



# COMMONWEALTH of VIRGINIA

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## MEMORANDUM

**To:** Office of Licensing Staff  
**From:** Jae Benz, Director, Office of Licensing  
**Date:** October 7, 2019  
**RE:** Summary Suspension & Imminent Danger

**Purpose:** The purpose of this 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:**

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 Regional Manager. After consultation with the Regional 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 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 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 will also put the case manager on notice that they may need to look for a new residence for the individual if the provider's license is summarily suspended.

### **Summary Suspension:**

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 Regional Manager will also submit an internal alert with pertinent information to the Associate Director and Director of Licensing. This information will be shared with the appropriate Assistant and Deputy Commissioners
- **Within the same day**, the licensing specialist 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 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 Licensing Office Manager shall contact the Supreme Court of Virginia at [hearingofficer@vacourts.gov](mailto:hearingofficer@vacourts.gov) to have a hearing officer assigned in accordance with 12VAC35-105-115(B).
- Once a hearing officer is assigned, the Licensing Officer Manager shall e-mail the assigned hearing officer the department approved engagement letter.
- If the hearing officer declines the assignment, then the Licensing Office Manager will contact the Supreme Court of Virginia to have another hearing officer assigned.
- While the Office 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 Associate Director of Licensing, Regulatory Compliance, Quality and Training 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 Associate Director for Licensing, Regulatory Compliance, Quality and Training 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 Associate Director for Licensing, Regulatory Compliance, Quality and Training 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 Licensing Office 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.
- The Associate Director for Licensing, Regulatory Compliance, Quality and Training 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 licensing specialist shall be putting together the documentary evidence into an evidence binder. The evidence binder shall be approved by the Regional Manager.
- An evidence binder shall be sent to the OAG's office as soon as possible for final approval.

- The Regional Manager shall work with the Licensing Office Manager to have an Administrative Assistant deliver the evidence binder to the OAG office for final approval.
- Once final approval has been received, the Regional Manager shall work with the Licensing Office Manager to have all required number of evidence binders created and delivered to the appropriate parties. Licensing Administrative Assistants will have the primary responsibility for creating the evidence binders with oversight from the Licensing Office Manager.
- The Licensing Office Manager shall 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 Licensing Officer Manager will need to arrange for a department approved court reporter for the call.
- The Licensing Officer 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).
- 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).
- 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).
- 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 the recommendation of the hearing officer in accordance with 12VAC35-105-115(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 Licensing Office Manager shall 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 Licensing Office Manager shall give them to the Associate Director of Licensing, Regulatory Compliance, Quality and Training to approve 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).

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