

CHAPTER FIFTEEN- NEGATIVE ACTIONS

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.

DSS Regulation Number 114-502 A(9)(b) If a license/approval is denied, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial.

DSS Regulation Number 114-512 A(9)(b) If a license is denied, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial or suspension and inform the operator of the right to appeal the decision through administrative channels to the Department and according to established appeals procedure for the Department. Upon appeal, the decision of the Department is final unless appealed by a party pursuant to an Administrative Law Judge.

DSS Regulation Number 114-522 B(8)(b) If a registration is denied or suspended, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial or suspension and inform the operator of the right to appeal the decision through administrative channels to the department and according to established appeals procedure for the department. Upon appeal, the decision of the department is final unless appealed by a party pursuant to an Administrative Law Judge.

DSS Regulation No. 114-528. B(7) If Department staff proposes to deny an application for registration, the applicant shall be given written notice by certified mail indicating the reason(s) for the proposed action and the right of the applicant to appeal the decision in accordance with Department fair hearing regulations.

SC Statute 63-13-160(1)(2)(3)

Injunctions sought by Department of Social Services

Section 63-13-160. Injunctions (Licensed or Approved Centers, Group, or Family Homes)

The department is empowered to seek an injunction against the continuing operation of a childcare 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 chapter or of the regulations promulgated by the department which threatens serious harm to children in the childcare facility;**
- (3) when an operator has repeatedly violated this chapter or the regulations of the department.**

Section 63-13-170. Penalties (Licensed or Approved Centers, Group, or Family Homes)

A person violating the provisions of this chapter is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand five hundred dollars or imprisonment not exceeding six months, or both.

DSS Regulation Number 114-502 A(10) If a facility is found to be in operation after the Department has denied the application for the license/approval and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel.

Section 63-13-1060. Injunctions. (Registered Churches)

The department may seek an injunction against the continuing operation of a childcare center or group childcare home in the family court having jurisdiction over the county in which the facility is located when the facility is considered to be out of compliance with the provisions of Sections 63-13-1010 and 63-13-1020.

Section 63-13-1080. Penalties. (Registered Churches)

An operator violating the provisions of this article is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand five hundred dollars or imprisonment not exceeding six months, or both.

DSS Regulation Number 114-522 B(9) If a facility is found to be in operation after the Department has denied the application for the registration and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel.

SC Statute 63-13-80

Investigations and Inspections by 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 childcare center or group childcare home anytime 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 childcare centers and group childcare 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 childcare center or a group childcare home. If the results of the investigation satisfy the department that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, a license or approval must be issued.

Regulations for Licensed and Approved Centers:

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

DSS Regulation Number 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.

DSS Regulation Number 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.

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

DSS Regulation Number 114-502 C(5) Upon receipt of a regulatory complaint, the Department shall conduct an unannounced inspection of the center to investigate the complaint. If the complaint is written, the Department shall provide a copy to the director upon request.

Regulations for Licensed Group Child Care Homes:

DSS Regulation Number 114-512 C(1) Department staff may visit and inspect a group child care home at any time during the hours of operation without prior notice to verify regulatory compliance.

DSS Regulation Number 114-512 C(2) Department staff shall provide at least two working days-notice to the operator prior to conducting an initial or renewal inspection.

DSS Regulation Number 114-512 C(3) The operator and staff shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff.

DSS Regulation Number 114-512 C(4) The Department has the right to interview staff and parents relating to regulatory compliance.

DSS Regulation Number 114-512 C(5) Upon receipt of a regulatory complaint, the Department shall conduct an unannounced inspection of the home to investigate the complaint. If the complaint is written, the Department shall provide a copy to the operator upon request.

Regulations for Registered Churches:

DSS Regulation Number 114-522 D(1) Department staff may visit and inspect a child care center operated by religious bodies at any time during the hours of operation without prior notice to verify regulatory compliance with staff:child ratios.

