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*** Current through the 2014 Regular Session and amendments approved at the November 4, 2014 General Election ***

Title 37 Juveniles
Chapter 5 Department of Children's Services
Part 5 Child Care Agencies

Tenn. Code Ann. § 37-5-514 (2015)

37-5-514. Violations of licensing regulations -- Probation, suspension, denial and revocation of licenses -- Appeal procedures.

(a) If any complaint is made to the department concerning any alleged violation of the laws or regulations governing a child care agency, the department shall investigate such complaint and shall take such action as it deems necessary to protect the children in the care of such agency.

(b) (1) If, during the licensing period, the department determines that a child care agency is not in compliance with the laws or regulations governing its operation, and if, after reasonable written notice to the agency of the violation, the department determines that the violation remains uncorrected, the department may place the licensed agency on probation for a definite period of not less than thirty (30) days nor more than sixty (60) days, as determined by the department, and the department shall require the posting by the agency of the notice of probation. The department shall provide the agency a written basis describing the violation of the licensing rules that supports the basis for the probationary status.

(2) (A) If placed on probation, the agency shall immediately post a copy of the probation notice, together with a list provided by the department of the violations that were the basis for the probation, in a conspicuous place as directed by the department and with the agency's license, and the agency shall immediately notify, in writing, the custodians of each of the children in its care of the agency's status, the basis for the probation and of the agency's right to an informal review of the probationary status.

(B) If the agency requests an informal review within two (2) business days of the imposition of probation, either verbally or in writing to the department's licensing staff that imposed the probation, the department shall informally review the probationary status by a department licensing staff person or other designee who was not involved in the decision to impose the probation. The agency may submit any written or oral statements as argument to such staff person or designee within five (5) business days of the imposition of the probation. Written and oral statements may be received by any available electronic means.

The licensing staff person or designee shall render a decision, in writing, upholding, modifying or lifting the probationary status within seven (7) business days of the imposition of the probation.

(3) If the licensing staff person or designee did not lift the probation under subdivision (b)(2)(B), the agency may also appeal such action in writing to the commissioner within five (5) business days of the receipt of the notice of the licensing staff person, or designee's decision regarding the agency's probationary status as determined in subdivision (b)(2)(B). If timely appealed, the department shall conduct an administrative hearing pursuant to the contested case provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, concerning the department's action within fifteen (15) business days of receipt of the appeal, and shall render a decision, in writing, within seven (7) business days following conclusion of the hearing. The hearing officer may uphold, modify or lift the probation.

(4) This subsection (b) shall be discretionary with the department, and shall not be a prerequisite to any licensing action to suspend, deny or revoke a license of a child care agency.

(c) (1) If the department determines that any applicant for a temporary license or for the renewal of an existing license has failed to attain, or an existing licensee has failed to maintain, compliance with licensing laws or regulations after reasonable notice of such failure and a reasonable opportunity to demonstrate compliance with licensing laws or regulations, the department may deny the application for the new or renewed license or may revoke the existing license; provided, that the department at any time may deny a temporary license if the applicant fails to meet the initial requirements for its issuance; and, provided, further, if the department determines that repeated or serious violations of licensing laws or regulations warrant the denial or revocation of the license, then, notwithstanding any provisions of § 4-5-320 or this subsection (c) to the contrary, the department may seek denial or revocation of the license regardless of the licensee's demonstration of compliance either before or after the notice of denial of the application or after notice of the revocation.

(2) Notwithstanding § 4-5-320, the notice of denial or revocation may be served personally by an authorized representative of the department who shall verify service of the notice by affidavit, or the notice may be served by certified mail, return receipt requested.

(3) If application for the temporary or annual license is denied or if an existing license is revoked, the applicant may appeal the denial or revocation by requesting, in writing, to the department a hearing before the child care agency board of review within ten (10) days of the personal delivery or mailing date of the notice of denial or revocation. Failure to timely appeal shall result in the expiration of any existing license immediately upon the expiration of the time for appeal.

