

MEMORANDUM

To: Office of Licensing Staff
From: Jae Benz, Director, Office of Licensing
Date: October 7, 2019; Revised April 2024
RE: Internal Memo: Imminent Danger & Summary Suspension

Purpose: The purpose of this internal memo is to provide clarifying information to licensing staff related to the identification of imminent danger during unannounced inspections and investigations and the process for seeking summary suspension against a residential provider.

Imminent Danger:

The Office of Licensing defines imminent danger as situations where there is an immediate and substantial threat to the health, safety or welfare of the individuals' receiving services. **Please note that not all imminent danger situations warrant summary suspension actions.** Some examples of imminent danger include but are not limited to:

Individual who was/is missing: Elopement Situations:

- Individual missing/eloped (1 or more) and at time of reporting not found-**Yes**, imminent danger.
- Individual missing/eloped but was found---**Not imminent danger**.
- Individual missing/eloped more than 3 times in one month, but found each time-**Not imminent danger** but at 3rd elopement, refer to LS for investigation to determine if staffing issues or not following ISP, etc.
- Individual missing/elopement-IMU may still refer to LS to review for potential investigation, however not all elopements rise to classification of imminent danger.

Significant Health and Safety Citations:

- Violations regarding employees or those working directly with the individuals not being appropriately trained.
 - No staff training for **all staff on all shifts** (CPR & First Aid/Behavioral Training/Medication Training).
- Violations regarding employees or those working directly with the individuals not having appropriate background checks.
 - No background check results or evidence of submission for **majority of staff on all shifts**.
- Violations regarding inappropriate staffing or staffing ratios.



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- Instances where provider staffing schedule does not account for appropriate staffing ratios **for all shifts**.

Imminent Danger Process in CONNECT/Follow Up:

The Incident Management Unit (IMU) reviews all serious incident reports (SIRs) and will flag an SIR as imminent danger for an individual who is/was missing and that meets criteria listed above regarding elopements.

- **When this occurs via the CONNECT system, the system will automatically generate and send the Case Alert Email to the Investigator/Licensing specialist, Regional Manager/SIU Manager, Associate Director and Director. The Case Alert Email informs staff that the record has been flagged and provides the Case details and Internal Alert Situation entered on the screen.**

Due to the potential severity of imminent danger situations, the expectation is that the licensing specialist/investigator would review their emails prior to going in the field for any imminent danger email notifications that are sent out **within 2 hours of notification**. Managers should be aware if staff are in the field and should an imminent danger notification be received while staff are in the field, be prepared to respond to the notification. The LS/investigator in consultation with their assigned manager should respond back to all via the email chain with the following:

- **Plan of action** for follow up or initial investigation actions.
- **Investigating:** Yes/No and if not, why not investigating.
 - *Please note most, if not all imminent danger notifications will require an investigation, however once LS/investigator receives any additional information and in consultation with their manager, decide an investigation is not warranted, the reason why, should be included in the email chain and as IMU action in CONNECT as to why not investigating.
- **Any clarifying questions** the LS/investigator should address.

The Associate Director of Administrative & Specialized Units, in consultation with the Office of Licensing Director and the Associate Director of State Licensing Operations, will review and respond **within 3 hours of receipt** of an imminent danger email notification acknowledging it has been reviewed and providing any clarifying questions if needed. If LS/investigator and manager is out, then Associate Director of Administrative and Specialized Units would review and respond accordingly with any clarifying questions.

If an LS or Investigator deems an inspection or investigation warrants notification of imminent danger or media alerted in CONNECT, then that LS/Investigator is responsible for ensuring that the text box in CONNECT for media alerted or imminent danger is completed **immediately** with all needed information for all parties to be aware of the situation. Note information that is