DSS Regulation Number 114-522 D(2) Department staff may also visit the facility under the following conditions:

DSS Regulation Number 114-522 D(2)(a) The facility requests in writing that a Department representative visit to discuss problems related to the applicable regulations or other matters of concern;

DSS Regulation Number 114-522 D(2)(b) The facility has not applied for registration to the Department as mandated by law; or

DSS Regulation Number 114-522 D(2)(c) There has been a report of child abuse or child neglect involving the facility.

DSS Regulation Number 114-522 D(3) Upon receipt of a regulatory complaint on staff:child ratios, the Department shall conduct an unannounced inspection of the center to investigate the complaint. If the complaint is written, the Department shall provide a copy to the director upon request.

DSS Regulation Number 114-522 D(4) Fire and health officials may visit the facility under the following conditions:

DSS Regulation Number 114-522 D(4)(a) When there is a complaint against the facility citing health and fire regulations violations that threaten serious harm to the children.

Regulations for Licensed Family Child Care Homes:

DSS Regulation Number 114-528. E(4) After giving the applicant prior notice, Department staff shall make an on-site visit to the proposed family day care home to determine compliance with appropriate regulations by completing a licensing/approval study.

DSS Regulation Number 114-528. E(5) Health and fire officials shall inspect the facility to determine compliance with appropriate regulations and shall put their results in writing on the appropriate forms.

Regulations for Licensed of Registered Family Child Care Homes:

DSS Regulation No. 114-528. H.(1) Upon receipt of a regulatory complaint, Department staff shall conduct an unannounced visit to the family day care home to investigate the complaint. If the complaint is written, Department staff shall provide a copy to the operator upon request.

II. Definitions

Willful – consciously aware; deliberate

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

Intermittent – One (1) serious action or two (2) consecutive serious actions within a six month period followed by an egregious action that warrants more immediate negative response by the department; this includes citations by ABC Monitors, USDA, Fire Marshals as well as other divisions within DSS or law enforcement officers.

Egregious – A serious action or event that is severe in nature and requires immediate termination of the license, registration, or approval. This may include death of a child, serious injury to a child, gross falsification of documentation, denial of lawful access to inspect the facility, or operating over capacity.

III. Revocation

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

- Death of a child caused by a provider
- Lack of supervision and/or ratio issues which cause 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
- Gross falsification of documentation
- Denial of lawful access to inspect the facility
- Being over the licensed operating capacity

IV. Steps to Take Prior to Revocation

1. Deficiency letter

- a. A deficiency letter 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 letter 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). Do not use the term “immediately”.
- d. If the provider does not comply with the deficiency letter, it will result in a second citation. If the deficiency is of a significantly serious nature, the facility will be placed on a Corrective Action Plan (CAP), and the facility may be sent a Final Warning Letter.
- 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. If three deficiency letters (citations) for violations of staff to child ratios, lack of supervision, or inaccurate tracking of children are given to the facility during a period of six (6) months, the Region Office will place the facility on a Corrective Action Plan for three (3) months.
- g. If at any time a deficiency letter is given to the facility for violations of terms of the Corrective Action Plan, the Region staff will follow step (e) as described above. The Corrective Action Plan will be extended for an appropriate period of time as determined by the nature of the violation and recommendations of the Central Office.
- h. A Corrective Action Plan, a Final Warning Letter, or both may be initiated at the time of a deficiency citation if the situation warrants such actions and are recommended by the Central Office of Child Care Licensing. Such actions are likely if the violation is determined to be egregious in nature.
- i. If a Corrective Action Plan is completed successfully, and a new CAP must be initiated for the same violations as those included on the first CAP, a staffing will be done for approval of a Final Warning letter to be issued with the CAP.

- j. Final Warning letters are to be considered void after the successful completion of a Corrective Action Plan. A new Final Warning letter would be issued if the facility is placed on a new CAP, and the deficiency issues were the same as the previous CAP.
 - k. Special circumstances will allow for a staffing to be done with a recommendation to issue a Final Warning letter or to revoke a license.
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 timeframes**
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 (unannounced visits) to ensure that the CAP is being followed.**
4. **Periodic review of the CAP will be done, and the CAP will be amended as needed.**

If a CAP is written for violations of staff to child ratios, it should also include lack of supervision, insufficient tracking, and/or unauthorized/unqualified caregivers (if applicable).