(4) The hearing upon the denial or revocation shall be heard by the board of review within thirty (30) days of the date of service of the notice of denial or revocation; provided, that, for good cause as stated in an order entered on the record, the board or the

administrative law judge or hearing officer may continue the hearing. In order to protect the children in the care of the agency from any risk to their health, safety and welfare, the board or administrative law judge or hearing officer shall re-set the hearing at the earliest date that circumstances permit.

(5) (A) If timely appeal is made, pending the hearing upon the denial or revocation, the child care agency may continue to operate pending the decision of the board of review unless the license is summarily suspended as provided in subsection (d).

(B) The board, as part of its decision regarding the status of the applicant's application for a license or the licensee's license, may direct that the child care agency be allowed to operate on a probationary or conditional status, or may grant or continue the license with any restrictions or conditions on the agency's authority to provide care.

(d) (1) Subject to the following provisions of this subsection (d), if the department determines at any time that the health, safety or welfare of the children in care of the child care agency imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of the license may be ordered by the department pending any further proceedings for revocation, denial or other action. If the department determines that revocation or denial of the license is warranted following suspension, those proceedings shall be promptly instituted and determined as authorized by this part.

(2) The department shall set forth with specificity in its order the legal and factual basis for its decision stating therein the specific laws or regulations that were violated by the agency, and shall state with specificity in the order the reasons that the issuance of the order of summary suspension is necessary to adequately protect the health, safety or welfare of children in the care of the child care agency. Summary suspension may be ordered in circumstances that have resulted in death, injury or harm to a child or that have posed or threatened to pose a serious and immediate threat of harm or injury to a child based upon the intentional or negligent failure to comply with licensing laws or regulations.

(3) In issuing an order of summary suspension of a license, the department shall use, at a minimum, the following procedures:

(A) The department shall proceed with the summary suspension of the agency's license and shall notify the licensee of the opportunity for an informal hearing within three (3) business days of the issuance of the order of summary suspension before an administrative law judge or before a hearing officer who is not an employee of the department.

(B) The notice provided to the licensee may be provided by any reasonable means and, consistent with the provisions of subdivision (d)(2), shall inform the licensee of the reasons for the action or intended action by the department and of the opportunity for an informal hearing as permitted by subdivision (d)(3)(C).

(C) The informal hearing described by this subdivision (d)(3) shall not be required to be held under the contested case provisions of the Uniform Administrative Procedures Act. The

hearing is intended to provide an informal, reasonable opportunity for the licensee to present to the hearing official the licensee's version of the circumstances leading to the suspension order. The sole issues to be considered are whether the public health, safety or welfare imperatively required emergency action by the department and what, if any, corrective measures have been taken by the child care agency following the violation of licensing laws or regulations and prior to the issuance of the order of summary suspension that eliminate the danger to the health, safety or welfare of the children in the care of the agency. The hearing official may lift, modify or continue the order of summary suspension.

(D) Subsequent to the hearing on the summary suspension, the department may proceed with revocation or denial of the license or other action as authorized by this part, regardless of the decision concerning summary suspension of the license.

(4) The department shall by rule establish any further necessary criteria that it determines are required for the determination of circumstances that warrant imposition of the summary suspension order and any other necessary procedures for implementation of the summary suspension process.

(5) If the conditions existing in the child care agency present an immediate threat to the health, safety or welfare of the children in care, the department may also seek a temporary restraining order from the chancery or circuit court of the county in which the child care agency is located seeking immediate closure of the agency to prevent further harm or threat of harm to the children in care, or immediate restraint against any violations of the licensing laws or regulations that are harming or that threaten harm to the children in care. The department may seek any further injunctive relief as permitted by law in order to protect children from the violations, or threatened violations, of the licensing laws or regulations. The use of injunctive relief as provided by this subdivision (d)(5) may be used as an alternative, or supplementary measure, to the issuance of an order of summary suspension or any other administrative proceeding.

