

CHAPTER FIFTEEN—NEGATIVE ACTIONS (11/3/10)

I. STATUTORY AUTHORITY

**SC Statute 63-13-460 a.
License denial; nonrenewal; notice,
hearing; appeals**

- a. An applicant who has been denied a license by the department must be given prompt written notice by certified or registered mail. The notice shall indicate the reasons for the proposed action and shall inform the applicant of the right to appeal the decision to the director in writing within thirty days after the receipt of notice of denial. An appeal from the final decision of the director may be taken to an administrative law judge pursuant to the Administrative Procedures Act.

114-502 A.(9)(b) If a license/approval/registration is denied, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial. See also regulation 114-522 B(8)(b) (Reason for denial for church or religious child care centers)

**SC Statute – Section 63-13-160(1)(2)(3)
Injunctions sought by Department of Social Services.
See also Section 63-13-1060 (Injunctions; church or religious child care centers)**

The department is empowered to seek an injunction against the continuing operation of a child care facility in the family court having jurisdiction over the county in which the facility is located:

1. when a facility is operating without a license or statement of registration;
2. when there is any violation of this subarticle or of the regulations promulgated by the department which threatens serious harm to children in the child care facility; or
3. when an operator has repeatedly violated this subarticle or the regulations of the department.

114-502 A. (10) If a facility is found to be in operation after the Department has denied the application for the license/approval/registration and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel. See also Regulation 114-522 E (Reasons for registration denial, suspension or non-renewal of church or religious child care centers)

**SC Statute – Section 63-13-80
Investigations and inspections by the Department of Social Services**

- (A) In exercising the powers of licensing, approving, renewing, revoking, or making provisional licenses and approvals, the department shall investigate and inspect licensees and approved operators and applicants for a license or an approval. The authorized representative of the department may visit a child care center or

group child care home any time during the hours of operation for purposes of investigations and inspections. In conducting investigations and inspections, the department may call on political subdivisions and governmental agencies for appropriate assistance within their authorized fields. The inspection of the health and fire safety of child care centers and group child care homes must be completed upon the request of the department by the appropriate agencies (i.e., Department of Health and Environmental Control, the Office of the State Fire Marshal, or local authorities). Inspection reports completed by state agencies and local authorities must be furnished to the department and become a part of its determination of conformity for licensing and approval. After careful consideration of the reports and consultation where necessary, the department shall assume responsibility for the final determination of licensing, approving, renewing, revoking, or making provisional licenses and approvals.

(B) Before issuing a license or approval the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a child care center or a group child care home. If the results of the investigation satisfy the department that the provisions of this subarticle and the applicable regulations promulgated by the department are satisfied, a license or approval may be issued.

114-502 C.(1) Department staff may visit and inspect a child care center at anytime during the hours of operation without prior notice to verify regulatory compliance.

114-502.C.(2) Department staff shall provide at least two working days notice to the director or center director prior to conducting an initial or renewal inspection.

114-502.C.(3) The director and staff shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff.

114-502C. (4) The Department has the right to interview staff and parents relating to regulatory compliance.

See also Regulation 114-522D.(1)(2)(3)(4) (Inspection and consultation with regard to church or religious child care centers)

II. Definitions

Willful – consciously aware; deliberate

Continual – Three (3) consecutive serious actions within a six month period; this includes citations by ABC Monitors, USDA, DHEC, Fire Marshal as well as other divisions within DSS or law enforcement officers.

III. Example of when to seek a revocation

Examples that may warrant an immediate revocation (seek an injunction) include:

- Illegal operation. An illegal operation must close within 5 days before they can apply to become a licensed facility. Failure to cease operation within 5 business days may result in the Department seeking an injunction. If the Illegal Operation is not applying for a license and has refused to close, the Department may seek an injunction.

- Death of a child caused by a provider
- Lack of supervision and/or ratio issues which causes life threatening situations resulting in injuries or death
- Three incidents that may or may not result in serious injuries or death
- Willful unauthorized administration of medication

IV. Steps to Take Prior to Revocation

1. **Written Reprimand (Deficiency Letter)**
 - a. A written reprimand may be issued to cite any violation which the Department determines to have been a brief uncustomary event which is unlikely to recur in the ordinary operation of a center or home.
 - b. The reprimand shall describe the reasons for its issuance including identification of the specific section of the statute or regulation violated.
 - c. A time frame shall be specified for compliance to be achieved (a specific time if the same day-30-60-90 days).
 - d. If provider does not comply with the written reprimand, it will result in a Corrective Action Plan, a written warning, if the deficiency is of a significantly serious nature, or both.
 - e. The facility should be staffed with the Central Office prior to initiating a Corrective Action Plan if sending a Final Warning letter is included.
 - f. A Corrective Action Plan, a Final Warning Letter, or both may be initiated at the time of a written reprimand if the situation warrants such actions and are recommended by the Central Office of Child Care Licensing.

