



## Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40 – 121
<b>Regulation title</b>	Standards for Licensed Family Day Systems
<b>Action title</b>	New Regulation
<b>Document preparation date</b>	December 15, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This is a joint action to repeal Minimum Standards for Licensed Family Day-Care Systems, 22 VAC 40-120, and replace it with a new regulation, Standards for Licensed Family Day Systems, 22 VAC 40-121. Procedural information that is now covered in a separate regulation has been deleted. Applicable changes in the *Code of Virginia* since the last action on this regulation are incorporated. The broad topic areas covered in the repealed regulation, with one exception, are retained in the new regulation. Family Day Systems may continue to develop criteria and requirements that family day homes must meet in order to be approved as members of the system. These criteria and requirements must, in all cases, match or exceed the requirements for licensed family day homes.

### 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.*

The State Board of Social Services approved the final action for Child Care Program on December 15, 2004.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Sections 63.2-217, 63.2-1701 and 63.2-1734 of the *Code of Virginia* provide the legal authority for the Department of Social Services to promulgate this regulation. The *Code of Virginia* mandates 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 and their member homes to ensure that they are conducive to the welfare of children in care.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The *Code of Virginia* gives individuals or agencies choosing to operate a Family Day System authority to approve family day homes for a number of children that, without system approval, would be subject to licensure by the state. The *Code* also grants authority for systems to refer children to its approved family day homes. This regulation sets out the requirements that individuals or agencies must meet in order to carry out these statutory provisions. The last revision to this regulation was in 1984. The goal of the regulation is to ensure that the activities, services and facilities are conducive to the health safety and welfare of children, and that children in these homes that are not licensed by the state receive at least equal protection.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

Definitions and names are updated to reflect current statutory language, including family day system, to replace family day-care system, and family day homes, to replace family day care homes. References within the text of the regulation to sections of the statute are updated where necessary.

The following changes in the proposed regulation are mandated by the *Code of Virginia*:

- The added requirement that prohibits false or misleading advertising;
- The added requirement to secure documentation that establishes a child's age and identity, and the last day care or school attended;
- The added requirement for destruction of proof of identity information if is reproduced or retained or both;

- The requirement for compliance with the provisions of the law related to background checks and the current regulation for background checks for both system staff and member homes.

The following terms are added and defined: “adult,” “assistant,” “caregiver,” “child day program,” “good character and reputation,” “parent,” “programmatically experience,” “licensing office,” “serious injury,” “substitute provider.”

Additions to reporting requirements include, but are not limited to, the following:

- The toll-free number for the Child Abuse and Neglect Hotline;
- Immediate notification of the department of any danger or hazard that threatens the health and safety of children in a member home;
- Notification of the department of a serious injury to a child, a lost or missing child, death of a child, or damage to the system’s office that affects the operation of the system;
- Quarterly submission to the licensing office of a current directory of member homes.

New sections are added regarding public access to records and confidentiality.

The number of homes for which a full-time home visitation staff member may be responsible is increased over a four year period to a maximum of 40.

Added to the section on orientation of newly employed system staff is the requirement for training in recognizing and reporting child abuse and neglect.

Ongoing training is newly required for system staff, to be provided by trainers who meet qualifications that are specified in the regulation.

In the section headed *Services to Member Homes*, requirements are added that allow for development of approval criteria for homes wishing to be members of the system, as long as the criteria and requirements match or exceed the requirements for licensed family day homes.

Newly added is the requirement for orientation prior to approval as a member home. Areas to be covered during orientation include, but are not limited to, the Standards for Licensed Family Day Homes, confidential treatment of information about children and their families, child abuse and neglect reporting requirements. In addition, the system must provide training in specified areas within three months after approval as a member home.

Proposed additions to the section titled *Services to Children and Families* include the following:

- Information on parents’ places of employment;
- Emergency contact information;
- Information on the parent’s hospitalization or medical assistance plan;
- Immunization records on file by the first day of a child’s attendance.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

A key advantage to the public is the inclusion in this regulation of requirements for release of information about system homes to the public. This addition allows consumers to make more informed choices in selecting day care providers, and is consistent with the requirements for release of information in other regulated day care programs. Requirements are also included, however, that assure that certain information is not released, which serves to protect children and families involved in complaint investigations and other investigations where violations of the requirements may be found.