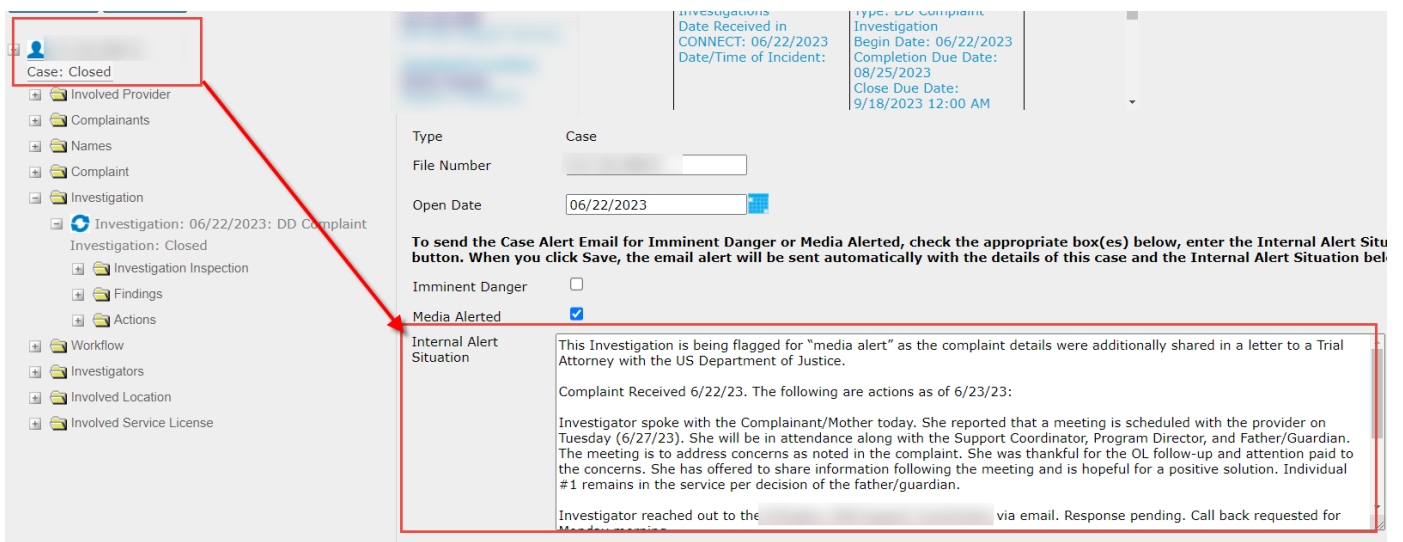
included in that text box in CONNECT will populate in the Case Alert Email and **must not include PHI**.

Investigations: CONNECT process guides give instructions to all staff in the **Investigation Process Guide** how to update the Case Alert Email. All staff should follow these steps to update the Case Alert Email as applicable for cases/investigations. See screenshot below for process guide steps and 2nd screenshot below of where in CONNECT on a case that the internal alert information should be included.

▼ **10 Manual Step - LS/Investigator:** At any time the Case can be flagged for Media Alerted or Imminent Danger to send the Case Alert Email

10.1 Note - If at any point during the Investigation the Case needs to be flagged for Media Alerted or Imminent Danger, click on the Case in the tree, enter the Internal Alert Situation via the text box by typing in the information, and check the applicable box, then click the Save button. The system will send the Case Alert Email to the Investigator/Licensing Specialist, Regional Manager/SIU Manager, Associate Director and Director. The Case Alert Email informs staff that the record has been flagged and provides the Case details and Internal Alert Situation entered on the screen.

10.2 Note - If the Case Alert Email needs to be updated and re-sent, click on the Case in the tree and un-check the Imminent Danger or Media Alerted checkbox, then click the Save button. Wait for the screen to fully refresh after saving. Update the Internal Alert Situation as needed, then re-check the applicable box and click the Save button again. The email will re-send with the updated details.



Inspections: CONNECT process guides give instructions to all staff in the **Inspections Process Guide** how to update the Case Alert Email. All staff should follow these steps to update the Case Alert Email as applicable for inspections. See screenshot below for process guide steps and 2nd screenshot below of where in CONNECT on a case that the internal alert information should be included.

▼ **18 Manual Step - LS: At any time the Inspection can be flagged for Media Alerted or Imminent Danger to send the Case Alert Email**

18.1 Note - If at any point during the Inspection process, the inspection needs to be flagged for Media Alerted or Imminent Danger, click on the Inspection in the tree, enter the Internal Alert Situation via the text box by typing in the information, and check the applicable box, then click the Save button. The system will send the Case Alert Email to the Investigator, Licensing Specialist, Regional Manager/SIU Manager, Associate Director and Director. The Case Alert Email informs staff that the record has been flagged and provides the Case details and Internal Alert Situation entered on the screen.

18.2 Note - If the Case Alert Email needs to be updated and re-sent, click on the Inspection in the tree and un-check the Imminent Danger or Media Alerted checkbox, then click the Save button. Wait for the screen to fully refresh after saving. Update the Internal Alert Situation as needed, then re-check the applicable box and click the Save button again. The email will re-send with the updated details.