2. **Corrective Action Plan (CAP)** –This action is intended as a method of deficiency correction, as well as prevention of further occurrences. It is a required action to be followed prior to revocation of a permit to operate a child care facility unless there has been a significant event such as death or serious injury to a child. At the agreement of the Department, the terms of a CAP may be revised as appropriate.

Corrective Action Process

If use of a Corrective Action Plan (CAP) is recommended to the Central Office for approval by director:

1. Develop a Corrective Action Plan with appropriate time frames
2. The CAP is reviewed by provider. The provider signs CAP and is given a copy by Department staff.
3. Licensing Specialist will follow up at the designated time to insure that the CAP is being followed.
4. Periodic review of the CAP will be done, and the CAP will be amended as needed.

If the Corrective Action Plan is not being followed by the provider, a Final Warning Letter shall be sent to the provider, and the CAP shall be revised as appropriate to the specific situation. Revocation of the license should be determined by a staffing with the Central Office if a facility fails to comply with the terms of a revised CAP or a CAP initiated for repeat deficiencies.

3. **Written Warning (Final Warning)** – This action may be used if the situation warrants in addition to a Written Reprimand (Citation Letter) or to prevent additional serious

dangerous situations. The Final Warning Letter may include the initiation of a revised CAP as appropriate to the specific situation.

- a. A Written Warning and a Corrective Action Plan may be issued in regard to any violation to allow the operator an opportunity to demonstrate compliance with all requirements.
- b. The Written Warning and Correction Action Plan shall describe the reasons for its issuance including identification of the specific section of the statutes or regulations violated. It shall also describe those actions necessary for the operator to be in full compliance with requirements and shall specify a time period for compliance to be achieved.
- c. If the director/operator fails to achieve compliance during the specified time period, the Department can begin the procedure to revoke the license or withdraw the registration or approval. Also, if the license/approval/registration is provisional, it may only be extended for a period of 6 months (*unless the license has already been provisional for three years. The facility must close because no license may be provisionally extended beyond three years*).
- d. The issuance of a provisional license/approval/registration instead of a regular license/approval/registration may precede the agency's instituting a revocation action or refusing to renew a license.

V. Procedure to use when revoking a license/approval/registration

Revocation Process

1. Visit provider (findings that cause a revocation)
2. Send citation/letter to provider (this is left with the provider at the visit)
3. Staff case at the Regional Office
4. Submit recommendation of a revocation to the Central Office for review and approval by the director or designee

If revocation is approved by director, the Office of General Counsel will be copied on recommendation letter to any provider for any comments or recommendations.

VI. Procedures to use for an illegal operation

Step 1: When there is an illegal operation

1. Visit to provider is made within 3 days after notification of an illegal operation
2. If illegal operation is verified, Licensing Specialist shall deliver or send (certified) illegal operation letter indicating that they must close within 5 business days. However, they can apply to become regulated but must still close.
3. Licensing Specialist shall return to the facility within 48 hours (following the 5th business day in which the provider was given to close) to follow-up and ensure that the facility is closed
4. If not closed, conduct an internal staffing with the Regional Supervisor
5. Recommendation for injunction is then submitted to the Central Office for review and approval by the director or designee in consultation with the General Counsel's Office.

Step 2: If unable to determine illegal operation

1. If unable to talk to provider to determine illegal operation, or if the provider denies access, Licensing Specialist will leave (or send certified) the illegal operations letter at the residence or facility.
2. The Licensing Specialist will return to the office and staff case with Regional Supervisor and the Central Office.

If an injunction is approved by director, the Office of General Counsel will be copied on recommendation letter to any provider for any comments or recommendations.

VII. Procedures for history of noncompliance

This procedure must have at least two consecutive unsuccessful Corrective Action Plans by the provider. Once this has been determined, follow Revocation Process under Section V.

VIII. Procedures for failure to comply with a statute or regulation that results in the injury or death of a child

Follow Revocation Process under Section V.

IX. Other things that may be done on a case-by-case basis that could cause a revocation

The following is a list of situations that could cause a revocation and should be staffed with the Regional Supervisor:

1. Being out of ratio
2. Unauthorized or illegal employees
3. Being out of capacity
4. Infants not being in the infant room