state with particularity the basis for rejection. In issuing a final order of summary suspension, the Commissioner may choose to suspend the license of the child welfare agency or to suspend only certain authority of the child welfare agency to operate, including the authority to provide certain services or perform certain functions that the Commissioner determines should be restricted or modified in order to protect the health, safety, or welfare of the children receiving care. 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 service 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 revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

A copy of any final order of summary suspension shall be prominently displayed by the child welfare agency at each public entrance of the facility, or in lieu thereof, the child welfare agency may display a written statement summarizing the terms of the order in a prominent location, printed in a clear and legible size and typeface, and identifying the location within the facility where the final order of summary suspension may be reviewed.

The willful and material failure to comply with the final order of summary suspension constitutes a violation of subdivision 3 of § 63.2-1712. In the case of a children's residential facility, 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 children's residential 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 such residents.

The provisions of this subsection shall not apply to any child welfare agency operated by an agency of the Commonwealth, which shall instead be governed by the provisions of § 63.2-1710.1.

§ 63.2-1710.1. Summary order of suspension; assisted living facilities and child welfare agencies operated by an agency of the Commonwealth.

Whenever the Commissioner issues a summary order of suspension of the license to operate an assisted living facility, group home, or ~~children's residential facility~~ child welfare agency operated by an agency of the Commonwealth:

1. Before such summary order of suspension shall take effect, the Commissioner shall issue to the assisted living facility, group home, or ~~children's residential facility~~ child welfare agency a notice of summary order of suspension setting forth (i) the procedures for a hearing and right of review as provided in this section and (ii) facts and evidence that formed the basis on which the summary order of suspension is sought. Such notice shall be served on the licensee or its designee as soon as practicable thereafter by personal service or certified mail, return receipt requested, to the address of record of the licensee. The notice 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 notice 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.

2. A final order of summary suspension shall include notice that the licensee may request, in writing and within three business days after receiving the Commissioner's decision, that the Commissioner refer the matter to the Secretary of Health and Human Resources for resolution within three business days of the referral. Any determination by the Secretary shall be final and not subject to judicial review. If the final order of summary suspension is upheld, it shall take effect immediately, and a copy of the final order of summary suspension shall be prominently displayed by the licensee at each public entrance of the facility. Any concurrent revocation, denial, or other proceedings shall not be affected by the outcome

of any determination by the Secretary.

§ 63.2-1712. Offenses; penalty.

Any person, and each officer and each member of the governing board of any association or corporation that operates an assisted living facility, adult day care center or child welfare agency, shall be guilty of a Class 1 misdemeanor if he:

1. Interferes with any representative of the Commissioner in the discharge of his duties under this subtitle;

2. Makes to the Commissioner or any representative of the Commissioner any report or statement, with respect to the operation of any assisted living facility, adult day care center or child welfare agency, that is known by such person to be false or untrue;

3. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency without first obtaining a license as required by this subtitle or after such license has been revoked *or suspended* or has expired and not been renewed. No violation shall occur if the facility, center, or agency has applied to the Department for renewal prior to the expiration date of the license. Every day's violation of this subdivision shall constitute a separate offense; or

4. Operates or engages in the conduct of an assisted living facility, adult day care center, or child welfare agency serving more persons than the maximum stipulated in the license.

§ 63.2-1737. Licensure of group homes and residential facilities for children.

A. Notwithstanding any other provisions of this subtitle, the Department shall cooperate with other state departments in fulfilling their respective licensing and certification responsibilities of children's residential facilities. The Board shall adopt regulations establishing the Department as the single licensing agency for the regulation of children's residential facilities, including group homes, which provide social services programs, with the exception of educational programs licensed by the Department of Education and facilities regulated by the Department of Juvenile Justice. Notwithstanding any other provisions of this chapter, licenses issued to children's residential facilities may be issued for periods of up to 36 successive months.

B. The Board's regulations for the regulation of children's residential facilities shall address the services required to be provided in such facilities as it may deem appropriate to ensure the health and safety of the children. In addition, the Board's regulations shall include, but shall not be limited to (i) specifications for the structure and accommodations of such facilities according to the needs of the children; (ii) rules concerning allowable activities, local government- and facility-imposed curfews, and study, recreational, and bedtime hours; and (iii) a requirement that each facility have a community liaison who shall be responsible for facilitating cooperative relationships with the neighbors, the school system, local law enforcement, local government officials, and the community at large.

C. Notwithstanding any other provisions of this chapter, any facility licensed by the Commissioner as a child-caring institution as of January 1, 1987, and that receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as adopted by the Board and in effect on January 1, 1987. Effective January 1, 1987, all children's residential facilities shall be licensed under the regulations for children's residential facilities.

D. Pursuant to the procedures set forth in subsection E and in addition to the authority for other disciplinary actions provided in this title, the Commissioner may issue a summary order of suspension of the license of any 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 of the home or facility should be suspended during the pendency of such proceeding.

E. 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 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 such residents.

~~The provisions of this subsection shall not apply to any group home or children's residential facility operated by an agency of the Commonwealth, which shall instead be governed by the provisions of § 63.2-1710.1.~~

F. In addition to the requirements set forth in subsection B, the Board's regulations shall require, as a condition of initial licensure or, if appropriate, license renewal, that the applicant shall: (i) be personally interviewed by Department personnel to determine the qualifications of the owner or operator before granting an initial license; (ii) provide evidence of having relevant prior experience before any initial license is granted; (iii) provide, as a condition of initial license or renewal licensure, evidence of staff participation in training on appropriate siting of the residential facilities for children, good neighbor policies, community relations, and shaken baby syndrome and its effects; and (iv) be required to screen residents prior to admission to exclude individuals with behavioral issues, such as histories of violence, that cannot be managed in the relevant residential facility.

~~G.~~ E. In addition, the Department shall:

1. Notify relevant local governments and placing and funding agencies, including the Office of Children's Services, of multiple health and safety or human rights violations in residential facilities for which the Department serves as lead licensure agency when such violations result in the lowering of the licensure status of the facility to provisional;

2. Post on the Department's website information concerning the application for initial licensure of or renewal, denial, or provisional licensure of any residential facility for children located in the locality;

3. Require all licensees to self-report lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents;

4. Require proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services, or any other services needed to serve the residents in accordance with the facility's operational plan;

5. Disseminate to local governments, or post on the Department's website, an accurate (updated weekly or monthly as necessary) list of licensed and operating group homes and other residential facilities for children by locality with information on services and identification of the lead licensure agency; and

6. Modify the term of the license at any time during the term of the license based on a change in compliance.