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To: licensinglistserv@virginiainteractive.org
Subject: 2010 Legislation

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June 25, 2010

TO: Licensed Child Day Care Centers, Licensed Family Day Homes, Licensed Family Day System, Licensed Children's Residential Facilities, Licensed Child Placing Agencies

FROM: Lynne Williams, Director, Division of Licensing Programs

SUBJECT: 2010 Legislation

The Virginia Department of Social Services has developed the following information regarding legislation passed in the 2010 General Assembly session that affects children's facilities licensed by the Virginia Department of Social Services. Also, we have attached the relevant bill. If you have any questions, please contact your licensing inspector. Thank you.

SCROLL DOWN TO VIEW INFORMATION ON 2010 LEGISLATION

Senate Bill 339 was passed in the 2010 General Assembly session and becomes effective July 1, 2010. The bill results in changes to §§ 63.2-1706 and 63.2-1728 of the Code of Virginia. Although the focus of the bill is on assisted living facilities, almost all of the facilities licensed by the Division of Licensing Programs (Division) will be affected in one way or another. A summary of the portions of the legislation that will affect children's facilities and the Division's implementation procedures follows. A copy of the bill is attached.

§ 63.2-1706 A Interviews

The bill specifies that the representative of the Virginia Department of Social Services (Department) must obtain the permission of a resident or participant or his legally authorized representative prior to interviewing the resident or participant.

Implementation: When the licensing inspector wishes to interview a child in any children's facility, the inspector will ask the child for permission to interview. If oral permission is given, the inspector may proceed with the interview. If the child refuses to be interviewed, an interview will not take place.

When the inspector wishes to conduct a private interview with a child in any facility except a children's residential facility or a child in a home approved by a licensed child-placing agency, the inspector will follow this guidance from the Division's Standard Operating Procedure 301-4.1, section 2:

The licensing representative does not need to obtain parental permission to conduct a private interview with a child, as long as the interview is conducted jointly with a child protective services worker. If, however, a child protective services worker is not involved, the interview can still occur. The licensing representative shall under such circumstances attempt to obtain parental permission, preferably by phone, before interviewing the child in private. If it is a situation of high risk and the licensing representative has attempted unsuccessfully to contact the parents, he or she may still conduct the interview. The licensing representative shall document on the supplemental page in DOLPHIN any activities related to obtaining parental permission to interview a child.

When the licensing inspector wishes to conduct a private interview with a child in a children's residential facility or a child in a home approved by a licensed child-placing agency, the interview may take place with the child's oral permission.

In addition, the bill requires that the interview be limited to discussion of issues related to the facility's compliance with laws and regulations.

Implementation: The licensing inspector will restrict questions during the interview to those regarding the facility's compliance with laws and regulations. The inspector may, however, discuss anything that the child has initiated discussion on and wishes to discuss.

The requirements noted above apply whether a facility is licensed or is an applicant for licensure.

§63.2-1728 Incident Reports

The legislation specifies that an incident report filed by an assisted living facility as required in the regulations is not to be considered a complaint. However, the Department may investigate facility-reported incidents and may implement a plan of correction. Although the legislation only addresses assisted living facilities, the policy of the Division is that facility-reported incidents for all licensed child and adult facilities will not be considered complaints.

Implementation: When a licensee, the facility administrator/director, or his designee reports an incident involving the facility (facility-reported incident), the report will not be considered a complaint by the inspector and will not be posted on the website as a complaint. Although a facility-reported incident is not considered a complaint, the inspector may initiate an investigation depending upon the seriousness of the incident and the nature of any response to the incident. Based on the investigation, there may be a plan of correction.

Enactment Clause - Criteria for Licensure Periods

The legislation includes an enactment clause that mandates that the Department develop specific criteria for the issuance of one, two and three year assisted living facility licenses by November 1, 2010. The bill specifies that this be done in consultation with key stakeholder groups. Data is currently being collected.

Although the legislation only addresses developing criteria for assisted living facilities' licenses, the Division will be developing specific criteria for the issuance of one, two and three year licenses for all facilities (except child day centers).