If the Corrective Action Plan is not being followed by the provider, it should be staffed with the Central Office, 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.

If new deficiencies are cited during a CAP which are unrelated to the original deficiencies, the CAP may be revised and/or extended as needed at the discretion of the Region Supervisor. These type deficiencies are typically of a more serious nature.

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. The written Final 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.
 - b. If the license/registration/approval has expired or is due to expire soon, it will only be extended for the duration of the Corrective Action Plan.
 - c. If the director/operator fails to achieve compliance during the specified time period, the Department will begin the procedure to revoke the license or withdraw the registration or approval.

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

Section 63-13-450. Deficiency correction notices. (Licensed centers, Group Child Care Homes, and Licensed Family Child Care Homes)

(E) In the event that the operator of the facility fails to correct deficiencies within the period prescribed, the department may revoke the license.

DSS Regulation Number 114-502 D. Reasons for license/approval denial, revocation, or non-renewal

Policy: If upon inspection a Family Child Care Home or Group Child Care Home is found to be operating over the licensed/registered capacity, the license/regulation shall be revoked/withdrawn.

DSS Regulation Number 114-502 D(1) A license/approval may be denied, revoked or not renewed by the Department if the owner, director or staff member has been determined to have abused or neglected any child as defined in Section 20-7-490(B), S.C. Code of Laws, 1976 as amended.

DSS Regulation Number 114-502 D(2) A license/approval may be denied, revoked or not renewed by the Department if cited deficiencies threaten serious harm to the health and/or safety of the children.

Revocation/Suspension/Withdrawal 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.

If the revocation is recommended for an approval, refer to the following statute and proceed with recommendations of General Counsel:

Section 63-13-640. Deficiency correction notices. (Approvals)

(E) In the event that the operator fails to correct any deficiency within the period prescribed for correction, the department shall notify the appropriate public officials.

DSS Regulation Number 114-502 D. Reasons for license/approval denial, revocation, or non-renewal

DSS Regulation Number 114-502 D(1) A license/approval may be denied, revoked or not renewed by the Department if the owner, director or staff member has been determined to have abused or neglected any child as defined in Section 20-7-490(B), S.C. Code of Laws, 1976 as amended.

DSS Regulation Number 114-502 D(2) A license/approval may be denied, revoked or not renewed by the Department if cited deficiencies threaten serious harm to the health and/or safety of the children.

If withdrawal of the registration is recommended for a Registered Family Child Care Home, refer to the following statute and proceed with recommendations of General Counsel:

Section 63-13-830. Statement of registration. (Registered Family Child Care Homes)

(E) The department may withdraw the statement of registration if one or more of the following apply:

- (1) the health and safety of the children require withdrawal;
- (2) the facility has enrolled children beyond the limits defined in this chapter;
- (3) the operator fails to comply with the registration procedures provided in this chapter.

Policy: If upon inspection a Family Child Care Home or Group Child Care Home is found to be operating over the licensed/registered capacity, the license/regulation shall be revoked/withdrawn.

Policy: If a Family Child Care Home is placed on a Corrective Action Plan, the CAP must include a requirement that the FCCH staff and operators all meet the training requirements according to Kendra's Law.

Examples that may warrant an immediate withdrawal of the registration or revocation of the license to operate a Family Child Care Home would include:

- Death of a child caused by a provider
- Lack of supervision
- Willful unauthorized administration of medication
- Gross falsification of documentation, i.e. not listing all children in care, not listing residents of the home, and not having 15-year-old residents fingerprinted by listing them as being younger in age.
- Denial of lawful access to inspect the facility
- Being over the operating capacity
- Leaving a child unattended in a vehicle
- Children being left without adult supervision while the operator leaves the property
- Children missing from the property of care of the provider, i.e. while on field trips, shopping trips, or parks.