The addition of requirements for immediate notification of the department when hazardous conditions exist in a member home allows the department to take immediate action to oversee and protect children in care, by either assuring immediate abatement of the hazard or removal of children from the situation.

Additional emergency contact information allows providers to take appropriate action and action agreed upon with parents, in the event of an emergency.

For system operators, the increased costs associated with some of the requirements may be viewed as a disadvantage.

This regulatory action poses no disadvantages to the Commonwealth or the public.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
22 VAC 40-121-10	“Department” defined as “Virginia” Department of Social Services	“Virginia” changed to “State.”	Consistent with statutory definition.
22 VAC 40-121-40 E		The requirement that there be a written policy for the collection and disbursement of funds is added.	This requirement is not new for systems. Omitted from the proposed in error.
22 VAC 40-121-40 G		Adds the requirement that the department, at any time, may request an audit of the financial records of the system by a certified public accountant. When requested, systems shall obtain such an audit and the cost of the audit report shall be borne by the system. (This does not mean that the department will routinely require such a report as part of the process of application for licensure.)	This requirement is not new for systems. Omitted from the proposed in error.
22 VAC 40-121-70 3		Adds the requirement that the types and needs of children served by the system be considered in determining the number of homes that may be members of the system.	This requirement is not new for systems. Omitted from the proposed in error.

*22 VAC 40-121- 80 D	Licensee must notify the department within five working days of any change in office location or the director of the system, or any change that would affect the terms of the license.	The time frame for notification is changed from 5 to 3 days, with the addition of the requirement for written notification within 5 work days.	In order to be consistent with the notification requirements in other family day regulations.
*22 VAC 40-121- 80 G	Licensee must notify the department of certain events, including a lost or missing child, serious injury of a child, or death of a child by the next working day.	The requirement is added for written notification within 5 work days.	In order to be consistent with the notification requirements in other family day regulations.
22 VAC 40-121- 80 G 2	Licensee must notify the department when a child is lost or missing.	Adds that notification is required when it is necessary to seek assistance of local emergency or police personnel.	In order to be consistent with the notification requirements in other family day regulations.
22 VAC 40-121- 100.B		Adds section addressing general requirements for records, to include that any form used for record keeping contain at minimum the information required by the standards; all records must be kept in a locked area; all records shall be kept current.	Included in repealed regulation. Omitted from proposed in error.
22 VAC 40-121- 110 A	Reference to <i>Code of Virginia</i> not italicized.	Italics added.	In order to correctly reference statute.
*22 VAC 40-121- 210	The system shall develop criteria and requirements that family day homes must meet to be approved as members of the system. At minimum, these criteria and requirements in all cases shall match or exceed the requirements for licensed family day homes.	Added is a list of the requirements that providers must meet. The list does not include <i>all</i> of the requirements from the standards for licensed family day homes, but includes the following broad areas: educational, personal attributes and experience requirements for caregivers and household members; requirements of the <i>Code of Virginia</i> and the current regulation for background checks; health requirements for caregivers and household members; first aid certification; staffing and supervision; physical environment and equipment; care of children; nutrition and food service; transportation; medication management and first aid supplies; behavioral guidance.	The additions clarify which areas in the standards for licensed family day homes must be met, at minimum, by homes that are members of the system.

22 VAC 40-121- 250 A 10	Member homes must comply with the reporting requirements in 22 VAC 121-80	Member homes must comply with the reporting requirements in the standards for licensed family day homes.	Proposed standard referenced a section of the regulation that is applicable to the system, rather than to system homes.
22 VAC 40-121- 260 C	The orientation requirement may be waived if the system certifies equivalent competency.	The orientation requirements may be waived if the system certifies equivalent competency.	"S" added to make requirements plural, since the reference is to more than one requirement.
*22 VAC 40-121- 270 A	The system shall provide a minimum of 12 clock hours of annual in-service training to caregivers.	The system shall provide a minimum of 10 clock hours of training annually to caregivers. One year after the effective date of the regulation, the number of training hours shall increase to 12 clock hours annually. Two years after the effective date of the regulation, the number of training hours shall increase to 14 clock hours annually. Three years after the effective date of the regulation, the number of training hours shall increase to 16 clock hours annually.	The intent of the agency was to make the annual training requirement the same across all child day programs (consistent with the hours being proposed for child day centers). The agency failed to make the change in the Town Hall document and in the proposed draft prior to submission.
22 VAC 40-121- 320 E	If the complaint suggests that the suspected abuse or neglect occurred while the child was in care or was perpetrated by the home's provider or household members ...	Following words deleted: "or was perpetrated by the home's provider or household members."	Deleted as unnecessary. Term "in care" is all inclusive.
*22 VAC 40-121- 340 D	The system shall make a follow-up inspection to the member home to ensure the violations listed on the corrective action plan are corrected.	The system shall make a follow-up inspection when necessary.	Confirmation of corrective action may not always require a visit. In the case of violations related to documentation, for example, a copy of the documentation in question may be forwarded to the systems office to confirm corrective action.

