



**Virginia
Regulatory
Town Hall**

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-121
Regulation Title:	Minimum Standards for Licensed Family Day Systems
Action Title:	Proposed new regulation
Date:	November 26, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

This regulation is considered essential to protect the health, safety, and welfare of children who are separated from their parents during a part of the day by (i) establishing standards to ensure that the activities, services, and facilities of a family day system are conducive to the health, safety, and well-being of children and (ii) by reducing the risk of harm to children in a family day system member home.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

§§ 63.1-25, 63.1-195, 63.1-196, and 63.1-202 of the Code of Virginia provide the legal authority for the State Board of Social Services to promulgate regulations for family day systems. The Code of Virginia mandates the licensure of family day systems by the Commissioner of Social

Services. The State Board of Social Services is mandated to promulgate regulations for the activities, services, and facilities of family day systems to ensure that the activities, services, and facilities are conducive to the welfare of the children in care.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

This regulation will incorporate the repealed Minimum Standards for Licensed Family Day Care Systems (22 VAC 40-120-10 et seq.) and necessary amendments into a proposed regulation entitled Minimum Standards for Licensed Family Day Systems (22 VAC 40-121-10 et seq.). The text will be reorganized and reworded for clarity as has been requested by licensed family day systems and regional licensing staff. Attached is a matrix outlining the issues that will be addressed in the proposed regulation.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The following methods were used to identify less burdensome and less intrusive alternatives for achieving the essential purpose of the regulation:

1. Notice of the 20-day public comment period for the periodic review published in The Virginia Register February 15, 1999;
2. Notice of the 20-day public comment period for the periodic review mailed to licensed family day systems, regional licensing offices, and individuals on the interested parties list for the regulation;
3. Interviews with regional licensing administrators and regional children's programs licensing specialists;
4. Interviews with child care advocates and licensed family day systems' staff;
5. Review of comments received during the 20-day public comment period for the periodic review;
6. Review of written suggestions received from the licensed family day systems;
7. Review of technical assistance questions that have been received on the current standards; and
8. Review of all other Virginia Department of Social Services' licensing standards for children's and adult's programs.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This proposed regulation will strengthen the authority and rights of parents in the education, nurturing, and supervision of their children. The following components of the proposed regulation will enable parents to be better informed when making decisions about child day care: clarifications which make the requirements for licensed family day systems easier to understand, the incorporation of Code requirements that prohibit licensees from using misleading advertising, and the addition of requirements allowing parents access to information on complaints and compliance history on systems' member homes.

The proposed regulation encourages economic self-sufficiency, self-pride, and the assumption of responsibility for one's self, one's spouse, and one's children. Parents will be able to be employed and have the assurance that their children are being cared for by family day systems' member homes that have requirements protecting the health, safety, and welfare of the children.

The proposed regulation has no impact on marital commitment.

Potentially, the regulation could have a positive impact on disposable family income. Parents will have the option of safe care for their children in systems' member homes. Having this option could result in having the parent decide to enter the workforce. The regulation also increases the number of homes in a system home visitor's caseload so a system would have to employ fewer staff members. This could result in a decrease in the fees charged to parents by the system.

REPEALED SECTION	PROPOSED SECTION	CHANGE	JUSTIFICATION
		Regulation will use term “Licensed Family Day Systems” instead of “Licensed Family Day Care Systems”	Change in language in Code of Virginia
PART I INTRODUCTION			
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 Definitions	Added definitions of assistant, caregiver, good character and reputation, parent, provider, and regional licensing office	Clarity and consistency in licensing standards; matches the definitions used in the <u>Minimum Standards for Licensed Family Day Homes</u>
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 Definitions	Changed definition of child	Same as above
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 Definitions	Changed definition of day care to child day program as defined in the Code of Virginia	Same as above
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 Definitions	Changed definition of department’s representative	Same as above
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 Definitions	Changed definition of family day system	Clarity; matches the definition used in the Code of Virginia
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 Definitions	Changed definition of family day system home	Clarity; incorporates changes made to definition of family day home in the Code of Virginia
	22 VAC 40-121-10 Definitions	Added definition of serious injury	Clarity

