



## Economic Impact Analysis Virginia Department of Planning and Budget

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**22 VAC 40-186 –Standards for Licensed Child Day Centers**  
**Department of Social Services**  
June 6, 2013

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### Summary of the Proposed Regulation

The State Board of Social Services (Board) proposes to repeal 22 VAC 40-185 (Standards for Licensed Child Day Centers) which now governs the licensure standards for child care day centers that care for “(i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location”. The Board proposes to replace 22 VAC 40-185 with 22 VAC 40-186 (which will have the same chapter title). Many of the requirements that are proposed for the new regulations are currently in the Department of Social Services’ (DSS) [technical assistance document](#) or are clarifying changes which will not lead to a substantive change in practice. For instance, the technical assistance document currently allows child day centers to store records electronically and so will these proposed regulations. In addition to clarifying changes, the Board proposes several new substantive changes to existing requirements. The substantive changes that are proposed include:

1. Allowing directors of school age child day centers to serve as director for up to four centers,
2. Changing who can be left in charge in situations where a director is not physically at the child day center,
3. Allowing more options for the mixes of education and experience that will qualify individuals to be hired as a director or as a lead teacher at a child day center,
4. Increasing the number of annual training hours for directors, director-designees and lead teachers who work more than 20 hours a week from 16 hours to 20 hours,

5. Decreasing the number of annual training hours required for assistant teachers who work fewer than 20 hours a week from 16 hours to 12 hours,
6. Allowing orientation, CPR, first aid, daily health observation training and medication administration training to count for up to half the annual training hours required,
7. Requiring that parents get a written schedule of fees and applicable payment schedules as well as written notice of DSS's website with notice that a copy of these regulations and additional information about the center can be found on the website,
8. Requiring that parents be notified immediately if their child is left unattended in a vehicle or on a playground or if their child wandered away from a center so that their whereabouts were unknown for a time,
9. Allowing the use of electric space heaters in a center so long as they are inaccessible to children, have a seal of approval from a national testing laboratory or the state and are not used within three feet of any combustible materials,
10. Allowing playgrounds to be installed over hard surfaces such as asphalt or concrete if an industry approved surfacing system is used,
11. Requiring that an additional adult (besides the driver) ride along when children two years or younger are being transported and also requiring an additional adult, in addition to the required staff to child ratios, for field trips where one or more of the children are of preschool age or younger,
12. Requiring that infants who fall asleep on the floor be moved to their designated sleeping area,
13. Requiring daily activities that reflect the cultural and ethnic diversity of children in care be provided in child day centers and
14. Prohibiting children under the age of two from watching television or videos and from playing video or computer games.

## **Result of Analysis**

The benefits likely exceed the costs for most proposed regulatory changes. The costs likely exceed the benefits for two regulatory changes. There is insufficient data to ascertain

whether benefits exceed costs for one group of related proposed changes. Detailed analysis of costs and benefits can be found in the next section.

## **Estimated Economic Impact**

Under current regulations, directors of child day centers can work at up to two centers so long as they are physically present at each center for 50% of the center's operating hours and so long as they leave an adult in charge when they are not physically present (this is required of all directors when they are absent from their centers). The Board now proposes to allow directors to work at up to four centers for school age children so long as 1) only school age children attend, 2) the combined total licensed capacity of all centers does not exceed 300 children, 3) each center served is located within 30 minutes' drive-time of each other center and 4) the director each week is physically at each center for a number of hours at least equal to the daily operating hours of the center. The Board also proposes to require that someone with, minimally, lead teacher qualifications serve as director-designee. Board staff reports that there is a shortage of individuals qualified to serve as directors particularly for before and after school programs that are typically only open for a couple of hours in the morning and a few hours in the afternoon. Allowing directors to serve at more centers specifically for school age children will benefit directors, who can more closely approximate a full-time job working at up to four centers, and for before and after school programs, which will find it easier to fill director positions. Directors who work at more than one center will have to appoint a director-designee to oversee the centers when they are not physically there. Although the Board's proposal that the director-designee meet the qualifications of a lead teacher, rather than just an adult, is a stricter standard on its face, Board staff reports that the appointed lead teacher can also work in their assigned classroom. Because of this, child day centers are unlikely to incur any additional costs on account of the regulatory change defining director-designees. For both of these changes, benefits likely outweigh costs.

