

Suspension & Revocation Actions on Family Care Operating Certificates

Section 7.9

The processes below are described in Mental Hygiene Law (MHL) section 16.17 and applicable regulations of the Commissioner, found at Title 14 New York Codes, Rules, and Regulations (NY-CRR) sections 687.5, 602.2, 602.5 and the Administrative Directive Memorandum on Temporary Suspension and Revocation Actions on Family Care Operating Certificates (ADM #2018 –04). The processes in this section apply to both State Sponsored and Agency Sponsored Family Care.

The Commissioner of the Office for People With Developmental Disabilities (OPWDD) or his/her Designee may:

- For State Sponsored and Agency Sponsored Family Care, suspend a Family Care Home (FCH) operating certificate on an emergency basis without notice and an opportunity to be heard, if there is reason to believe that the health and/or safety of an individual receiving services is in imminent danger.

The Family Care Provider (FCP) may subsequently appeal this action.

- For State Sponsored and Agency Sponsored Family Care, revoke an operating certificate or suspend it and/or impose a limitation or fine of up to \$1000, upon a determination that the FCP has failed to comply with the terms of the operating certificate or with any applicable law or regulation governing FCHs.

OPWDD must give the FCP notice of the intent to take such action which includes the opportunity to request a hearing to appeal the determination.

Quality Assurance of Family Care Homes

Each Developmental Disabilities State Operations Office (DDSOO) has designated staff who investigate allegations of neglect and abuse of individuals receiving services in State Sponsored FCHs and Safety and Security Officers who ensure the home is safe. In the event of an allegation of abuse/neglect or unsafe conditions in a State Sponsored FCH, the designated DDSOO staff and/or the Safety and Security Officer conduct an initial review to assess the health and safety of all individuals receiving services in the home.

In the event of an allegation of abuse/neglect or unsafe conditions in Agency Sponsored Family Care (ASFC) homes, the Sponsoring Agency conducts the initial review to assess the health and safety of all individuals receiving services in the Family Care Home. 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 FCH that may warrant action against the operating certificate as described in this section. 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 FCHs 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 affecting individuals 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 FCH operating certificate for State Sponsored and Agency Sponsored FCP.

Temporary Emergency Suspension of Operating Certificate

Upon a determination that there is reasonable cause to believe that the health and safety of an individual receiving Family Care services is in imminent danger, the DDSOO Director may suspend a FCH operating certificate on an emergency basis for up to 60 days.

1. Prior to issuing a Notice of Emergency Temporary Suspension, the designated DDSOO staff must contact the attorney in Counsel's Office, Bureau of Service Delivery, Provider Compliance and Fair Hearing to discuss the reason for the proposed temporary suspension.
2. If time does not permit contact with Counsel's Office, the DDSOO Director in consultation with key staff, should use professional judgment and if needed remove the individual(s) from the FCH and suspend the operating certificate to prevent imminent danger to the health or safety of the individual(s). In such cases, the designated DDSOO staff must provide notice to Counsel's Office of the temporary suspension as soon thereafter as possible.
3. DDSOO serves the FCP with a Notice of Emergency Temporary Suspension of the FCH operating certificate, by hand delivery or by certified mail (return



Office for People With Developmental Disabilities

receipt requested), and by regular mail. The DDSOO must ensure the Sponsoring Agency is aware of and copied on the Notice.

4. The Emergency Temporary Suspension is effective immediately upon service and lasts up to 60 days. The date of service is the date that the Notice was hand delivered to the FCP; or the date the Notice was accepted, if sent by certified mail, return receipt requested and return receipt is signed; or the fifth day after mailing the Notice by ordinary mail to the FCP.
5. Upon issuance of the Notice of Emergency Temporary Suspension, the DDSOO may act to prohibit, limit or suspend placement of individuals in the FCH, and/or limit/suspend payment to the FCP.
6. An emergency temporary suspension is limited to 60 days and the law permits no extension.
7. Copies of any formal notifications that are sent to a FCP must also be forwarded to OPWDD's Office of Counsel, Bureau of Service Delivery, Provider Compliance and Fair Hearings.
8. A copy of the Notice must be sent to the Division of Quality Improvement within one business day by emailing:
opwdd.sm.family.care.review@opwdd.ny.gov

Hearing Process for Emergency Temporary Suspension

The Notice of Emergency Temporary Suspension served on the FCP includes notice of the right to a hearing.

If the FCP wants a hearing, the Provider must:

- Send a request for a hearing in writing to OPWDD's General Counsel and a copy to the DDSOO Director who issued the Notice of Emergency Temporary Suspension.
- This must be done within 10 days of the date of service of the Notice of Temporary Suspension.
- Request for a hearing must include a copy of OPWDD's Notice of Emergency Temporary Suspension.

When a hearing is requested, Counsel's Office will schedule a hearing within 10 days of the date of service of the FCP's hearing request, unless the FCP requests or agrees to a later date.