REPEALED SECTION	PROPOSED SECTION	CHANGE	JUSTIFICATION
22 VAC 40-120-10 A § I. A.	22 VAC 40-121-20 Legal Base	Reworded legal base section to give more specific references to the Code of Virginia	Clarity
None	22 VAC 40-121-30 Purpose and applicability	Added section explaining the purpose and applicability of the regulation	Clarity
22 VAC 40-120-10 C § I. C. The license	None	Eliminated information on licensure procedures	This information is included in the regulation, General Procedures and Information for Licensure (22 VAC 40-80-10 et seq.)
PART II ORGANIZATION AND ADMINISTRATION			
22 VAC 40-120-20 A § II. A.	22 VAC 40-121-40 Licensee	Reworded	Clarity
22 VAC 40-120-20 B § II. B.	None	Eliminated requirements for governing board	Makes regulations more consistent with other regulations for family day care programs
None	22 VAC 40-121-50 General requirements of the licensee	Added section consolidating and further explaining the responsibilities of the licensee	Clarity
22 VAC 40-120-F § II. F.	22 VAC 40-121-60 Family day system setting	Reworded	Clarity

REPEALED SECTION	PROPOSED SECTION	CHANGE	JUSTIFICATION
22 VAC 40-120-20 C 1 § II. C. 1.	22 VAC 40-121-70 Program description	Eliminated requirements for goals and added requirement for program description	Clarity; consistency with other regulations for family day care programs
22 VAC 40-120-20 C 2 and 22 VAC 40-120-60 B §§ II. C. 2. and IV. B.	22 VAC 40-121-80 Policies and procedures for administration of system	Reworded	Clarity
22 VAC 40-120-20 D 1 and 22 VAC 40-120-20 D 2 §§ II. D. 1 and II. D. 2.	22 VAC 40-121-90 System financing plan	Reworded	Clarity and simplification; consistency with other regulations for family day care programs
22 VAC 40-120-20 D 3 § II. D. 3.	22 VAC 40-121-100 Fee and payment schedules	Reworded	Clarity and simplification
22 VAC 40-120-20 G § II. G.	22 VAC 40-121-110 Number of member homes	Reworded	Clarity
None	22 VAC 40-121-120 Misleading advertisement	Added section prohibiting licensee from using deceptive or misleading advertising	Requirement of the Code of Virginia

REPEALED SECTION	PROPOSED SECTION	CHANGE	JUSTIFICATION
None	22 VAC 40-121-130 Public access to records	Added requirements for licensee to make available information on complaints and compliance history of member homes	Public comment received during periodic review of regulation identified problem of lack of public access to information on member homes; Office of Attorney General suggested section be added to regulation
22 VAC 40-120-60 A 4 § IV. A. 4.	22 VAC 40-121-140 Confidentiality	Added more specific information on confidentiality requirements	Clarity and consistency with other regulations for family day care programs
22 VAC 40-120-20 E and 22 VAC 40-120-40 B 7 §§ II. E. and IV. B. 7.	22 VAC 40-121-150 Reporting requirements	Consolidated reporting requirements into one section; added requirements for reporting to the department the serious injury, loss or death of child in care; added requirements for reporting situations that would affect the operation of the system	Clarity and consistency with other regulations for family day care programs
22 VAC 40-120-60 C § IV. C. 1.	22 VAC 40-121-160 System administrative records	Added requirement for system to maintain copies of current, relevant licensing standards; added requirement for system to maintain record of cumulative totals of services provided to member homes and referrals of children to health and social service agencies	Same as above