Current regulations allow four different combinations of experience and education to meet the qualifications for being a director of a child day center. These qualification options range from 1) having a graduate degree in a specialty listed in the regulations plus six months of programmatic experience to 2) having two years of programmatic experience, including one year in a staff supervisory position, plus either a) completion of an early childhood certificate with at least 30 semester hours or b) completion of a child development credential that included

completion of a high school child care program or c) 480 hours working with children in a group and determination of competency in certain areas. The Board now proposes to allow more options for qualifying to be employed as a center director. The board proposes to modify some options to include having a graduate degree or an undergraduate degree in certain specialties plus either three, six or twelve months of programmatic experience, depending on the degree. The Board also proposes to add five additional combinations of education and experience that will allow individuals to qualify to be directors. These proposed changes will benefit both individuals who wish to be daycare directors as well as child day center owners as they will likely allow more individuals to qualify to be hired as directors.

The Board also proposes to expand the combinations of education and experience for individuals to qualify as lead teachers by adding five new combinations to the currently available four. Again these proposed changes will expand the number of individuals that qualify for this job and will benefit both the newly qualifying lead teachers as well as the centers that could then hire them. For all changes that expand qualification options, benefits likely outweigh costs.

Current regulations require all individuals who work at child day centers to complete 16 hours of annual training. Any hours spent in orientation training or for specialized first aid, CPR, daily health observation training or medication administration training may not count toward annual training requirements. The Board now proposes to increase the number of annual training hours for directors, director-designees and lead teachers who work more than 20 hours a week from 16 hours to 20 hours, decrease the number of annual training hours required for assistant teachers who work fewer than 20 hours a week from 16 hours to 12 hours and allow specialized training to count for up to half of the annual training required. Increasing training hours would tend to increase costs for child day centers because those centers would have to pay any costs associated with the extra training plus the wages (at approximately \$7.25 per hour) of each worker undergoing training. Conversely, decreasing training hours and allowing other required specialized training will tend to decrease costs for child day centers. There is insufficient information about the number of workers that would fall into each category to ascertain whether additional costs or savings would have the greater magnitude.

Current regulations require child day centers to give parents written notification of a number of things from the center's written philosophy and administrative organization to written

notification (and permission slips) for field trips or swimming activities. The Board proposes to add requirements for parents to receive a written copy of the center's fee and payment schedules and of DSS's website along with notice that child day center regulations as well as center specific information may be found on that website. The Board also proposes to expand the list of situations that require immediate notification of parents to include instances where their child was left unattended in a vehicle or on a playground or when their child wandered away from a center so that their whereabouts were unknown for a time. For all of these new notification requirements, centers may incur some printing or time costs. These costs are likely outweighed by the benefit to parents of getting important information (or vital information) more quickly.

Current regulations do not allow the use of electric space heaters except in emergencies such as when a central heating unit breaks down. The Board proposes to change this restriction so that electric space heaters may be used whenever they are needed so long as they are placed so that they are inaccessible to children, they have a seal of approval from a national testing lab or the state and they are not placed within three feet of combustible materials. This change will allow centers greater flexibility in how they maintain required ambient temperatures while still requiring that safety be maintained. Benefits will likely outweigh costs for this proposed change.

Current regulations do not allow playground equipment to be installed over hard surfaces like asphalt or concrete but for the last several years DSS's technical assistance document has allowed such installation so long as a resilient surfacing system was used. Since this guidance was not well known, many licensees have been following the regulatory standard that requires asphalt to be broken up and removed and approved protective surfacing to be laid down over the underlying dirt before any outdoor climbing equipment or swings were installed. The Board proposes to include safety standards for resilient surfacing systems that will allow play equipment to be installed without first removing the asphalt or concrete. This regulatory change will benefit child day centers that are housed in strip malls or other commercial spaces where choices of where to put outdoor play equipment are limited to areas that already have asphalt laid. Since this is just an additional choice rather than a mandate, centers are unlikely to choose the new protective surface option unless it is the most efficient option open to them. This being the case, benefits for this proposed regulatory change will likely outweigh costs.

Current regulations include many requirements for staff to child ratios in various situations and for various age groups. Adding to these existing requirements, the Board proposes to newly require that an additional adult (besides the driver) ride along when children two years or younger are being transported and also that an extra adult, in addition to the required staff to child ratios, supervise on field trips where one or more of the children are of preschool age or younger. Board staff reports that the additional required adult in these instances does not have to be in the employ of the center but can be a parent volunteer. Centers may incur additional salary costs if they use employees to cover these additional supervision requirements. If centers are able to recruit parent volunteers for situations where additional supervision would be required, additional costs would be minimized or eliminated.

