



**Office for People With
 Developmental Disabilities**

ADMINISTRATIVE DIRECTIVE

Transmittal:	ADM 2018-04
To:	Executive Directors of Voluntary Providers Sponsoring Family Care Developmental Disabilities Regional Office Directors Developmental Disabilities State Operations Directors
Issuing OPWDD Office:	Division of Service Delivery (State Operations) Office of Counsel
Date:	May 29, 2018
Subject:	Suspension and Revocation Actions on Family Care Operating Certificates
Suggested Distribution:	Family Care Program Administrators and Managers Family Care Coordinators and Liaisons Quality Assurance Staff Family Care Providers
Contact:	Family Care, Division of Service Delivery State Operations FamilyCare@opwdd.ny.gov Office of Counsel
Attachments:	<ul style="list-style-type: none"> • Family Care Manual Section 7.9 Suspension and Revocation Actions on Family Care Operating Certificates • Notice of Emergency Temporary Suspension • Notice of Intent to Suspend • Notice of Suspension • Notice of Intent to Fine • Notice of Fine • Notice of Intent to Revoke • Notice of Revocation • Notice of Intent to Limit • Notice of Limit • Notice of Reinstatement

Related ADMs/INFs	Releases Cancelled	Regulatory Authority	MHL & Other Statutory Authority
None	Family Care Manual Policy 10.5.1 10.5.2 10.5.3	New York Codes, Rules, and Regulations(NYCRR) Title 14 sections 687.5, 602.2 and 602.5	MHL 16.05 and 16.17

Purpose

This memorandum describes the process for initiating action against the certification of State and Agency Sponsored Family Care Homes, including emergency temporary suspension and revocation of a Family Care Home's operating certificate. This memorandum also describes the expectations to notify and consult with appropriate Developmental Disabilities State Operations Office (DDSOO) staff and the Office of Counsel when determining whether to take such actions. The attachments include template notices described in this memorandum and a new Family Care Manual Policy, Section 7.9 Suspension and Revocation Actions on Family Care Operating Certificates. This new policy section will replace manual sections 10.5.1, 10.5.2 and 10.5.3.

Applicability

This memorandum applies to all State Sponsored Family Care and Agency Sponsored Family Care Providers.

Background

The Commissioner of the Office for People With Developmental Disabilities (OPWDD) is granted the authority, pursuant to Mental Hygiene Law (MHL) 16.05, to certify Family Care Homes to provide alternative residential opportunities to individuals with developmental disabilities. The Commissioner may suspend a Family Care Home operating certificate on an emergency basis, without notice and an opportunity to be heard, if there is reason to believe that the health or safety of an individual receiving services is in imminent danger. The Family Care Provider may subsequently appeal this action.

The Commissioner may revoke, suspend, or impose a limitation on an operating certificate or impose a fine up to \$1000, upon a determination that the Family Care Provider has failed to comply with the terms of the operating certificate or with the provisions of any applicable statute, rule or regulation governing Family Care Homes. OPWDD must give the Family Care Provider notice of the intent to take such action which includes the opportunity to request a hearing to appeal the determination. These processes are described in Mental Hygiene Law section 16.17 and applicable regulations of the Commissioner, found at 14 NYCRR 687.5, 602.2 and 602.5.

Quality Assurance

Each DDSOO has designated staff who investigate allegations of neglect and abuse of individuals receiving services in State Sponsored Family Care Homes and Safety Officers who make sure the house is safe. In the event of a report of abuse/neglect or unsafe conditions in a State Sponsored Family Care Home, the designated DDSOO staff and/or the Safety Officer conduct an initial review to assess the health and safety of any individuals receiving services.

In the event of a report of abuse/neglect or unsafe conditions in Agency Sponsored Family Care Homes, the Sponsoring Agency conducts the initial review to assess the health and safety of any individuals receiving services. It is the responsibility of the Sponsoring Agency to inform the designated DDSOO Family Care contact if there are incidents or unsafe conditions in a Family Care Home that may warrant action against the operating certificate as described in this memorandum. The Sponsoring Agency must provide the DDSOO all requested information

necessary to make determinations about whether suspension, revocation, or other actions are needed.