<p>*22 VAC 40-121- 370 A 5 e and f</p>		<p>The proof of identity, if reproduced or retained or both, shall be destroyed upon the conclusion of the requisite period of retention. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying any social security numbers in these records to make them unreadable or indecipherable by any means.</p>	<p>Newly adds requirements that became effective July 1, 2004, as a result of passage during the 2004 General Assembly of HB 872 related to identity theft.</p>
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**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
<p>Local Family Child-Care and Early Education Association</p>	<p>“Playgrounds must be enclosed with a protective barrier when they are located within 30 feet of safety hazards of safety hazards, in certain circumstances. Protective barriers must be at least 4 ft in height and can be but are not limited to fencing, hedges. Circumstances include but are not limited to the play ground being within 30 feet of traffic, water, RR Tracks. <b>It is important that the standard be as defined as possible leaving little to the interpretation of an individual licensing specialist.</b>”</p>	<p>SEE AGENCY RESPONSE FOLLOWING CHART</p>

<p>Local Family Child-Care and Early Education Association</p>	<p>“Square footage will be 25 sq. ft. for now. In two years, it will move to 30 sq. ft; in 5 years to 35 sq. ft. <b>We support this with the understanding that the 35 sq. ft. includes areas with furnishings.</b>”</p>	<p>SEE AGENCY RESPONSE FOLLOWING CHART</p>
<p>Statewide Alliance of Family Child Care Associations</p>	<p>“On the 35 sq. ft. per child as presented would have the unintended impact of driving those of us who currently welcome children into our home for day care out of business due to capital investments that will be required to meet the proposed new standards. Should this occur there would be children in the Commonwealth left unattended who are too young to be on their own. In some rural areas there are no Day Care Centers near by. In addition, some providers who need the income but cannot afford to make the changes you seek might continue to provide services in the shadows with no oversight whatsoever.</p> <p>Funding availability is critical to allow [p]roviders to be in compliance while at the same time keeping the existing business operative. If the ultimate goal is to align [F]amily day care providers home with the same set of standards/requirements for Day Care Centers it stands to reason that the same funding sources should be made available/accessible to the Family Day Care Provider (Family Home Provider).”</p>	



There are no requirements in the current family day home regulation for fencing of outdoor play yards or for square footage. The system regulation has always included a requirement for orientation of member homes, either prior to or within six months of approval. The requirement for on-going training has been the same as the current requirement (six hours annually) for licensed family day homes.

The agency will retain the above referenced comments for response during the public comment period for the proposed standards for licensed family day homes.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-120-10 A Legal Base		Sets out statutory base authorizing the Department of Social Services to license family day-care systems and the State Board of Social Services' responsibility to develop standards and requirements. Spells out penalty for operating a family day-care system without a license.	Programs are referred to as "family day systems," in accordance with language in statute. Legal base and Board's authority will be addressed in "Foreward" to regulation. Section deleted.