SCROLL DOWN TO VIEW ATTACHMENT

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 603

An Act to amend and reenact §§ 63.2-1706 and 63.2-1728 of the Code of Virginia, relating to licensure of a facility; interview with residents or participants.

[S 339]

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1706 and 63.2-1728 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1706. Inspections and interviews.

A. Applicants for licensure and licensees shall at all times afford the Commissioner reasonable opportunity to inspect all of their facilities, books and records, and to interview their agents and employees and any person living or participating in such facilities, or under their custody, control, direction or supervision. *Interviews conducted pursuant to this section with persons living or participating in a facility operated by or under the custody, control, direction, or supervision of an applicant for licensure or a licensee shall be (i) authorized by the person to be interviewed or his legally authorized representative and (ii) limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations, including ascertaining if assessments and reassessments of residents' cognitive and physical needs are performed as required under regulations of the Board.*

B. For any ~~assisted living facility~~ or adult day care center issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any ~~assisted living facility~~ or adult day care center issued a license or renewal thereof for a period of one year, the Commissioner shall make at least three inspections each year, at least two of which shall be unannounced. For any ~~assisted living facility~~ or adult day care center issued a license or a renewal thereof for a period of two years, the Commissioner shall make at least two inspections each year, at least one of which shall be unannounced. For any ~~assisted living facility~~ or adult day care center issued a three-year license, the Commissioner shall make at least one inspection each year, which shall be unannounced.

For any assisted living facility issued a license or renewal thereof for a period of six months, the Commissioner shall make at least two inspections during the six-month period, one of which shall be unannounced. For any assisted living facility issued a license or renewal thereof for a period of one, two, or three years, the Commissioner shall make at least one inspection each year, which shall be unannounced, and as needed based on compliance with applicable laws and regulations.

C. All licensed child welfare agencies shall be inspected not less than twice annually, and one of those inspections shall be unannounced.

D. The activities, services and facilities of each applicant for renewal of his license as an assisted living facility, adult day care center or child welfare agency shall be subject to an inspection or examination by the Commissioner to determine if he is in compliance with current regulations of the Board or Child Day-Care Council, whichever is applicable.

E. For any licensed assisted living facility, adult day care center or child welfare agency, the Commissioner may authorize such other announced or unannounced inspections as the Commissioner considers appropriate.

§ 63.2-1728. Establishment of toll-free telephone line for complaints; investigation on receipt of complaints.

With such funds as are appropriated for this purpose, the Commissioner shall establish a toll-free telephone line to respond to complaints regarding operations of assisted living facilities, adult day care centers and child welfare agencies. Upon receipt of a complaint concerning the operation of an assisted living facility, adult day care center or child welfare agency, regardless of whether the program is subject to licensure, the Commissioner shall, for good cause shown, cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, records and facilities. The assisted living facility, adult day care center or child welfare agency shall afford the Commissioner reasonable opportunity to inspect all of the operator's activities, services, records and facilities and to interview its agents and employees and any child or other person within its custody or control. Whenever an assisted living facility, adult day care center or child welfare agency subject to inspection under this section is determined by the Commissioner to be in noncompliance with the provisions of this subtitle or with regulations adopted pursuant to this subtitle, the Commissioner shall give reasonable notice to the assisted living facility, adult day care center or child welfare agency of the nature of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to enjoin the operation of the assisted living facility, adult day care center or child welfare agency.

An incident report filed by an assisted living facility, pursuant to regulations adopted by the Board, for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of the facility shall not be considered a complaint for purposes of this section and shall not be posted by the Department on a website maintained by the Department. However, upon receipt of an incident report for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of an assisted living facility, the Commissioner may initiate an investigation including an on-site visit to the facility if the Commissioner finds, for good cause shown based upon the seriousness of the incident and the nature of any response to the incident, including any implementation of a plan of correction to address the situation giving rise to the incident, that an investigation is required to protect the life, health, safety, or welfare of a resident of the assisted living facility.

2. That by November 1, 2010, the Department of Social Services shall, in consultation with key stakeholder groups, develop specific criteria by which the Department issues one-, two-, and three-year assisted living facility licenses. Such criteria shall be separately stated for each licensure period and shall be unambiguously communicated to all entities seeking initial and renewal licenses.