



**Virginia
Regulatory
Town Hall**

**Notice of Intended Regulatory Action
Agency Background Document**

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| Agency Name: | Department of Social Services |
| VAC Chapter Number: | 22 VAC 15-20 |
| Regulation Title: | General Procedures and Information for Licensure for Licensed Child Day Centers |
| Action Title: | Proposed regulation |
| Date: | Enter Date |

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.

The Code of Virginia mandates the licensure of child day centers and programmatic regulations are developed for these facilities. This regulation contains general licensing requirements that are not included in the programmatic regulations. Previously, the General Procedures regulation was promulgated jointly by the State Board of Social Services and the Child Day-Care Council for all the department's licensed programs. However, the Child Day-Care Council now desires to promulgate a separate regulation that applies only to child day centers and child day center systems. The Council has also requested that all code citations and all information that is not a specific procedure be removed from the regulation. This amendment to the regulation proposes to do this.

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.

Section 63.1-202 of the Code of Virginia gives the Child Day-Care Council authority to "promulgate regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed under this chapter, which shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies."

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.

PART I. INTRODUCTION.

22 VAC 15-20-10. Definitions.

1. Add a statement that "definitions set forth in 22 VAC 15-30-10 (Minimum Standards for Licensed Child Day Centers) shall govern unless expressly modified below."

Justification: Some definitions that were previously in this regulation are being deleted because they exist in the current child day center regulation.

2. Delete the definition of "adult care facility."

Justification: The regulation no longer refers to adult care facilities.

3. Delete the definition of "allegation."

Justification: The term is not used in the regulation.

4. Amend the definition of "allowable variance."

Justification: The amended definition more clearly defines the allowable variance.

4. Delete the definition of "Board."

Justification: The term is only used in this regulation as Board of Social Services.

5. Add a definition of "child day center system."

Justification: The Child Day-Care Council has joint promulgating authority for regulations for child day center systems.

6. Delete the definition of "complaint."

Justification: Definition is unnecessary.

7. Add a definition of "days" to mean calendar days unless otherwise specified.

Justification: Council members felt there was some confusion about whether "days" means calendar days or work days.

8. Delete the definition of "denial."

Justification: Definition is unnecessary.

9. Delete the definition of "good character and reputation."

Justification: The definition is found in 22 VAC 15-30-10 et seq.

10 Add a definition of "person."

Justification: To make clear that "person" refers to entities other than a single individual.

11. Delete the definition of "revocation."

Justification: Definition is unnecessary.

22 VAC 15-20-20. Preplanning.

Repeal the entire standard.

Justification: The standard is informational and unnecessary.

PART II. LICENSING STANDARDS.

22 VAC 15-20-30. Responsibility of the department.

Repeal the entire standard.

Justification: The standard is informational and unnecessary and the regulation no longer will include other licensed programs.

22 VAC 15-20-40. Adoption of standards.

Repeal the entire standard.

Justification: The standard is informational and unnecessary.

22 VAC 15-20-50. Standards development /revision process.

Repeal the entire standard.

Justification: The standard is informational and unnecessary.

PART III. THE LICENSE.

22 VAC 15-20-70. Nontransferability of license (to be changed to Transferability of license).

Reword the standard for clarity. Add a standard that licenses may be transferred only to persons meeting all requirements set forth in the Code of Virginia and regulations.

Justification: Simplifies requirements regarding transferability of licenses.

22 VAC 15-20-80. Conditional license.

Delete the first sentence of the first paragraph. Delete the EXCEPTION.

Justification: This is information and unnecessary. The EXCEPTION is deleted because it applies to adult care facilities.

22 VAC 15-20-90. Regular license.

Amend to delete reference to State Board of Social Services.

Justification: Child Day-Care Council has authority to promulgate regulations for child day centers.

22 VAC 15-20-100. Duration of licensure.

Delete the entire standard as it exists and replace with the following wording: The period of licensure shall be determined by the Commissioner in accordance with § 63.1-196.1 of the Code of Virginia.

Justification: The legislative history shows that the primary issue under consideration in the General Assembly in 1990-92 was the lengthening of license durations to permit better staff utilization, i.e., there was insufficient DSS staff to handle the inspections required by annual licensure. The first move was from one year to two year licenses, accompanied by a grant of discretion to phase in the change. This was followed by the 1992 expansion of the Commissioner's discretion to permit him to adjust license durations from time to time, subject to a three year maximum duration. The 1990 statute clearly states that the initial grant of discretion to the Commissioner was intended only to aid in the transition from a shorter to a longer licensing period. The 1992 statute represents a minor adjustment in the lengthening of licenses, and does not indicate any intent to expand the scope of discretion granted to the Commissioner beyond that purpose.