<p>22 VAC 40-120-10 B Definitions</p>	<p>22 VAC 40-121-10 Definitions</p>	<p>The following terms are added and defined in order to clarify their use in the body of the regulation:                  “Adult” means an individual 18 years of age or older.                  “Assistant” means an individual who is 14 years of age or older and who, under the direct supervision of the provider or substitute provider, provides care, protection, supervision and guidance to children in the member home.                  “Caregiver” means the provider, substitute provider or assistant.                  “Child day program” means a regularly operating service arrangement for children where, during the absence of a parent, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.                  “Good character and reputation” means knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness and truthfulness, and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance and protection of children. Relatives by blood or marriage, and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references;                  “Parent” means the biological, foster or adoptive parent, legal guardian, or any individual with legal custody of a child enrolled or in the process of being admitted to a family day system home.                  “Programmatic experience” means time spent working directly with non-related children in a group. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period of time. Experience settings may include but not be limited to a child day program, family day home, child day center, boys and girls club, field placement, elementary school, or a faith-based organization.                  “Licensing office” means the office of the Virginia Department of Social Services from which the family day system’s license to operate was issued.</p>
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22 VAC 40-120-10 C. The license.		These requirements include information about the types, terms and duration of licenses.	This information is deleted. It is included in the regulation, General Procedures and Information for Licensure.
22 VAC 40-120-10 D. The licensing process.		This section describes the licensing process, from application to issuance, along with early compliance and modification of licenses, the system and department's responsibilities in complaint investigations, revocation and denial of licenses and appeals.	This information is deleted. It is included in the regulation, General Procedures and Information for Licensure.
22 VAC 40-120-20. Organization and Administration	PART II. Organization and Administration		Change in section number.
22 VAC 40-120-20 A. Sponsorship.	22 VAC 40-121-20. Sponsorship.	Specifies who may sponsor a family day-care system and who fulfills the duties of the licensee. Also specifies when a governing board is required.	Adds language that the system must have a clearly identified sponsor. Rewords requirements for who serves as the licensee based on various sponsorship types, for clarity. A governing board continues to be required for unincorporated associations and corporations.
22 VAC 40-120-20 B. Governing Board.		Establishes minimum size and duties of the governing boards; specifies what administrative positions the board must have, meeting frequency; requirements for submission of minutes to the department; requirements for personnel evaluations.	Requirements deleted as unnecessarily intrusive. Not required in regulations for other programs.
22 VAC 40-120-20 C. Goals, policies and procedures		Section header.	Header deleted.
22 VAC 40-120-20 C. 1. Goals		Requires system to establish written goals that reflect the system's philosophy and objectives, to include purpose; population served; program offered; services to member homes and to families and children.	Reference to goals deleted. The proposed language requires systems to develop written program descriptions addressing mission and organizational structure (22 VAC 40-121-30 A.)

	22 VAC 40-121-30. Operational responsibilities.		Consolidates the duties and responsibilities of the licensee into a single section, regardless of sponsorship type.
	22 VAC 40-121-30 A.		Newly requires the written program description be made available to prospective member homes, parents and the general public.
22 VAC 40-120-20 C. 2. Policies and procedures; and 22 VAC 40-120-40. Services to system homes.	22 VAC 40-121-30 B.	Requires development of policies and procedures for operation of the system, to include personnel policies, criteria for approving homes, training of providers, inspection, monitoring and supervision, technical assistance and consultation.	Lists within a single section of the regulation the operational policies and procedures that must be developed. Newly adds to operational procedures to be developed, procedures for complaint investigations and for notifying parents when a member home has been suspended or terminated. The latter assures parents are informed of suspensions and terminations.
	22 VAC 40-121-30 E		Newly adds the requirement that prohibits licensees from using deceptive or misleading advertising, in accordance with § 63.2-1713 of the <i>Code of Virginia</i> . This requirement was added to the law in 1993, after the effective date of the family day-care system regulation.
22 VAC 40-120-20 D. Finances	22 VAC 40-121-40 D. Finances		Number change.
22 VAC 40-120-20 D. 1 a.	22 VAC 40-121-40. A	Requires a plan of financing that assures sufficient funds to operate in accordance with stated purpose, objectives and services to be provided.	Requires that the plan of financing assure sufficient funds to operate in accordance with the stated program description (rather than purpose and objectives) and the services to be provided.
22 VAC 40-120-20 D.1. b	22 VAC 40-121-40. G.	Establishes the department's authority to request and audit of the financial records by a certified public accountant, when requested. The cost of the audit shall be borne by the system.	Standard number change.
22 VAC 40-120-20 D. 1 c. (3)	22 VAC 40-121-40 B 3	Requires provision of a financial report that reflects the current fiscal condition of the facility, which shall be in the form of a balance sheet showing a statement of assets and liabilities.	Language simplified to require a balance sheet showing current assets and liabilities.

