

## NEGATIVE ACTIONS

### I. TYPES:

- A. DENIAL
- B. CONDITIONAL
- C. FINE
- D. INDEFINITE SUSPENSION
- E. REVOCATION
- F. TEMPORARY IMMEDIATE SUSPENSION

Negative actions are taken by the Commissioner of DHS based upon a recommendation from the county or private agency. The negative action does not go into effect until the provider is notified by the Commissioner.

### II. CRITERIA USED TO DETERMINE NEGATIVE ACTIONS:

- A. Consider the nature, severity, and chronicity of the violations.
- B. Does the issue involve a disqualification factor that is not or cannot be set aside or granted a variance?
- C. Does the issue involve the license holder, a member of the household, or an individual required to have a background study?
- D. In general, the agency should recommend the least restrictive sanction necessary to bring the license holder into compliance so that the health and safety of persons served is protected.

### III. VIOLATIONS THAT ARE GROUNDS FOR RECOMMENDING A NEGATIVE ACTION (you are not limited to the violations listed; possible type of negative actions to consider are in parentheses):

- A. A background study disqualification that has not been set aside or a variance has not been granted (Denial or Revocation)
- B. A licensing rule disqualification that has not been granted a variance by the county or private licensing agency (Denial, Suspension, or Revocation)
- C. The license holder has knowingly made a false statement on the application or withheld relevant information on application or during investigation (Denial or Revocation)
- D. The license holder fails or refuses to allow the commissioner access to the physical plant, grounds, documents, staff persons, or persons served by the program during normal program hours (Revocation, Suspension, TIS)
- E. Ongoing or recurring failure to comply with the standards in the rule governing the program (Fine, Conditional, Revocation, Suspension)
- F. Chronic and severe licensing rule violations, i.e. failure to operate within capacity limits, failure to comply with crib safety requirements, behavior guidance, etc. (Conditional, Revocation)
- G. The license holder fails to comply with the terms established by a previous negative action (Conditional, Revocation, Suspension)
- H. There has been a maltreatment determination (Fine for simple maltreatment, Revocation for serious or recurring maltreatment with no set aside or variance)

#### **IV. NEGATIVE ACTIONS:**

##### **A. DENIAL**

- Use with new applicants
- Must be recommended when the applicant, household member, or other individual requiring a background study (BGS) has a disqualification which has not been set aside
- Also may be appropriate when an applicant has failed to meet minimum licensing requirements. The licensing agency should contact a Family Systems licensor to discuss
- An applicant may appeal the denial. The request for an appeal must be postmarked and sent to the Commissioner by certified mail, personal service, or fax within twenty calendar days
- If a license application is denied, the applicant must not be granted a license for two years following the denial, unless the applicant's subsequent application contains new information which constitutes a substantial change in the conditions that caused the previous denial. In that case, the licensing agency should contact a Family Systems licensor to discuss

##### **B. CONDITIONAL**

- Least restrictive licensing action
- The continued operation of the program is in the best interests of persons served by the program and it would not pose a risk of harm to persons served by the program
- The licensing agency submits a plan for monitoring the program to ensure the safety of persons served by the program
- For CFC programs, having a license under conditional status can affect the county receiving federal IV-E funding. Before recommending a conditional for CFC, determine whether this is a factor
- The license holder may request reconsideration of the conditional status. The request for reconsideration of conditional status must be postmarked and sent to the Commissioner by certified mail, personal service, or fax within ten calendar days
- If the license holder requests reconsideration, the conditional status does not go into effect until the Commissioner makes a disposition
- The Commissioner's disposition of a request for reconsideration is final and not subject to appeal under Chapter 14
- The length of the conditional status is determined on a case by case basis, however it is generally one or two years. For a conditional following a temporary immediate suspension, the length of the conditional must be two years
- Violation of any of the terms of a conditional license may be grounds for further licensing actions
- The licensing agency is responsible for monitoring the provider's compliance with the terms of the conditional license

### C. FINE

- In all programs, fines are consistently issued for the following violations:
  - There has been a determination of maltreatment and the license holder is still able to operate (i.e. the license is not being revoked) - \$1000 fine.
  - Failure to submit a background study as required - \$200 per occurrence
  - Failure to complete initial:
    - Sudden Unexpected Infant Death (SUID) training with infants in care
    - Child Passenger Restraint training and transported children under the age of 9
    - First Aid and CPR training - \$200 per occurrence
  - Chronic failure to comply with correction orders; including training; SUID/Abusive Head Trauma (AHT) training renewal, crib safety inspections - \$200 fine
  - Fines may also be issued for other chronic rule violations that impact the health and safety of children
- In family child care, fines are issued for any substantiated infant sleep violation under Minnesota Statutes, section 245A.1435 (E.g.: items other than pacifier in crib, infant sleeping in location other than crib, infant sleeping in position other than on back without a physician directive, loose sheets or no sheets on mattress of crib where infant slept, etc.) - \$200 fine
- The license holder may appeal the fine. The appeal must be postmarked and sent to the Commissioner by certified mail, personal service, or fax within ten calendar days
- Fines must be paid prior to renewal of a license

### D. INDEFINITE SUSPENSION

- A more restrictive negative licensing action than a conditional license
- There are serious or chronic violations that pose a risk to persons served by the program
- The licensing agency submits conditions that must be met before the program may resume operation
- In the order of indefinite suspension, DHS identifies the conditions that must be met before the indefinite suspension can be lifted
- The license holder may appeal the indefinite suspension. The appeal must be postmarked and sent to the Commissioner by certified mail, personal service, or fax within ten calendar days
- If the license holder appeals the suspension, the suspension does not go into effect until the final order of the Commissioner. The license holder may continue to operate during the appeal period
- If the license holder does not appeal the suspension, the suspension goes into effect when the appeal time frame expires
- The license holder must cease operation during the suspension period

- Once the conditions of the suspension have been completed, the suspension may be lifted if the continued operation of the program is in the best interest of the persons served by the program and would not pose a risk of harm to persons served by the program
- Indefinite suspensions are lifted only by order of the Commissioner based on the county/private agency recommendation

#### **E. REVOCATION**

- The most restrictive licensing action
- There are serious or chronic violations that pose a risk to persons served by the program
- The license holder may appeal the revocation. The request for an appeal must be postmarked and sent to the Commissioner by certified mail, personal service, or fax within ten calendar days
- The license holder may continue to operate during the appeal period
- If the license is revoked, the license holder may not be issued another license for five years unless the revocation was based on the disqualification of a person who no longer resides in the home. In that case, the licensing agency should contact a Family Systems licensor to discuss

#### **F. TEMPORARY IMMEDIATE SUSPENSION (TIS)**

- A temporary sanction to suspend services while the agency conducts an investigation
- Use when the agency has reasonable cause to believe the license holder's actions, failure to comply, the actions of other individuals, or conditions in the program pose an imminent risk of harm to the health, safety, or rights of persons served
- For details on the TIS process, refer to the handout distributed to all counties and private agencies via the August 2011, newsletter (30-60-90), or contact a family systems licensor to request a copy
- The license holder may appeal the temporary immediate suspension. The request for an appeal must be postmarked and sent to the Commissioner by certified mail, personal service, or fax within five calendar days
- The license holder must cease operation even if the action is appealed
- Most appropriate for family child care homes. If persons served by the program are at risk in a foster care home, they should be removed from the home to eliminate risk
- A final sanction must be issued within 90 days of Commissioner's final order on TIS