All reports of abuse, neglect and other incidents, occurrences, events, and situations must be reported, investigated, reviewed, and monitored in accordance with the provisions of Article 11 of New York Social Services Law and OPWDD regulations at 14 NYCRR Parts 624 and 625.

Reports of abuse and neglect in State Sponsored and Agency Sponsored Family Care Homes may be investigated by the NYS Justice Center or the Justice Center may delegate responsibility for the investigation to the DDSOO or the Sponsoring Agency. Reports of abuse or neglect in State Sponsored Family Care may be investigated by the OPWDD Office of Investigations and Internal Affairs if the Justice Center does not assume responsibility for the investigation.

In all abuse and neglect cases, an incident is not considered closed until the Justice Center provides the DDSOO or Sponsoring Agency written notice that it approves the investigation, or if the Justice Center is conducting the investigation, notice they have completed their investigation.

Upon the preliminary report of health or safety issues impacting an individual receiving services or any time thereafter, the Director of the applicable DDSOO, as designee of the Commissioner, may decide that action should be taken on an emergency basis to suspend or, on a non-emergency basis, to temporarily or permanently limit, suspend, and/or revoke the Family Care Home operating certificate for State Sponsored and Agency Sponsored Family Care Providers.

Temporary Emergency Suspension

The DDSOO Director, as designee of the Commissioner, may suspend both State and Agency Sponsored Family Care Home operating certificates on an emergency basis for up to sixty days if there is reasonable cause to believe that the health or safety of an individual receiving services in that home is in imminent danger. The DDSOO Director may decide to suspend an operating certificate based upon, but not limited to, the following:

- statements about alleged incidents of Family Care Provider's neglect or abuse of the individuals made by the individuals, other providers of services or medical treatment, others living in the home, neighbors, family and friends of the individuals, and Family Care Home Liaisons or Coordinators
- photographs
- police reports
- medical records
- financial records
- reports to Adult Protective Services and to the Justice Center
- any other evidence pertaining to the physical safety of the premises or the suitability of the Family Care Provider to continue to operate the Family Care Home

The information may pertain not only to the triggering event but also its impact on the health and safety of the individuals in the home, as well as the overall performance of the Family Care Provider.

Prior to issuing a Notice of Emergency Temporary Suspension, the designated staff from the DDSOO must contact the attorney in the Office of Counsel Bureau of Service Delivery Provider Compliance and Fair Hearing to discuss the basis for the proposed temporary suspension.

However, the DDSOO Director, in consultation with key staff, should use professional judgment and remove the individual(s) from the Family Care Home to prevent imminent danger to the health or safety of the individual(s) if time does not permit contact with the Office of Counsel. In such cases, the designated DDSOO staff must provide immediate notice to the Office of Counsel of the removal of the individuals from the Family Care Home so that Notice of an Emergency Temporary Suspension of the operating certificate may be issued as soon thereafter as possible.

Upon a determination that there is reasonable cause to believe that imminent danger to the health or safety of an individual receiving services exists and contact with the Office of Counsel has occurred, the DDSOO must serve upon the Family Care Provider a Notice of Emergency Temporary Suspension of the Family Care Home operating certificate. A template Notice of Emergency Temporary Suspension is attached. The Emergency Temporary Suspension is effective immediately upon service and lasts for up to 60 days. The date of service is the date that:

- (i) the Notice was hand delivered to the Family Care Provider; or
- (ii) the date the Notice was accepted, if sent by certified mail, return receipt requested if the receipt was signed; or
- (iii) the fifth day after mailing the Notice by ordinary mail to the Family Care Provider, in that order.

Upon issuance of the Notice of Emergency Temporary Suspension, the DDSOO may prohibit, limit or suspend placement of individuals in the Family Care Home, and/or limit or suspend payment to the Family Care Provider.

Hearing Process for Emergency Temporary Suspension

The Notice of Emergency Temporary Suspension served on the Family Care Provider includes notice of the right to a hearing. If the Family Care Provider wants a hearing, he or she must send a request in writing to OPWDD's General Counsel and a copy to the Director who issued the Notice of Emergency Temporary Suspension. This must be done within 10 days of the date of service (see above) of the Notice of Temporary Suspension. The Family Care Provider's request for a hearing must include a copy of OPWDD's Notice of Emergency Temporary Suspension.

