



COMMONWEALTH of VIRGINIA


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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: Jennifer C. Williamson 
Senior Assistant Attorney General

DATE: June 17, 2019

SUBJECT: Final Stage Review of 22 VAC 40-151
Amend Standards for Children's Residential Facilities to Comply with
Code Requirements

I have reviewed the attached regulation, which is being amended to comply with Chapters 446 and 449 of the 2019 Acts of Assembly, to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the specified regulation and whether the specified regulation comports with applicable state law.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. Consequently, it is my opinion that the State Board has the authority to promulgate this regulation, which is exempt from the provisions of Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(a), and the State Board has not exceeded that authority.

If you have any questions, please feel free to call me at 225-3197.

DEPARTMENT OF SOCIAL SERVICES

Amend Standards for Children's Residential Facilities to Comply with Code
Requirements

22VAC40-151-90. Summary suspension. (Repealed.)

~~A. In conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of the residents, the commissioner may issue an order of summary suspension of the license to operate a children's residential facility when he believes the operation of the facility should be suspended during the pendency of such proceeding.~~

~~B. Prior to the issuance of an order of summary suspension, the department shall contact the Executive Secretary of the Supreme Court of Virginia to obtain the name of a hearing officer. The department shall schedule the time, date, and location of the administrative hearing with the hearing officer.~~

~~C. The order of summary suspension shall take effect upon its issuance. It shall be delivered by personal service and certified mail, return receipt requested, to the address of record of the facility as soon as practicable. The order shall set forth:~~

- ~~1. The time, date, and location of the hearing;~~
- ~~2. The procedures for the hearing;~~
- ~~3. The hearing and appeal rights; and~~
- ~~4. Facts and evidence that formed the basis for the order of summary suspension.~~

~~D. The hearing shall take place within three business days of the issuance of the order of summary suspension.~~

~~E. The department shall have the burden of proving in any summary suspension hearing that it had reasonable grounds to require the facility to cease operations during the pendency of the concurrent revocation, denial, or other proceeding.~~

~~F. The administrative hearing officer shall provide written findings and conclusions, together with a recommendation as to whether the license or certificate should be summarily suspended, to the commissioner within five business days of the hearing.~~

~~G. 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.~~

~~H. The commissioner shall issue and serve on the children's residential facility or its designee by personal service or by certified mail, return receipt requested, either:~~

~~1. A final order of summary suspension including (i) the basis for accepting or rejecting the hearing officer's recommendations and (ii) notice that the children's residential facility may appeal the commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order; or~~

~~2. Notification that the summary suspension is not warranted by the facts and circumstances presented and that the order of summary suspension is rescinded.~~

~~I. The facility 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.~~

~~J. The outcome of concurrent revocation, denial, and other proceedings shall not be affected by the outcome of any hearing pertaining to the appropriateness of the order of summary suspension.~~

~~K. At the time of the issuance of the order of summary suspension, the department shall contact the appropriate agencies to inform them of the action and the need to develop relocation plans for residents, and ensure that parents and guardians are informed of the pending action.~~

22VAC40-151-170. Relationship to regulatory authority.

A. The governing body or its official representative shall notify the department within five working days of any change in administrative structure or newly hired chief administrative officer or program director.

B. Notwithstanding any other provision of law, the commissioner shall have the authority to place, remove, or direct the placement or removal of any child who is under the supervision and control of a local board or licensed child-placing agency.

C. Pursuant to such authority, the commissioner shall remove or direct the removal of any child placed by a local board or licensed child-placing agency in a children's residential facility that fails to comply with any state or federal requirements intended to protect the child's health, safety, or well-being.