(e) (1) In determining whether to deny, revoke or summarily suspend a license, the department may choose to deny, revoke or suspend only certain authority of the licensee to operate, and may permit the licensee to continue operation, but may restrict or modify the licensee's authority to provide certain services or perform certain functions, including, but not limited to: transportation or food service, enrollment of children at the agency, the agency's hours of operation, the agency's use of certain parts of the agency's physical facilities or any other function of the child care agency that the department determines should be restricted or modified to protect the health, safety or welfare of the children. The board of review, in considering the actions to be taken regarding the license, may likewise restrict a license or place whatever conditions on the license and the licensee it deems appropriate for the protection of children in the care of the agency.

(2) The actions by the department or the board authorized by this subsection (e) may be appealed as otherwise provided in this part for any denial, revocation or suspension.

(f) (1) When an application for a license has been denied, or a license has been revoked,

on one (1) occasion, the child care agency may not reapply for a license for a period of one (1) year from the effective date of the denial or revocation order if not appealed or, if appealed, from the effective date of the board's or reviewing court's order.

(2) If application for a license has been denied, or a license has been revoked, on two (2) occasions, the child care agency may not reapply for a license for a period of two (2) years from the effective date of the denial or revocation if not appealed or, if appealed, from the effective date of the board's or reviewing court's order.

(3) If an application for a license has been denied, or a license has been revoked on three (3) occasions, the agency shall not receive another license for the care of children.

(4) No person who served as full or part owner or as director or as a member of the management of a child care agency shall receive a license to operate a child care agency if that person participated in such capacity in a child care agency that has been denied a license, or that had a license revoked, on three (3) occasions.

(5) (A) The time restrictions of subdivisions (f)(1) and (2) may be waived by the board of review in the hearing in which the denial or revocation is sustained, or, if requested by the former licensee in writing to the commissioner, in a separate subsequent hearing before the board of review or, in the discretion of the commissioner, upon review by the commissioner.

(B) The agency must show to the board's or the commissioner's satisfaction that the agency has corrected the deficiencies that led to the denial or revocation, and that the child care agency can demonstrate that it has the present and future ability, and is willing, to maintain compliance with licensing laws or regulations. The decision of the board or the commissioner shall be reduced to an order, which shall be a final order pursuant to the Uniform Administrative Procedures Act, and may be appealed pursuant to § 4-5-322.

(C) No waiver may be granted for any permanent restriction that has been imposed pursuant to subdivision (f)(3).

(g) (1) In conducting hearings before the board of review on the appeal of a denial or revocation of a license or for review of summary suspension orders, it is the legislative intent that such hearings be promptly determined consistent with the safety of the children in the care of the child care agency appealing the department's licensing action and with the due process rights of the license applicants or licensees.

(2) If, however, the administrative procedures division of the office of the secretary of state certifies by letter to the recording secretary of the board of review that the division's contested case docket prevents the scheduling of a hearing on the appeal of a denial or revocation of a license before the board of review within the initial time frames set forth in this part, then the department shall have authority to appoint a hearing officer from the department to conduct the proceedings before the board. The substitute hearing officer shall have all authority as an administrative law judge of the department of state. The hearing

may be continued by order of the board for the purpose of obtaining a substitute hearing officer.

(3) Hearings on summary suspension orders shall be heard by an administrative law judge from the administrative procedures division of the secretary of state's office. The administrative law judge shall have authority, as otherwise permitted in this section, to enter orders binding on the department resulting from show cause hearings involving summary suspension orders. If the administrative procedures division informs the department that the division's contested case docket prevents the scheduling of a hearing on the issuance of a summary suspension order within the initial time frames set forth in this part, the department may utilize a hearing officer from the department to conduct the show cause hearing.

(h) By July 1, 2000, any initial rules to implement this section shall be by emergency rules of the department; provided, that any permanent rules shall be promulgated pursuant to the provisions of the Uniform Administrative Procedures Act.

HISTORY: Acts 2000, ch. 981, § 32; 2009, ch. 566, § 12.

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Tenn. Code Ann. § 37-5-515 (2015)

37-5-515. Board of review for licensing actions.

Actions by the department to deny or revoke or to otherwise limit any license, except for the summary suspension of a license, shall be reviewed by the child care agency board of review established pursuant to title 71, chapter 3, part 5.

HISTORY: Acts 2000, ch. 981, § 33.