



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department (Board) of Juvenile Justice
Virginia Administrative Code (VAC) citation	6VAC35-51
Regulation title	Standards for the Interim Regulation of Children's Residential Facilities
Action title	This new regulation will replace the current Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 <i>et seq.</i>). This regulation adopts the provisions of 22VAC42-11 in their entirety, with the exception of the requirement for interdepartmental cooperation in the development and promulgation of regulations governing children's residential facilities that, effective July 1, 2008, were removed from the governing statutes and two provisions from which the Department of Juvenile Justice is specifically excluded. Additionally, technical changes have been made to the new regulation for ease of reading and consistency with the Form, Style, and Procedure Manual for Publication of Virginia Regulations. The Board is taking this action to comply with the mandates of Chapter 873 of the 2008 Acts of the General Assembly and the requirements of its enactment clauses.
Final agency action date	April 9, 2008
Document preparation date	July 23, 2008

When a regulatory action is exempt from executive branch review pursuant to §2.2-4002 or §2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board of Juvenile Justice is entrusted with general authority to promulgate regulations by §66-10 of the Code of Virginia, which states the Board may "promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department." Additional statutory provisions address the Board's responsibility to promulgate regulations governing residential facilities. These provisions are §16.1-309.9 of the Code of Virginia, governing facilities receiving funding through the

Virginia Juvenile Community Crime Control Act (Chapter 11, Article 12.1 of Title 16.1 of the Code of Virginia); §16.1-322.5 of the Code of Virginia, governing local or regional detention homes; and §66-24 of the Code of Virginia, governing community group homes and other residential facilities.

Children's residential facilities regulated by the Board of Juvenile Justice currently must meet the requirements of the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 *et seq.*) and the Standards for Juvenile Residential Facilities (6VAC35-140 *et seq.*). The Standards for Interdepartmental Regulation of Children's Residential Facilities were jointly promulgated by the respective boards for the Departments of Education, Juvenile Justice, Mental Health, Mental Retardation and Substance Abuse Services, and Social Services. This regulation recently underwent a comprehensive review and became effective December 28, 2007.

However, legislation passed in the 2008 General Assembly Session removes the requirement of each agency, and its corresponding Board, to cooperate regarding the regulation of children's residential facilities and makes the Board of Juvenile Justice the sole regulatory and licensing authority for secure residential facilities and the group homes/halfway houses operated or funded by the Department of Juvenile Justice. Consequently, the legislation eliminates the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 *et seq.*) as a governing regulation. *See* Chapter 873 of the 2008 Acts of the General Assembly amending §§22.1-323.2, 37.2-408, 63.2-1737, and 66-24 of the Code of Virginia and adding §37.2-408.1 of the Code of Virginia.

Furthermore, the legislation's enactment clauses require each affected agency's Board to promulgate regulations to implement the provisions of the Act no later than October 31, 2009. Once the agency's Board has promulgated new regulations, the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 *et seq.*) will no longer be in effect.

For ease of reference, the enactment clause states as follows:

3. That the Standards for Interdepartmental Regulation of Children's Residential Facilities (22 VAC 42-11-10 *et seq.*) shall remain in full force and effect until such time as each Board required to promulgate regulations pursuant to this act promulgates such regulations as required by this act. Upon promulgation of regulations by a Board as required by this act, the Standards for Interdepartmental Regulation of Children's Residential Facilities shall cease to apply to facilities licensed and regulated by that Board.

In order to comply with the statutory mandate, the Board of Juvenile Justice is enacting a new regulation, the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51), which adopts the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 *et seq.*), less the requirement for interdepartmental cooperation and parts of two sections from which the Department of Juvenile Justice is specifically excluded and with several technical changes, as a Board regulation. Thereafter, the Department of Juvenile Justice will commence a comprehensive review of both regulations governing children's residential facilities with the goal of streamlining the regulations for each type of regulated facility.

As the Board of Juvenile Justice is adopting as a Board regulation a regulation currently in effect, minus the interdepartmental cooperation provision that was removed from the governing statutes in the 2008 General Assembly Session and parts of two sections from which the Department of Juvenile Justice is specifically excluded and only with other technical changes, the Board is processing the action as exempt from the Administrative Process Act pursuant to §2.2-4006 of the Code of Virginia.

Below is a detailed list of the changes made from the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-11-10 *et seq.*) to the attached draft of the Standards for the Interim Regulation of Children's Residential Facilities (6VAC35-51).

- Substantive change -
 - Section 20:
 - ✓ The title was changed from “Interdepartmental cooperation” to “Previous regulations terminated.”
 - ✓ The requirement for interdepartmental cooperation in the development and promulgation of regulations governing children’s residential facilities, effective July 1, 2008, was removed from the governing statutes.
 - ✓ Text was added that clarifies the intent and effect of this regulatory action.
- Technical changes -
 - The definition for “interdepartmental standards” was deleted from section 10. In the definition of “regulatory authority” a short citation was added for “interim standards” when referencing this regulation. Subsequent references to the “interdepartmental” regulation/standards were changed to “interim” regulation/standards.
 - Commas were added and removed as needed for consistency with the Form, Style, and Procedure Manual for Publication of Virginia Regulations.
 - Short citations were used for agencies and terms as referenced in the definitions (section 10).
 - Section 10, definition of “regulatory authority or agency”: a sentence was added to the end of the definition that states, “for the Interim Regulation... the regulatory authority is the Board of Juvenile Justice.” Thereafter, all references to “regulatory agency” were changed to “regulatory authority.” Also, references to the “lead regulatory authority or agency” were changed to “regulatory authority.” Also any reference to multiple regulatory authorities was changed to singular form.
 - Section 60: the requirement to post information on children’s residential facilities on the “Interdepartmental Regulation” website was changed to the “DJJ website.”
 - Section 140: references to “the lead regulatory authority agency head” were changed to “the director of DJJ.”
 - Several other technical edits and grammatical changes were made for consistency with the Form, Style, and Procedure Manual for Publication of Virginia Regulations, such as placing quotation marks around defined terms in the definitions and adding hyphens in hyphenated words.
 - Deleted parts:
 - ✓ Section 10, definition of “Children’s residential facility”: subdivisions (1) and (2) were removed. Subdivision 1 refers to facilities licensed by the Department of Social Services. Subdivision 2 refers to acute-care private psychiatric hospitals licensed by the Department of Mental Health, Mental Retardation and Substance Abuse. These subdivisions explicitly do not apply to facilities regulated by the Board of Juvenile Justice.
 - ✓ Section 90 (B): subsection B has been removed as it explicitly applies to facilities regulated by DOE, DMHMRSAS, or DJJ. This subsection does not apply to facilities regulated by the Board of Juvenile Justice. The reference to former subsection C has been changed to subsection B.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On April 9, 2008, the Board of Juvenile Justice voted unanimously to adopt the Standards for the Interim Regulation of Children’s Residential Facilities through an exempt regulatory process. The Board considered such action necessary to meet the mandates of Chapter 873 of the 2008 Acts of the General Assembly.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This new regulation, the Standards for the Interim Regulation of Children’s Residential Facilities (6VAC35-51 *et seq.*), which adopts all but one provision of the Standards for Interdepartmental Regulation of Children’s Residential Facilities (22VAC42-11-10 *et seq.*), will continue to bolster family relationships and have a positive impact on families during the period of time the juvenile resides in the applicable facilities.