22 VAC 40-120-20 D.1 d. (2)	22 VAC 40-121-40 C. 2	Requires a budget for the next year of operation.	Section addresses the financial information that must be submitted with an application for renewal of a license. Next year's budget is replaced with the requirement to submit a current working budget showing actual income and expenditures. The working budget, together with the statement of current assets and liabilities, provide information necessary to determine if funds are sufficient for continued operation.
22 VAC 40-120-20 D. 1 d (3)		Requires submission of a current audit report if such a report is requested by the department.	Deleted as redundant. Required at 22 VAC 40-121-40. F.
22 VAC 40-120-20 D. 2 b	22 VAC 40-121-40. E.	Requires a written policy for the collection and disbursement of funds	Standard number change.
22 VAC 40-120-20 D.2 c	22 VAC 40-121-40 F.	Requires that members of the governing entity and staff responsible for system funds be bonded.	Standard number change.
22 VAC 40-120-20 D.3. Fee and payment schedules	22 VAC 40-121-50. Fee and payment schedules		Header retained. Number changed.
22 VAC 40-120-20 E. Relationship to licensing authority.	22 VAC 40-121-80. Reporting Requirements		Change in section title. Content changes identified in section 80 below.
22 VAC 40-120-20 E. 1	22 VAC 40-121-80 A	Requires the family day-care system to submit to the department such reasonable reports and information as the department may require. Includes a cross-reference to § 63.1-201 of the <i>Code of Virginia</i> .	Term "family day-care system" replaced with "family day system." Cross-reference to statute deleted as unnecessary.
22 VAC 40-120-20 E.2	22 VAC 40-121-80 B	Requires that the system make its' books and records available for inspection by the department's representative upon request. Includes a cross-reference to § 63.1-198 of the <i>Code of Virginia</i> .	Cross-reference to statute deleted as unnecessary.

	22 VAC 40-121-80 D	The licensee must notify the department within five working days of a change in the office location, or the director of the system, or any change that would affect the terms of the license.	Notification within five days changed to 3 working days with the addition that notification be submitted in writing within five work days. This makes notification requirements consistent across all family day programs.
	22 VAC 40-121-80 E		Newly adds the toll-free number for the Child Abuse and Neglect Hotline. Requires that the licensee and any system employee notify the local department of social services of any suspected child abuse or neglect by a provider or other person, in accordance with §63.2-1509 of the <i>Code of Virginia</i> .
	22 VAC 40-121-80 F		Newly adds the requirement that the system notify the department immediately of any imminent danger or hazard that threatens the health and safety of children in a member home. The consequence is that the department can provide guidance and assistance in assuring that children are immediately removed from the hazardous situation and that the hazard is abated in a manner that assures that the environment is safe for the children's return.
	22 VAC 40-121-80 G.1-4		Newly adds the requirement that the licensee shall notify the department by the next working day, and in writing within five work days, after the system learns of a serious injury to a child while in the care of a provider, lost or missing child when it is necessary to seek assistance of local emergency or police personnel; death of a child while in the care of a provider; damage to the system's office that affects the operation of the system. These additions are consistent with the requirements in other regulations for family day programs.

	22 VAC 40-121-80 G. 5, 6		Newly adds requirements for reporting any charge and the disposition of any crime specified in § 63.2-1720 of the <i>Code of Virginia</i> for system staff, and any charge and the disposition of any crime specified in §§ 63.2-1720 and 63.2-1727 for approved providers. These barrier crimes affect continued employment of staff and continued approval of a home as a member of the system.
	22 VAC 40-121-80 G. 8		Newly adds the requirement for notification when the provider is exceeding the number of children allowed as a family day home and is required by law to be licensed as a child day center.
	22 VAC 40-121-80 H		Newly requires submission of an updated program description, when changes are made, to the licensing office within 30 days of the change.
	22 VAC 40-121-80 I		Newly requires submission of directories of current member homes to the assigned licensing office on a quarterly basis. The consequence is that current information is available to the licensing office for use in investigation of illegal operations, statistical reporting, ongoing monitoring of the system, and other uses as deemed appropriate.
22 VAC 40-120-20 F. Family day-care system setting.	22 VAC 40-121-60. Family day system setting.		Change in number. "Family day-care system" changed to "family day system."
22 VAC 40-120-20 F.1	22 VAC 40-121-60 A.	Requires that the system have an office that serves as headquarters.	Requirement amended to require, for clarity, an office "in Virginia."
22 VAC 40-120-20 F.2. b	22 VAC 40-121-60 B 2	Requires sufficient space in the system office to maintain privacy during interviews and conferences with parents and family day-care operators.	"Family day-care operators" changed to "family day home providers", the term used in current law and regulations.
22 VAC 40-120-20 G. Determination of the number of homes that may be under contract to the system.	22 VAC 40-121-70. Determination of number of member homes		Section number and title change.