DSS Regulation No. 114-528. D.(8) The application for original registration or registration renewal may be denied or the registration may be withdrawn by the Department, if the operator, any staff including substitute caregiver(s), volunteer(s) and emergency person(s) or household member(s), abuses or neglects any child as defined in Section 20-7-490, B, South Carolina Code of Laws, 1976, as amended.

DSS Regulation No. 114-528. D.(5) The Department shall withdraw registration if the health and safety of the children is determined to be at risk or in threat of harm; if the operator cares for

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more children than the number stated on the registration; or if the operator fails to comply with the registration procedures defined in statute and these regulations.

If the revocation is recommended for a Registered Church, refer to the following statute and proceed with recommendations of General Counsel:

Section 63-13-1050. Deficiency correction notices. (Registered Churches)

(E) In the event that the operator of the facility fails to correct deficiencies within the period prescribed, the department may suspend the registration of the facility to be effective thirty days after date of notice. An appeal may be taken pursuant to the Administrative Procedures Act.

DSS Regulation Number 114-522 B(8)(b) If a registration is denied or suspended, the Department shall give the applicant written notice by certified mail indicating the reason(s) for the denial or suspension and inform the operator of the right to appeal the decision through administrative channels to the department and according to established appeals procedure for the department. Upon appeal, the decision of the department is final unless appealed by a party pursuant to an Administrative Law Judge.

DSS Regulation Number 114-522 B(9) If a facility is found to be in operation after the Department has denied the application for the registration and the administrative appeal/review procedure has been completed, the Department shall notify the Department's Office of General Counsel.

DSS Regulation Number 114-522 C(4) An application for a registration may be denied or suspended by the Department if the director, any staff member, volunteer(s) or emergency person(s) has been determined to have abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

DSS Regulation Number 114-522 E. Reasons for registration denial, suspension or non-renewal

DSS Regulation Number 114-522 E(1) A registration may be denied, withdrawn or not renewed by the Department if the owner, director or staff member has been determined to have

abused or neglected any child as defined in Section 20-7-490B, S.C. Code of Laws, 1976 as amended.

DSS Regulation Number 114-522 E(2) A registration may be denied, withdrawn, or non-renewed by the Department if cited deficiencies threaten serious harm to the health and/or safety of the children.

VI. Procedures for failure to comply with a statute or regulation that results in serious injury to a child that requires medical treatment or death of a child

Follow Revocation/Suspension/Withdrawal Process under Section V after the investigation and appeal process is complete.

VII. History of Negative Action - Application for a License or Registration by previous operators of child care facilities who have had a license/registration revoked/withdrawn

Policy: All applications to operate a child care facility are approved or disapproved on an individual basis. Withdrawal of a previous license/registration will be treated as information regarding the character of the applicant and may affect the approval/denial of a new application.

Private Child Care Centers and Group Child Care Homes

Section 63-13-420. Licensure requirements

(B) Before issuing a license the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a private childcare center or group childcare home. If the results of the investigation verify that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, a license must be issued. The applicant shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff. Failure to comply with the regulations promulgated by the department within the time period specified in this chapter, if adequate notification of deficiencies has been made, is a ground for denial of application. The investigation and inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home, including references and **other information about the character and quality of the personnel.**

Family Child Care Homes

Section 63-13-820. Registration requirements

(B) Before becoming a registered operator the applicant shall:

(3) upon request, provide the department with any facts, conditions, or circumstances relevant to the operation of the family childcare home, including references and other information regarding the character of the family childcare home operator.

Policy: Illegal operations that apply for a registration will be denied if there were more than six children in care without a registration. If six or fewer children were present, the application may be approved but the applicant must be placed on a Corrective Action Plan, and they must attend training according to Kendra's Law.

Policy: Family Child Care Homes that are found to be operating with more than six children present will have the registration withdrawn or denied upon renewal application.