The focus of the legislature during the 1990-92 period was to increase licensure durations as a means of managing shortfalls in available DSS staff. This does not carry with it an implication of a power to grade licensees beyond merely ascertaining whether they meet the minimum standards. Tiered licensing clearly places DSS in the position of promoting select day care centers to the disadvantage of other licensed centers. While it may be argued that this is a public information service of some value, DSS's interceding to provide such endorsements is neither an expressed nor implied authorization by statute.

Any actions of DSS beyond the scope of the statutes are subject to oversight by the appropriate regulatory bodies. In the day care arena, Council was created to exercise this oversight and regulatory function. The Council believes that a tiered system is discriminatory, provides great opportunity for mismanagement and misinterpretation by DSS licensing staff. The DSS has failed to provide licensees with information regarding expectations of what they consider to be "exceeding standards." The standards are written to provide the minimal expectation of care in

any given facility. DSS has the right to go into a center at any time, as many times as necessary to ensure that the minimum standards are being met and to take appropriate action accordingly.

22 VAC 15-20-110. Provisional licenses.

Delete the first sentence of the first paragraph. Delete the EXCEPTION.

Justification: This is Code material and is not needed in the regulation. The EXCEPTION is deleted because it applies to adult care facilities.

22 VAC 15-20-120. Terms of the license.

1. Delete C., which is informational. Delete D. and E., which refer to provisional and conditional licenses.

Justification: These standards are informational and unnecessary.

2. Amend F. to include this statement regarding modification of licenses: The department will evaluate written information about any planned changes in operation and will respond to the licensee either with a modified license or an explanation of why the modification was not granted. The licensee may request a modification of the terms of a license at any time during the period of licensure. The request must be submitted in writing to the department's representative.

Justification: The standard regarding modification of licenses (22 VAC 15-20-190) is to be repealed and the pertinent information included here.

PART IV. THE LICENSING PROCESS.

22 VAC 15-20-130. Preapplication consultation.

Repeal numbers 2. through 5.

Justification: This standard should not limit consumer information. By specifically listing areas that are in the current standard, providing other information could be restricted. This standard is being amended to improve customer service.

22 VAC 15-20-140. The initial application.

Delete A. and D. and revise C. as follows: The Department will take action on a completed application within 60 days.

Justification: The Code of Virginia directs DSS, not applicants for licensure.

22 VAC 15-20-150. Approval of functional design features.

Delete all of the standards except 1., 2., and 3. and add a new number 2. Number 1. is rewritten for clarity to state: Four prerequisites for licensure are (i) a valid certificate of occupancy for a child day center; (ii) an inspection report from the appropriate state or local fire authority to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code; (iii) an inspection report from the appropriate health authority; and (iv) floor plans that clearly indicate the use of space and other plans for compliance with all requirements for the building and bathroom facilities.

New standard number 2. is added: A new floor plan shall be submitted if there is a change in functional design.

Justification: The deleted standards are informational and unnecessary. Standards 1. and 2. clarify the requirements regarding functional design features of the building that must be met prior to licensure.

22 VAC 15-20-160. The investigation.

Repeal all standards except B. Amend B. to read as follows: The department's representative will make an on-site inspection of the proposed facility and an investigation of the proposed services. Compliance with all standards will be determined by the Department of Social Services. The licensee shall be responsible for correcting any areas of noncompliance found during any on-site inspection.

Justification: The deleted standards are informational. The amended standard B. explains that an investigation will be made.

22 VAC 15-20-170. Notice to the applicant of issuance or denial of a license.

Add a standard that states: Licensed child day centers shall follow the regulations regarding sanctions set forth in 22 VAC 40-60-10 et seq. promulgated by the State Board of Social Services.

Justification: The State Board of Social Services has sole authority for promulgating regulations regarding sanctions.

22 VAC 15-20-180. Determination of continued compliance.

Amend A. as follows: The licensee shall permit the department's representative to make announced and unannounced visits to the facility during the hours of its operation. The licensee shall be responsible for correcting any areas of noncompliance found during any licensing inspections.

Combine and amend B. and C. as follows: All licensed facilities shall be inspected at least twice annually and one of these inspections shall be unannounced. In every instance the renewal inspection shall be announced. The commissioner may authorize such other announced and unannounced inspections as he considers appropriate.