22 VAC 40-120-20 G.3	22 VAC 40-121-70 3	Requires that the number of homes under contract to the system be based on the types and needs of children served by the system	Omitted from prior draft in error.
	22 VAC 40-121-90. Public access to records.		A section is added that makes certain records available for public review, including but not limited to, confirmation that a family day home is a member of the system, evaluation and monitoring reports, enforcement letters, and completed complaint investigation reports, except reports of child abuse or neglect investigations. The system must follow the requirements in the Freedom of Information Act (§ 2.2-3700 of the <i>Code of Virginia</i> ) regarding charges for copies of public information. Access to information was identified as a problem during a periodic review. This addition makes information available to parents that allow them to make more informed decisions in choosing a day care provider.
	22 VAC 40-121-100.A		Newly added is a section on confidentiality, which identifies information that is not available for public review, to include names of enrolled children and their parents, records, reports and correspondence pertaining to child abuse and neglect investigations, any items that deal with reports of inspections or complaint investigations still in progress. The consequence is that the system has clear guidance on what information may be released to the public and what information remains private.
22 VAC 40-120-30. Personnel	22 VAC 121-110. General staff qualifications		Change in number and header.

22 VAC 40-120-30. A.1	22 VAC 40-121-110 A	No person convicted of a crime involving child abuse, child neglect or moral turpitude shall be a family day-care system owner, operator or employee.	Newly requires that the “directors, staff members, volunteers, and any other persons who are alone with, in control of, or supervising one or more children, or involved in the day-to-day operations of the system shall comply with the current regulation and requirements of background checks in § 63.2-1720 of the <i>Code of Virginia</i> .” Rather than spell out background check requirements in this regulation, operators are directed to the regulation and statute governing this matter.
22 VAC 40-120-30. B Personnel policies	22 VAC 40-121-120. Position descriptions		Change in section number and header.
22 VAC 40-120-30 C.2.a. The director	22 VAC 40-121-130 and 140.	Lays out the qualifications and duties of the director.	Separates duties and qualifications of director into two sections. Adds “human services” as an acceptable background for the position.
	22 VAC 40-121-140 B and C		Newly adds the requirement that the director of the system assign sufficient staff to operate the system and that the director designate a staff member to serve in the director’s absence.
22 VAC 40-120-30 C.2.b. Referral, training and home visitation services	22 VAC 40-121-150 and 160.	Lays out duties and qualifications of referral, training, and home visitation staff.	Separates qualifications and duties into two sections. Adds “human services” as an acceptable background for the position.
22 VAC 40-120-30 C 2 b 1 (c)	22 VAC 40-121-160 B	A full-time home visitation staff member shall be responsible for no more than 25 family day-care homes.	A full-time home visitation staff member shall be responsible for no more than 30 member homes. Two years after the effective date of the regulation, the number will increase to 35. Four years after the effective date of the regulation, the number will increase to 40. The incremental increases allow time for a determination of the impact of the change on the quality of services provided to member homes. The four-year maximum coincides with the time frames established for periodic review of the regulation. At the time of the periodic review, consideration can be given to the need for further revision of the requirement.
22 VAC 40-120-30 C.2.c. Clerical staff	22 VAC 40-121-170. Clerical/support staff.		Change in number and header.