When a hearing is requested, the Office of Counsel will schedule a hearing. A hearing on the Emergency Temporary Suspension is required to be held within 10 days of the date of the Family Care Provider's hearing request, unless the Family Care Provider requests or agrees to a later date. The Commissioner will issue a decision within approximately 10 days after receipt of the hearing officer's report. The standard of review for such hearings is whether, at the time of the temporary suspension, there was reasonable cause to believe that the health or safety of a person receiving services was in imminent danger. The DDSOO need not prove that the health or safety of the individual(s) was harmed or that the alleged neglect or abuse occurred to prevail on a determination. to suspend an operating certificate.

60-Day Limit to Emergency Temporary Suspension

An Emergency Temporary Suspension is limited to 60 days and the law permits no extension. Within 60 days of service of the Notice of Emergency Temporary Suspension, the DDSOO Director must serve the Family Care Provider either (a) a Notice of Reinstatement, (b) a Notice of Intent to Revoke, or (c) a Notice of Suspension, each of which are described below. Service of a Notice of Emergency Temporary Suspension and a Notice of Intent to Revoke, Suspend, Limit or Fine each entitle the Family Care Provider to hearings which are described in more detail below.

The Office of Counsel may be contacted for assistance if the Justice Center has not completed its investigation within 30 days of the temporary suspension. Where there are matters that will not be resolved within 60 days, such as an indictment of a Family Care Provider for a criminal offense, the 60-day limit still applies. The DDSOO must determine from the overall circumstances whether to reinstate or revoke the operating certificate in consultation with the Office of Counsel.

Notice of Reinstatement after Emergency Temporary Suspension

A DDSOO Director may decide to reinstate a Family Care Home operating certificate if the information gathered during an investigation or other follow up, overall, does not support the existence of imminent risk of harm to health or safety, and/or does not indicate any other basis for revocation. In this event, the DDSOO Director should sign a Notice of Reinstatement and have it served on the Family Care Provider by hand delivery or by mailing it by certified mail, return receipt requested and by regular mail to the Family Care Provider within 60 days of the date of service of the Notice of Emergency Temporary Suspension. A template Notice of Reinstatement is attached.

A determination to reinstate an operating certificate does not preclude future revocation based on the outcome of any unresolved or new matters. The reinstatement of a Family Care operating certificate does not necessarily require any individuals removed from the home to be returned to the home nor that other individuals be placed in the home. This is an individualized determination to be made in accordance with each individual's desires and needs and in consultation with the Office of Counsel.

Notice of Revocation After Emergency Temporary Suspension

A DDSOO Director may decide to permanently revoke a Family Care Home operating certificate during the 60-day period of the emergency temporary suspension. The DDSOO Director must decide within 60 days of an emergency temporary suspension whether to revoke the Family Care Home operating certificate. The DDSOO must consider the findings of the investigation and any other follow up pertaining to the incident(s) or condition that gave rise to the emergency temporary suspension, as well as the overall performance of the Family Care Provider which might provide a separate basis for revocation. If a Family Care Provider is alleged to have caused harm or to have failed to prevent harm to an individual in the home, the Director should consider whether the alleged actions or inactions are likely to occur again. Also, staff should review the Family Care Provider's records to determine whether he or she is complying with the terms of the operating certificate, applicable law or regulations, including matters such as the safety of the home and property, compliance with fire safety, the presence of people living in the home who are not known to the DDSOO, the use of respite providers who have not been approved and the adequacy of the Family Care Provider's financial resources.

Upon a determination to revoke the operating certificate, the DDSOO Director must sign a Notice of Intent to Revoke and either have it served on the Family Care Provider by hand delivery or have it sent by certified mail, return receipt requested, and by regular mail to the Family Care Provider within 60 days of the date of service of the Notice of Emergency Temporary Suspension. A template Notice of Intent to Revoke is attached. This revocation is final unless the Family Care Provider sends a request for a hearing in writing to the General Counsel with a copy to the DDSOO Director, within 30 days of service of the Notice of Intent to Revoke. The request must include a copy of OPWDD's Notice of Intent to Revoke, a declaration of the issues alleged to be involved, and documentation of the Family Care Provider's position as to each identified issue.