REPEALED SECTION	PROPOSED SECTION	CHANGE	JUSTIFICATION
22 VAC 40-120-60 C 2 § IV. C. 2.	22 VAC 40-121-170 Records on member homes	Consolidated all requirements for records on member homes into one section; added requirements for maintaining a copy of application for approval, notification to the department of child abuse or neglect reports, corrective action plans, suspension or termination notifications; reworded requirements for caregivers	Clarity and consistency with other regulations for family day care programs
22 VAC 40-120-60 C 3 § IV. C. 3.	22 VAC 40-121-180 System staff records and health requirements	None	
22 VAC 40-120-60 C 4 § IV. C. 4.	22 VAC 40-121-190 Records on children referred for care	Added requirement for maintaining record of any complaint investigation involving the individual child	Same as above
PART III QUALIFICATIONS FOR SYSTEM'S STAFF			
22 VAC 40-120-30 A § III. A.	22 VAC 40-121-200 General staff qualifications	None	

REPEALED SECTION	PROPOSED SECTION	CHANGE	JUSTIFICATION
22 VAC 40-120-30 B and 22 VAC 40-120-30 C 1 §§ III. B. 1 &2. and III. C. 1.	22 VAC 40-121-210 Position descriptions	Eliminated requirements for written personnel policies addressing salary scales, employee benefits, vacations, holidays, suspension and termination of employment, grievance procedures; other personnel policies under section headed <u>Personnel Policies</u> moved to other sections; requirements for size and composition of staff addressed elsewhere	Makes regulation more consistent with other regulations for child welfare programs. Deleted personnel policies overly intrusive. Not required of any other regulated program
22 VAC 40-120-30 C 2 a (2) § III. C. 2. a. (2)	22 VAC 40-121-220 Qualifications of the director	Eliminated master's degree in education from education qualifications and substituted master's degree in human services	Change suggested by family day system during public comment
22 VAC 40-120-30 C 2 a (1) § III. C. 2. a. (1)	22 VAC 40-121-230 Responsibilities of the director	Added requirements for director to ensure assignment of sufficient qualified staff to operate the system (requirement was in repealed regulation, but was not specifically a requirement of the director); added requirement for director to appoint staff member to act in his absence	Clarity and consistency with other regulations for child welfare programs
22 VAC 40-120-30 C 2 b (2)	22 VAC 40-121-240 Qualifications of professional staff	Eliminated bachelor's degree in education from education	Change suggested by family day system during public comment

§ III. C. 2. b. (2)	professional staff	qualifications and substituted bachelor's degree in human services	
22 VAC 40-120-30 C 2 b (1) § III. C. 2. b. (1)	22 VAC 40-121-250 Responsibilities of professional staff	Increased the number of homes in a home visitor's caseload from 25 to 40	Change suggested by family day system during public comment
22 VAC 40-120-30 D § III. D	22 VAC 40-121-260 Volunteers	Reworded	Clarity
22 VAC 40-120-30 D § III. D	22 VAC 40-121-270 Staff orientation	Reworded; added requirement for system staff to have orientation on recognizing and reporting child abuse or neglect	To ensure compliance with the reporting requirements in § 63.1-248.3 of the Code of Virginia and to ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia)
22 VAC 40-120-30 C 3 c&d § III. C. 3. c&d	22 VAC 40-121-280 Staff training	Added requirements for trainers' qualifications and documentation of training received by system staff	Makes regulation more consistent with other regulations for child welfare programs
PART IV SERVICES TO CHILDREN AND FAMILIES			
22 VAC 40-120-50 A § V. A.	22 VAC 40-121-290 Referral to member homes	Reworded	Clarity
22 VAC 40-120-50 A § V. A.	22 VAC 40-121-300 Written agreements	Reworded	Clarity
22 VAC 40-120-50 B § V. B.	22 VAC 40-121-310 Referral to health and social services	Added specific requirements for referral of child with disabilities	Clarity and consistency with other regulations for family day care programs
PART V SERVICES TO MEMBER HOMES			
None	22 VAC 40-121-320	Added section listing all documentation	Clarity and consistency with other regulations