22 VAC 40-120-30 C.3 Staff development	22 VAC 40-121-190. Staff orientation and training		Change in number and header.
	22 VAC 40-121-190 A		Included in the orientation for newly employed system staff is the added requirement for training in recognizing and reporting child abuse and neglect. This addition assures that system staff complies with the reporting requirements of § 63.2-1509 of the <i>Code of Virginia</i> .
	22 VAC 40-121-190 B		A requirement is added that system staff obtains a minimum of 8 clock hours of training annually. The consequence is that system staff is continuously working toward improving knowledge and skills necessary to carry out their duties and responsibilities.
22 VAC 40-120-30 D. Volunteers	22 VAC 40-121-180. Volunteers		Change in number and header.
22 VAC 40-120-40.B 1 Approval criteria and requirements	22 VAC 40-121-210. Approval criteria and requirements.	Requires the system to develop criteria and requirements for approval of member homes, to include qualifications for providers, ratio requirements; physical plant requirements; requirements related to the water supply; care of children; acceptable and unacceptable discipline methods; nutrition requirements, health information for caregivers and household members, fire safety, record keeping.	Newly requires the development of approval criteria and requirements that match or exceed the requirements for licensed family day homes. An exception is that member homes are not subject to the requirements in the regulation, General Procedures and Information for Licensure. The second exception is that the requirements in Sections 370 (Records on children referred for care) and 380 (Written agreements) of this regulation regarding record keeping are applicable. Requirements to be matched or exceeded include educational, personal attributes and experience requirements for caregivers and household members; requirements and the current regulation for background checks; health requirements for caregivers and household members; first aid certification; staffing and supervision; physical environment and equipment, care of children, nutrition and food service; transportation, medication management and first aid supplies; behavioral guidance.

<p>22 VAC 40-120-40.B 3 b</p>	<p>22 VAC 40-121-220 C 1</p>	<p>In no case shall the capacity exceed nine children, including children under six who are related by blood or marriage to the day-care provider.</p>	<p>Changes the maximum capacity of a member home that must not be exceeded from nine to twelve children, excluding the provider's own children and children who reside in the home.</p>
	<p>22 VAC 40-121-250 A 10</p>		<p>Adds the requirement that member homes comply with the reporting requirements in the standards for licensed family day homes.</p>
<p>22 VAC 40-120-40.C.2 Initial training.</p>	<p>22 VAC 40-121-260. Orientation of providers</p>	<p>Requires initial training either prior to acceptance or within the first six months after acceptance as a member home. Training must be provided in 11 subject areas, with each session lasting for a minimum of two hours (total of a minimum of 22 hours prior to or within the first six months after approval as a member home.).</p>	<p>Prior to approval as a member home, the system must provide orientation in system standards, the Standards for Licensed Family Day Homes, confidentiality requirements, and child abuse and neglect reporting requirements. The department currently provides orientation sessions on a regular basis for providers wishing to be licensed. The system may arrange to have potential applicants attend the sessions provided by the department. Alternatively, the system may submit an orientation program to the department for approval. In addition, within the first three months after approval as a member home, training is required in 10 specific areas. Orientation allows the provider to make an informed decision about becoming an approved provider and familiarizes the provider with the roles of the department and the system and the expectations of both for approved providers.</p>

<p>22 VAC 40-120-40 C.3 On-going training.</p>	<p>22 VAC 40-121-270. Training of caregivers</p>	<p>Requires at least 2 hours of on-going in-service training per quarter.</p>	<p>Adds the requirement that the system provide a minimum of 10 clock hours of training annually to caregivers. One year after the effective date of the regulation, the number of training hours shall increase to 12 clock hours annually. Two years after the effective date of the regulation, the number of hours shall increase to 14 clock hours annually. Three years after the effective date of the regulation, the number of training hours shall increase to 16 clock hours annually. Better trained providers are better able to recognize and correct health and safety problems. They are also better able to provide activities appropriate to the developmental needs of the children in care.</p>
	<p>22 VAC 40-121-280. Qualifications of trainers</p>		<p>Newly added are qualifications for trainers, including those under contract, to include an A.A., B.A., B.S., or advanced degree in an area directly related to the area of training. The consequence of this addition is that system staff and providers are receiving training from qualified trainers.</p>
<p>22 VAC 40-120-40 D Technical assistance and consultation training.</p>	<p>22 VAC 40-121-290. Technical assistance and consultation</p>		<p>Number change</p>
	<p>22 VAC 40-121-340. Corrective action plans</p>		<p>Requirements are added for developing corrective action plans when violations of standards are found; including requirements for follow-up to assure the violations listed in the plan are abated. This requirement is consistent with the requirements in other regulated programs.</p>
	<p>22 VAC 40-121-350. Suspensions and terminations.</p>		<p>Requirements and circumstances are added that could result in suspension or termination of a member home. The addition provides increased guidance to system staff in making termination or suspension decisions and assures consistency in the decision-making process.</p>
<p>22 VAC 40-120-50.A. Referral to system homes</p>	<p>22 VAC 40-121-360. Referral to member homes</p>		<p>Number change. Change in header title to "member homes."</p>