The Commissioner will issue a decision within approximately 10 days of receipt of the hearing officer's report. The standard of review for such hearings is whether, at the time 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 does not need to prove that the health or safety of the service recipient(s) was in jeopardy or that



the alleged neglect or abuse occurred to prevail on a determination to temporarily suspend an operating certificate.

Notice of Reinstatement or Notice of Intent to Revoke

Within 60 days of the Notice of Emergency Temporary Suspension being served, the DDSOO Director must serve the FCP either a Notice of Reinstatement, which will reinstate the operating certificate or a Notice of Intent to Revoke. Where there are matters that will not be resolved within 60 days, the DDSOO Director must determine in consultation with Counsel's Office, from the overall circumstances whether to reinstate or revoke the operating certificate.

Notice of Reinstatement, which will reinstate the operating certificate:

1. Decisions to reinstate a FCH operating certificate may occur if the information gathered during an investigation does not support the existence of imminent risk of harm to health or safety, and/or does not indicate any other reason for revocation.
2. Notice of Reinstatement may be served in the same way as the Emergency Temporary Suspension. The DDSOO must ensure the Sponsoring Agency is aware of and copied on the notice.
3. A determination to reinstate an operating certificate does not preclude future revocation based upon the outcome of any unresolved or new matters.
4. Copies of any formal notifications that are sent to a FCP must also be forwarded to the Office of Counsel Bureau of Service Delivery Provider Compliance and Fair Hearings.
5. A copy of the Notice must be sent to the Division of Quality Improvement within one business day by emailing: opwdd.sm.family.care.review@opwdd.ny.gov

Notice of Intent to Revoke: With or without an Emergency Temporary Suspension, the Commissioner or her/his Designee may permanently revoke a FCH operating certificate based upon the FCP's failure to comply with the terms of the operating certificate or any applicable law or regulation.

1. Notice of Intent to Revoke may be served in the same way as the Emergency Temporary Suspension. The DDSOO must ensure the Sponsoring Agency is aware of and copied on the notice.
2. If the Notice of Intent to Revoke is served within 60 days of the date of service of a Notice of Emergency Temporary Suspension the temporary suspension continues until the operating certificate is revoked.



Office for People With Developmental Disabilities

3. The revocation is final unless the FCP sends a request for a hearing in writing to the Commissioner within 30 days of the 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 FCP's position as to each identified issue.
4. If the Family Care Provider does not request an appeal within the 30 days as outlined above, the DDSOO Director should 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.
5. Copies of any formal notifications that are sent to a FCP must also be forwarded to the Office of Counsel Bureau of Service Delivery Provider Compliance and Fair Hearings.
6. A copy of the Notice must be sent to the Division of Quality Improvement within one business day by emailing: opwdd.sm.family.care.review@opwdd.ny.gov

Hearing Process for Revocation

The Notice of Intent to Revoke served on the FCP includes notice of the right to a hearing. If the FCP wants a hearing, the Provider must:

- Send a written request for a hearing to the Commissioner within 30 days of the service of the notice
- 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 FCP's position as to each identified issue.

If the FCP makes a valid request for a hearing, revocation of the operating certificate will not be final until after a hearing and the Commissioner's determination.

When a FCP 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 FCP failed to operate the FCH in compliance with the terms of the operating certificate or any relevant laws/regulations.

Notice of Suspension

A DDSOO Director, acting as the Commissioner's designee, may decide to suspend a FCH operating certificate in accordance with Mental Hygiene Law 16.17(a) upon 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 discussed above. Typically, a suspension under MHL 16.17(a) is for correctable physical plant or program deficiencies. For example, the FCP may need retraining or may need to make repairs to the home or premises. The DDSOO Director must sign a Notice of Intent to Suspend and either have it served on the FCP by hand delivery or have it sent by certified mail, return receipt requested, and by regular mail to the FCP. 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 correctable circumstances noted above. If the FCP does not request an appeal within the 30 days as outlined above, the DDSOO Director should sign a Notice of Suspension and have it hand-delivered to the FCP 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 FCP. 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 section and the FCP may appeal the Notice of Intent to Revoke as described above.

Hearing Process for Suspensions

Following the issuance of a Notice of Intent to Suspend, suspension of the operating certificate is implemented unless the FCP sends a request for a hearing to the General Counsel and the DDSOO Director within 30 days of service of the Notice. The FCP request for a hearing must be in writing and must include a copy of OPWDD's Notice of Intent to Suspend. The FCP request also must include a declaration of the issues alleged to be involved and documentation of the FCP position as to each identified issue. If the FCP 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 FCP appeals a suspension 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 suspension becomes final, the Director must sign a Notice of Suspension and have it hand-delivered to the FCP or have it sent by certified mail, return receipt requested and by regular mail.



Limitations or Fine

There may be circumstances when the DDSOO Director may decide to limit a FCH 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 FCP up to \$1000. Such decisions should be discussed with the Office of Counsel prior to issuing a notice of a limitation or fine. A FCP may appeal and request a hearing in response to these notices.