	Information for member home applicants	required to be given to homes applying to be members of a system	for family day care programs
None	22 VAC 40-121-330 Application requirements	Added section listing all documentation required from homes applying to be members of a system	Same as above
22 VAC 40-120-40 B 2 & 3 § IV. B. 2. & 3.	22 VAC 40-121-340 Approval determination	Reworded; changed maximum capacity of home from nine to twelve	Clarity; compliance with requirements of § 63.1-195 of the Code of Virginia
22 VAC 40-120-40 B 3 § IV. B. 3.	22 VAC 40-121-350 Approval notification	Changed requirement for notification to be 30 days after receipt background clearances, TB tests, etc. instead of 30 days after interview of applicant	Receipt of background clearances may take longer than 30 days and home could not be approved until received according to Regulation for Background Clearances for Child Welfare Agencies (22 VAC 40-191-10 et seq.); change suggested by family day system during public comment
22 VAC 40-120-40 B 5 § IV. B. 5.	22 VAC 40-121-360 Annual evaluation	None	
22 VAC 40-120-40 A 2 § IV. A. 2.	22 VAC 40-121-370 Agreements with member homes	Included rights and responsibilities of system to supervise and suspend or terminate approval of member homes	Clarity; compliance with requirements of § 63.1-195 of the Code of Virginia
22 VAC 40-120-40 C 2 § IV. C. 2.	22 VAC 40-121-380 Orientation of providers	Reworded; added requirement for orientation on the applicable sections of the Minimum Standards for Licensed Family Day Homes	Consistency with other regulations for family day care programs; change suggested by family day system during public comment

REPEALED SECTION	PROPOSED SECTION	CHANGE	JUSTIFICATION
22 VAC 40-120-40 C 3 § IV. C. 3.	22 VAC 40-121-390 Training of caregivers	Reworded; increased training requirements for homes with 9-12 children	Consistency with other regulations for family day care programs
None	22 VAC 40-121-400 Qualifications of trainers	Added section listing the qualifications of trainers	Makes regulation more consistent with other regulations for child welfare programs
22 VAC 40-120-40 D § IV. D.	22 VAC 40-121-410 Technical assistance and consultation	Reworded	Clarity; change suggested by family day system during public comment
22 VAC 40-120-40 B § IV. B.6.	22 VAC 40-121-420 Monitoring	None	
22 VAC 40-120-50 C § V. C.	22 VAC 40-121-430 Complaint investigation	Reworded; added requirements for procedures to follow when complaint on member home received by system	Clarity; family day system requested during public comment that language be added to clarify this standard
22 VAC 40-120-50 C § V. C.	22 VAC 40-121-440 Child abuse and neglect	Reworded	Clarity; family day system requested during public comment that language be added to clarify this standard
22 VAC 40-120-60 C 5 § VI. C. 5.	22 VAC 40-121-450 Complaint records	No change	
22 VAC 40-120-40 C 5 § VI. C. 5.	22 VAC 40-121-460 Corrective action plans	Added requirements for developing, monitoring, and documenting corrective action plans to correct violations of standards or system's policies and procedures	Clarity; consistency with other regulations for family day care programs

REPEALED SECTION	PROPOSED SECTION	CHANGE	JUSTIFICATION
22 VAC 40-120-40 B 4 § IV. B. 4.	22 VAC 40-121-470 Suspensions and terminations	Added requirement that approval of member homes be suspended or terminated for failure to correct violations of standards; require member home to be notified of suspension or termination within 5 calendar days (had been within 2 weeks in repealed regulation)	Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia); consistency with other regulations for family day care programs
PART IV REQUIREMENTS FOR MEMBER HOMES			
22 VAC 40-120-40 C § IV. C.	22 VAC 40-121-480 Qualifications of caregivers	Added section summarizing qualifications for caregivers	Clarity
None	22 VAC 40-121-490 Responsibilities of providers	Added section summarizing responsibilities of providers; added requirement for posting compliance evaluation and corrective action plan; added reporting requirements for member homes to report to system situations that would affect the operation of the home or the health, safety, and welfare of children in care	Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia) and ensure parental notification of home’s violation of standards; consistency with other regulations for family day care programs