Service Application: 001-01-001: DD Group
Home Service: Initial: Approved: Active

- Location
- Service License
- Service Program Information
- Inspection
 - Inspection
 - Inspection: 148: 07/13/2023:
Unannounced Inspection: Completed:

CHRIS Number (If Applicable)

*****Imminent Danger/Media Alert*****

Imminent Danger

Media Alerted

Internal Alert Situation



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Immediate & Substantial Threat: Unannounced Inspection or Investigation

If a licensing specialist determines during an unannounced inspection or investigation that there is an immediate and substantial threat to the health, safety or welfare of the individuals' receiving services, the licensing specialist will immediately contact their Manager. After consultation with the Manager, the licensing specialist shall immediately address their concerns with the provider and will request that the provider develop and commit to a corrective action plan during the onsite inspection. If the provider fails to suggest a corrective action plan during the inspection, the licensing specialist will suggest one for them. Please note that Licensing Regulation 12VAC35-105-170.D. states that an immediate corrective action plan shall be required if the department determines that the violations pose a danger to individuals receiving services. In addition, the licensing specialist will work with their regional manager to identify and contact the appropriate parties to inform them of the imminent danger.

- These contacts may include, depending on the service and individuals served, the following: APS, CPS, the Community Resource Consultant (CRC), the Human Rights Director, and assigned Human Rights (HR) advocate.
- If there is a concern that a crime has been committed, the Licensing specialist should also contact local law enforcement.
- In all situations where it is determined the individuals within the service are in imminent danger, the licensing specialist and manager will contact the appropriate case managers to notify the case managers of the identified danger, inform the case managers that they should conduct an onsite visit at the location, and, if applicable, request that the case managers communicate with the individual's AR/guardian about the identified concerns.
- If the imminent danger has been identified at a residential service, for either children or adults, the licensing specialist and manager will also notify the case manager and the case manager should visit the individual to ensure the individual is still comfortable and safe residing at the location.



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Summary Suspension

*** As a reminder as stated above not all imminent danger situations may rise to a summary suspension level. Consultation with your manager and directors is required.**

Code of Virginia § 37.2-419.1 states that the Commissioner may issue a summary order of suspension of the license of **any group home or residential facility for adults**, 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 adults who are residents** and the Commissioner believes the operation of the home or facility should be suspended during the pendency of such proceeding.

In addition, Code of Virginia § 37.2-408 states that 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. Lastly, both the general Licensing Regulations (12VAC35-105-115) and the Children's Residential Regulations (12VAC35-46-140) lay out the processes for seeking summary suspension.

If a licensing specialist identifies conditions or practices exist that post an immediate and substantial threat to the health, safety, and welfare of the individuals living within the service, the following steps will be taken by the Office of Licensing in accordance with the current Office of Licensing protocols:

- When the licensing specialist identifies that conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the individuals receiving services, the licensing specialist shall notify the Regional Manager who will consult with the Associate Directors and Director of Licensing **within the same day**.
- The Manager will also submit an internal alert via designated TEAMS chat labeled **"Potential Summary Suspension Alert"** with pertinent information to the Associate Directors and Director of Licensing. This information will be shared with the appropriate Assistant and Deputy Commissioners.
- **Within the same day**, the licensing specialist/investigator will provide documentary evidence to show that conditions or practices exists at the service that pose an immediate and substantial threat to the health, safety, and welfare of the individuals living there to the Regional Manager, both Associate Directors and Director of Licensing.
- A determination will be made as to whether there is enough evidence to demonstrate that an immediate and substantial threat exists. Due to the quick turnaround nature of the summary suspension process, and the imminent danger that exists, it is possible the



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licensing specialist may need to work additional hours during this short time period in order to have work completed within the required timeframes.

- If a determination is made that there is enough evidence, the Director of Licensing or their designee shall consult with the OAG and the Commissioner or the Commissioner's designee **by the next day**.
- If the OAG advises to move forward with the summary suspension, the Legal Operations Manager shall contact the Supreme Court of Virginia at hearingofficer@vacourts.gov to have a hearing officer assigned in accordance with 12VAC35-105-115(B) and 12VAC35-46-140 (B).
- Once a hearing officer is assigned, the Legal Operations Manager shall e-mail the assigned hearing officer the department approved engagement letter.
- If the hearing officer declines the assignment, then the Legal Operations Manager will contact the Supreme Court of Virginia to have another hearing officer assigned.
- While the Legal Operations Manager is working to secure the hearing officer, the Licensing specialist will work in conjunction with the Regional Manager and licensing leadership to complete a formalized licensing report for the unannounced inspection or investigation.
- In addition, the licensing specialist will gather all of the documentation necessary for the Legal Operations Manager to write the letter notifying the provider that their license has been summarily suspended and that the department intends to seek a denial, revocation, etc. of their license. This is one letter that includes both the Order of Summary Suspension as well as the Notice of Intent to revoke, deny, etc. the license. The letter shall include the following information: 1) The specific areas of noncompliance that demonstrate an immediate and substantial threat to the individuals receiving services exists; 2) The negative action that is being taken in conjunction with the summary suspension (denial, revocation, or other); 3) The provider's right to request an informal conference ; 4) The range of possible sanctions that may result from the case decision; and 5) The date, time, and location of the summary suspension hearing.
- Once the letter is written, the Legal Operations Manager will send the completed draft to the licensing specialist, Regional Manager, Associate Director for State Licensing Operations and the Director of Licensing for their review and edits.
- The Legal Operations Manager will incorporate all edits received prior to sending a finalized draft to the OAG.
- Once a date has been finalized with the Hearing Officer and the OAG, the Legal Operations Manager shall arrange for a conference room that is large enough to accommodate everyone and shall notify the licensing specialist, Regional Manager, Associate Director, and Director of the meeting location.