When the Director serves the Notice of Intent to Revoke within 60 days of the date of the temporary suspension of the operating certificate, the temporary suspension continues until the certificate is revoked. If the Family Care Provider decides to appeal the decision to revoke, the temporary suspension continues until the conclusion of the hearing process.

If the Family Care Provider does not request an appeal within the 30 days, the DDSOO Director must sign a Notice of Revocation and have it hand-delivered to the Family Care Provider or have it sent by certified mail, return receipt requested and by regular mail. A template Notice of Revocation is attached.

Revocation Without an Emergency Temporary Suspension

With or without an Emergency Suspension, the DDSOO Director, as the Commissioner's Designee, may permanently revoke a Family Care Home operating certificate based on the Family Care Provider's failure to comply with the terms of the operating certificate or any applicable law or regulation. When there has been no emergency temporary suspension of the Family Care Home operating certificate, revocation is initiated when the DDSOO Director issues a written Notice of Intent to Revoke the operating certificate to the Family Care Provider. The Notice of Intent to Revoke must be served upon the Family Care Provider and service is considered effective on the date that:

- (i) the Notice was hand delivered to the Family Care Provider; or
- (ii) the date the Notice was accepted, if sent by certified mail, return receipt requested, if the receipt was signed; or
- (iii) the fifth day after mailing the Notice by ordinary mail to the Family Care Provider, in that order.

This revocation is final unless the Family Care Provider sends a request for a hearing in writing to the General Counsel with a copy to the DDSOO Director, within 30 days of service of the Notice of Intent to Revoke. The request must include a copy of OPWDD's Notice of Intent to Revoke, a declaration of the issues alleged to be involved, and documentation of the Family Care Provider position as to each identified issue.

If the Family Care Provider does not request an appeal within the 30 days, the DDSOO Director must sign a Notice of Revocation and have it hand-delivered to the Family Care Provider or have it sent by certified mail, return receipt requested and by regular mail.

Hearing Process for Revocation

Following the issuance of a Notice of Intent to Revoke, revocation of the operating certificate becomes final unless the Family Care Provider sends a request for a hearing to the General Counsel and the DDSOO Director within 30 days of service of the Notice. The Family Care Provider's request for a hearing must be in writing and must include a copy of OPWDD's Notice of Intent to Revoke. The Family Care Provider's request also must include a declaration of the issues alleged to be involved and documentation of the Family Care Provider's position as to each identified issue. If the Family Care Provider makes a valid request for a hearing, revocation of the operating certificate will not be final until after a hearing and the hearing officer's determination.

When a Family Care Provider appeals a revocation notice, a Notice of Hearing and Statement of Issues is drafted by Counsel's Office and is served on the parties at least 10 days prior to any scheduled hearing date.

At the hearing, OPWDD must present evidence that the provider failed to operate the family care home in compliance with the terms of the operating certificate or any relevant laws or regulations.

If a revocation becomes final, the Director must sign a Notice of Revocation and have it hand-delivered to the Family Care Provider or have it sent by certified mail, return receipt requested and by regular mail. The notice includes a request for the Family Care Provider to return the operating certificate to the DDSOO Family Care Coordinator.

Notice of Suspension

A DDSOO Director may decide to suspend a Family Care Home operating certificate in accordance with Mental Hygiene Law 16.17(a) upon a determination that the holder of the certificate has failed to comply with the terms of its operating certificate or with applicable statute, rule or regulation. This is distinguished from an emergency temporary suspension described above. Typically, a suspension under MHL 16.17(a) is for correctable physical plant or program deficiencies. For example, the Family Care Provider may need retraining or may need to make repairs to the premises. The DDSOO Director must sign a Notice of Intent to Suspend and either have it served on the Family Care Provider by hand delivery or have it sent by certified mail, return receipt requested, and by regular mail to the Family Care Provider. Note that a suspension pursuant to MHL 16.17(a) cannot be used to extend an emergency temporary suspension. There must be a separate basis for the suspension, such as those noted above. The Notice of Intent to Suspend includes notice of the right to a hearing if requested within 30 days of its service. A template Notice of Intent to Suspend is attached.