<p>22 VAC 40-120-50.A.6 and 8.</p>	<p>22 VAC 40-121-370. Records on children referred for care.</p>	<p>Addresses identifying information to be included in a child's record.</p>	<p>Added to the information to be maintained on children in care is additional emergency contact information, to include information on each parent's place of employment; information on at least two designated persons to contact in an emergency if parents cannot be reached; information on allergies, food intolerances, medications; actions to take in an emergency related to allergies or food intolerances; and the name of the parent's hospitalization or medical assistance plan. This information provides clear guidance on actions to take in the event of an emergency.</p> <p>Requirements are added, as required by law, for verification of a child's age, identity, and previous day care and schools attended. Also added are requirements for destruction of the proof of identity, if reproduced or retained, in accordance with legislation passed by the 2004 General Assembly.</p> <p>Immunization records are newly required to be available by the first day of a child's attendance. This is consistent with requirements for day care centers and public schools.</p>
<p>22 VAC 40-120-50.A.7 The child care agreement</p>	<p>22 VAC 40-121-380. Written agreements</p>	<p>Allows for a one part agreement (between the parent and the system) or a two part agreement (between the parent, the provider and the system)</p>	<p>Streamlines written agreements. A one part agreement is required, between the parent and the system. (Another section of the regulation specifies that homes may not accept children unless referred by the system)</p>
<p>22 VAC 40-120-50.B. Referral to health and social services.</p>	<p>22 VAC 40-121-390. Referral to health and social services.</p>	<p>Requires development and maintenance on file of a written plan describing how the need for medical and social services is determined and how social services are made available.</p>	<p>Requirement for development of plan deleted. Standard simplified to require that a list be maintained of health and social services in the community, for use in making referrals upon request.</p>
<p>22 VAC 40-120-50.C.1-5 Complaint investigation</p>	<p>22 VAC 40-121-310. Complaint investigation.</p>		<p>Number change</p>
<p>22 VAC 40-120-50.C 6</p>	<p>22 VAC 40-121-320. Child abuse or neglect complaint.</p>		<p>Requirements for investigation of abuse or neglect complaints included under separate header for ease of identification.</p>

	22 VAC 40-121-320. Child abuse or neglect complaint. E	If complaint suggests that the suspected abuse or neglect occurred while the child was in care or was perpetrated by the home's provider or household members... .	Following language deleted: "or was perpetrated by the home's provider or household members". Unnecessary language. All household members covered by "in care."
22 VAC 40-120-60. Records	22 VAC 40-121-100.B	Section covers general record keeping requirements, including the content of system records, e.g., policies and procedures, organization chart, inventory of real property and equipment, written policies and procedures, records on systems staff and member homes.	The majority of the requirements in this section are covered elsewhere in the regulation. Cross-references and duplications are eliminated. Requirements are retained and incorporated into the new section include the requirement that forms used for record keeping contain at minimum the information required by these standards; all records must be kept in a locked area; all records must be kept current.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

This regulation has no adverse impact on the family. The regulation recognizes and supports the family by establishing requirements that assure that families in need of child day care receive services in a setting that is safe and healthy for children.

Family day systems provide yet another option for parents needing day care. In choosing to use the services of a system, parents are assured that member homes are monitored at least quarterly against criteria that meet and may exceed state standards. Family day home providers who become members of the system do so by choice. Member homes benefit from opportunities for interaction, networking, training, backup care and other services the system offers. The result is dependable and wholesome care that supports the family.

The cost of the services of a family day system varies depending on a number of factors, not the least of which is economic conditions in the areas where the services are provided. Disposable income may or may not be affected. A reduction in disposable income may not be viewed as a negative when parents receive, in exchange, safe, dependable child care.