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- The Legal Operations Manager shall add the meeting location, time, and date to the final approved letter.
- While the OAG is approving the combined Order of Summary Suspension and Letter of Intent, the Legal Operations Manager shall be putting together the documentary evidence into an evidence binder. The evidence binder shall be approved by the Director of Licensing.
- An evidence binder shall be sent to the OAG's office as soon as possible for final approval.
 - The Legal Operations Manager will ensure that the evidence binder is provided to the OAG office for final approval. This can be electronic or hard copy.
- Once final approval has been received, the Legal Operations Manager shall work with the Licensing Office Manager to have all required number of evidence binders created and delivered to the appropriate parties if hard copy. Licensing Administrative Assistants will have the primary responsibility for creating the evidence binders with oversight from the Legal Operations Manager if hard copy.
- The Legal Operations Manager shall work with the Licensing Office Manager to arrange for a department approved courier to deliver the Summary Suspension Order/Notice of Intent and the evidence binder to the provider.
- The Director of Licensing or designee shall contact the appropriate agencies to inform them of the action and ensure that the case manager notifies ARs or legal guardians or responsible family members are informed of the pending action.
- The hearing officer will arrange for a pre-hearing phone call. The Legal Operations Manager will need to arrange for a department approved court reporter for the call.
- The Legal Operations Manager will also need to arrange for a department approved court reporter for the summary suspension hearing date.
- The hearing shall take place within **three business days** of the issuance of the order of summary suspension in accordance with 12VAC35-105-115(D) and 12VAC35-46-140 (D).
- The department shall have the burden of proving that it had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding according to 12VAC35-105-115(E) and 12VAC35-46-140 (E).
- The hearing officer shall provide written findings and conclusions together with a recommendation as to whether the license should be summarily suspended to the commissioner within **five business days** of the hearing in accordance with 12VAC35-105-115(F) and 12VAC-46-140 (F).
- The commissioner shall issue a final order of summary suspension or make a determination that the summary suspension is not warranted based on the facts presented and the recommendation of the hearing officer within **seven business days** of receiving



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the recommendation of the hearing officer in accordance with 12VAC35-105-115(G) and 12VAC35-46-140 (G).

- The letter from the commissioner shall include the following (i) the basis for accepting or rejecting the hearing officer's recommendation, and (ii) notice that the provider may appeal the commissioner's decision to the appropriate circuit court no later than **10 days** following issuance of the order. If the commissioner decides not to issue a final order of summary suspension, the letter shall state that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.
- The Legal Operations Manager shall work with the Licensing Office Manager to arrange for a department approved courier to deliver the commissioner's final order of summary suspension.
- Once all invoices have been received from the court reporter, hearing officer, and courier the Legal Operations Manager shall give them to Licensing Office Manager to obtain approval by the Director of Licensing and enter the invoices into EVA.
- The provider may appeal the commissioner's decision on the summary suspension to the appropriate circuit court no more than **10 days** after issuance of the final order in accordance with 12VAC35-105-115(I) and 12VAC35-46-140 (I).

Please note that if it is determined that a summary suspension of the residential service is warranted, the Office of Licensing will institute heightened monitoring of the provider during the time between the unannounced inspection and the date the Commissioner submits their Summary Suspension Order. During this period of heightened monitoring, the Office will coordinate with appropriate parties such as the case managers, APS/CPS, and potentially DMAS to ensure the provider is effectively implementing their emergency corrective action plan. If you have any questions related to the content of this memo, please feel free to reach out directly to your regional manager or myself.

Sincerely,

Jae Benz
Director
Office of Licensing