This decision to suspend is final unless the Family Care Provider sends a request for a hearing in writing to the General Counsel with a copy to the DDSOO Director, within 30 days of service of the Notice of Intent to Suspend. The request must include a copy of OPWDD's Notice of Intent to Suspend, a declaration of the issues alleged to be involved, and documentation of the Family Care Provider's position as to each identified issue.

If the Family Care Provider does not request an appeal within the 30 days, the DDSOO Director must sign a Notice of Suspension and have it hand-delivered to the Family Care Provider or have it sent by certified mail, return receipt requested and by regular mail.

Hearing Process for Suspensions

Following the issuance of a Notice of Intent to Suspend, suspension of the operating certificate is implemented unless the Family Care Provider sends a request for a hearing to the General Counsel and the DDSOO Director within 30 days of service of the Notice. The Family Care Provider's request for a hearing must be in writing and must include a copy of OPWDD's Notice of Intent to Suspend. The Family Care Provider's request also must include a declaration of the issues alleged to be involved and documentation of the Family Care Provider's position as to each identified issue. If the Family Care Provider makes a valid request for a hearing, suspension of the operating certificate will not be implemented until after a hearing and the hearing officer's determination.

When a Family Care Provider appeals a suspension notice, a Notice of Hearing and Statement of Issues is drafted by the Office of Counsel and is served on the parties at least 10 days prior to any scheduled hearing date.

At the hearing, OPWDD must present evidence that the provider failed to operate the family care home in compliance with the terms of the operating certificate or any relevant laws or regulations.

If a suspension becomes final, the Director must sign a Notice of Suspension and have it hand-delivered to the Family Care Provider or have it sent by certified mail, return receipt requested and by regular mail.

Notice of Reinstatement or Revocation after Suspension

If the circumstances that led to the suspension are resolved, the DDSOO Director may issue a Notice of Reinstatement to the Family Care Provider. If the issues are unable to be remedied and there is reason to pursue a revocation, the Director in consultation with the Office of Counsel may, decide to permanently revoke the operating certificate and issue a Notice of Intent to Revoke. These notices are issued as previously described in this memorandum and the Family Care Provider may appeal the Notice of Intent to Revoke as described above.

Limitations on the Operating Certificate

There may be circumstances when the DDSOO Director may decide to limit a Family Care Home operating certificate (such as permitting only one individual to reside in the home) rather than revoke it. The DDSOO Director may also decide to fine a Family Care Provider up to \$1000. Such decisions must be discussed with the Office of Counsel prior to issuing a notice of the limitation or fine. A Family Care Provider may appeal and request a hearing in response to these notices.

Notification and Correspondence

OPWDD Office of Counsel must be consulted regarding any actions against a Family Care Provider's operating certificate. A copy of any formal notification letter described in this memorandum that is sent to a Family Care Provider must be forwarded to the Office of Counsel, Bureau of Service Delivery, Provider Compliance and Fair Hearings.

It is the responsibility of the Sponsoring Agency to inform the designated DDSOO Family Care contact if there are incidents or unsafe conditions in a Family Care Home that may warrant action against the operating certificate as described in this memorandum. The Sponsoring Agency must provide the DDSOO all requested information necessary to make determinations about whether suspension, revocation, or other actions are needed. The DDSOO must ensure the Sponsoring Agency is notified of and copied on any correspondence related to Suspension, Revocation, Limits, Fine or Reinstatement decisions.

Any notice described in this memorandum must also be forwarded by the DDSOO to the OPWDD Division of Quality Improvement within one working day following the date of service by the DDSOO. The OPWDD Division of Quality Improvement will issue an operating certificate letter to the Family Care Provider and to the Sponsoring Agency to reflect any change to the operating certificate arising from a notice issued in accordance with this memorandum.