Current regulations allow centers to let infants who fall asleep in areas other than their assigned cribs to be left to sleep in those areas so long as they are safe. The Board proposes to continue this policy except when infants fall asleep on the floor. To eliminate the chance that sleeping infants might be inadvertently stepped on, the Board proposes to require that infants be moved to their cribs if they fall asleep on the floor. This change may cost daycare workers some additional time, particularly if the infant wakes up during the move and needs to be soothed back to sleep. These costs are likely outweighed by the reduction in danger of harm to the babies involved.

Current regulations require that child day centers provide a variety of age appropriate activities for children in care. The Board proposes to expand what is required for activities by requiring centers to provide activities that are “reflective of the diversity of enrolled children’s families, cultures and ethnic backgrounds”. Adding this requirement may increase costs for centers that might be responsible for buying more toys or planning alternate activities if their toy or activity selection does not currently reflect the ethnic diversity of the children they care for or if they start caring for a different ethnic mix of children. While there is likely some benefit that accrues to children who have, for instance, dolls that look like them to play with, this benefit is likely outweighed by the costs to providers and to parents who might have those costs passed along in the form of higher fees. In any case, parents are likely the best judge of whether their child has a proper play environment at daycare and are able to address any perceived deficiencies by sending some of the child’s own toys with them to daycare without the need for a regulatory mandate.

Current regulations are silent on the topic of television and video game/computer usage. The Board proposes to prohibit the use of these media for children under the age of two and limit their use to not more than two hours per day for all other children. While the media policies proposed by the Board do mirror American Academy of Pediatrics' recommendations for screen time, there does not seem to be a solid empirical basis for policies that, in particular, completely prohibit screen time for infants and toddlers. An empirical study, "[Television Viewing in Infancy and Child Cognition at 3 years of age in a U.S. Cohort](#)" published in 2009 in *Pediatrics*,<sup>1</sup> for example, concluded that "TV viewing between birth and 2 years of age was neither beneficial nor deleterious to child cognitive and language abilities" as measured at age three. While [a survey of research published in 2011](#) in *Pediatrics*<sup>2</sup> supports the notion that there likely is a level of TV watching/video game playing to the exclusion of all other activities that is bad for children's development and health, that level is likely far beyond what children likely currently experience in child day centers.

Child day centers would likely incur some implicit costs from this regulatory change as it limits flexibility in choosing center activities, particularly for children under two years of age. The few child day centers that operate in private homes might also incur explicit costs for hiring extra staff or changing their center layout so that age groups are separated and children under two are excluded from rooms where older children are watching television or playing video or computer games. Toddlers in child day centers might also be made worse off as this regulatory change bans an activity (watching a favorite TV show) that may serve as a source of comfort and continuity between home and daycare. Absent some showing by the Board of harm currently caused by TV viewing in child day centers as it occurs now, costs likely outweigh benefits for this proposed regulatory change.

## **Businesses and Entities Affected**

Board staff reports that there are approximately 2,568 child day centers currently licensed by the Board. Most of these centers would qualify as small businesses and all will be affected by these proposed regulations.

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<sup>1</sup> Oken, Emily, et al. (2009). Television Viewing in Infancy and Child Cognition at 3 Years of Age in a US Cohort. *Pediatrics*. 123. Pp 370-375.

<sup>2</sup> Council on Communications and Media. Media Use by Children Younger Than 2 Years. *Pediatrics*. Published online October 17, 2011.

## **Localities Particularly Affected**

No locality will be particularly affected by these proposed regulations.

## **Projected Impact on Employment**

The two proposed regulatory changes above that newly require an extra adult to supervise in certain situations may marginally increase the number of hours worked in child day center employment but will do so only if day centers use paid staff rather than parent volunteers to meet these requirements.

## **Effects on the Use and Value of Private Property**

Affected businesses may see increased costs for several of the proposed changes in this regulatory package. To the extent that these increased costs are not offset by decreased costs on account of other proposed changes, affected businesses may see decreased profits which would reduce their value.

## **Small Businesses: Costs and Other Effects**

Most affected businesses will likely qualify as small businesses. Affected small businesses may incur increased net costs for training if additional required hours are not completely offset by reducing training hours for part time assistant teachers and by allowing previously disallowed training (like CPR) to now count toward annually required hours. Affected small businesses will also likely incur implicit and/or explicit costs from proposals that would mandate multicultural activities and ban or severely limit TV viewing and playing of video or computer games.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

The Board could likely lower both explicit and implicit costs for both care givers and parents by keeping current rules that allow these parties to cooperatively decide what type of activities are appropriate for the children in care.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact

analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.