Add a new standard that reads as follows: The licensee shall permit the department's licensing representative, at all reasonable times, to inspect the facility and to interview employees and children under the supervision of the center, provided that no private interviews may be conducted with any child without prior notice to the parents of such child.

Delete D. and the NOTE. Add a new NOTE that reads as follows: In an investigation of child abuse, neglect, or exploitation in a child day center, the investigation shall be conducted jointly with the local department of social services whenever possible in accordance with department policy.

Justification: The deleted standards are informational. The new standard requires the licensee to allow department staff to inspect the facility and interview employees and children during any licensing inspection. This includes requirements formerly found in 22 VAC 15-20-300 regarding complaint investigations. The new NOTE was formerly in 22 VAC 15-20-300 also. The standard that combines and amends B. and C. clarifies and simplifies the requirements regarding announced and unannounced inspections.

22 VAC 15-20-190. Modification.

Delete entire standard.

Justification: The information was moved to standard 120. F. (terms of the license).

22 VAC 15-20-200. Early compliance.

Amend 200.A.1 to delete "well in advance of the expiration date of the provisional or conditional license."

Justification: Time frames for requesting early compliance are added below.

Amendment made to 200.B. to require a request for early compliance to be made not more than 60 days following the issuance of the provisional or conditional license.

Justification: Sets a time frame for licensees to request modification of a license.

Delete 200.D.

Justification: Standard is unnecessary.

22 VAC 15-20-210. Renewal process.

A. Add a specific time period (120 days prior to expiration of license) to the statement regarding the department's sending an application for renewal of license.

Justification: Child Day-Care Council believes licensees should have a specific time period allocated to complete the renewal application.

B. Add a specific time period (60 days) within which the licensee is required to submit a completed application. Delete the second sentence of the standard.

Justification: Child Day-Care Council wants a specific time period added within which renewal application must be filed. The second sentence is unnecessary.

PART V. ALLOWABLE VARIANCE.

22 VAC 15-20-220. Use of allowable variances.

Delete the entire standard.

Justification: Standard is informational and unnecessary.

22 VAC 15-20-230. Conditions for initiating a request.

Delete the entire standard.

Justification: Standard is informational and unnecessary.

22 VAC 15-20-240. Process.

Minor amendments to 240.1., 2., and 3. for clarity.

Delete B.

Delete the Exception.

240.C.1. Amend the standard to read: The department may grant an allowable variance subject to conditions with which the licensee must comply.

240.C.2. Add a standard: The applicant or licensee shall inform the department if there are changes in the circumstances under which the variance was granted.

Justification: Simplifies and clarifies the allowable variance process.

Amend the NOTE: Delete the first sentence. Add a sentence: The department will review each allowable variance at least annually. At minimum, this review will address the impact of the allowable variance on children in care, adherence to any conditions attached, and the continuing need for the allowable variance.

Justification: Simplifies the requirements regarding annual review of allowable variances.

Delete 240.C. 4.

Delete 240.D. 1. and 2.

Amend 240.D.3.a. to reword for clarity, to provide for the licensee to request a review of a denied variance in writing within 30 days (previously the time was 15 days), and to allow the licensee a review if new or supporting information is provided.

Delete 240.D.3.b.

Add a standard numbered 240. G. stating: When a variance is no longer needed the applicant shall notify the department.

Justification: The deleted standards are informational and unnecessary. The amendments simplify and clarify the requirements regarding allowable variances.

PART VI. PROBLEM SOLVING CONFERENCES.

Delete the entire part.

Justification: The Child Day-Care Council does not have authority to promulgate regulations regarding problem solving conferences; authority is delegated to the State Board of Social Services. A statement will be added at the end of the Part, stating that licensed child day centers shall follow the regulations set forth in 22 VAC 40-80-10 et seq. promulgated by the State Board of Social Services.

VIII. SANCTIONS.

Delete the entire Part.

Justification: The Code of Virginia gives sole authority for promulgating regulations regarding sanctions to the State Board of Social Services. The following statement will be added: Licensed child day centers shall follow the regulations set forth in 22 VAC 40-80-10 et seq. promulgated by the State Board of Social Services.

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.

This regulation contains requirements that child day centers and child day center system licensees must meet that are not part of their programmatic regulations. It also includes information regarding the Department of Social Services' responsibility in the licensing process. One alternative would be to include these requirements in the programmatic regulations. However, amendments to the Code of Virginia sometimes require generic requirements to be amended and programmatic requirements are not affected. If these generic requirements were part of the programmatic regulations, each set of programmatic regulations would have to be revised rather than the one regulation.

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 regulation will have no impact on the institution of the family or on family stability.