



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC 40-771
Regulation title	Adult Services Approved Providers
Action title	Amend Adult Services Approved Providers
Date this document prepared	October 19, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The proposed regulatory action provides a general review of 22VAC40-771, Adult Services Approved Providers. 22VAC40-771 sets forth standards for adult services providers who are approved by the local department of social services.

This regulatory action also amends the regulation to (1) clarify regulation content that may be unclear, inconsistent, or outdated, and (2) utilize person-centered language throughout the regulation.

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 number(s), 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.

The legal basis for this regulation is § 63.2-217, and §§ 63.2-1600 through 63.1601.1 of the Code of Virginia. These sections provide general authority for the development of regulations for program operation and authority for the development of regulations for the delivery of home-based services, for adult foster care and for criminal history checks of approved providers of services to adults.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The proposed action provides a review of the regulation to ensure that regulation content addresses the standards for approval, such as conducting criminal background checks, the type of services that must be provided and the need for the provider to possess certain knowledge, skills and abilities. Clarity in regulation content is essential to ensuring that certain standards are maintained and that the health and safety needs of adults who need care are met.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Proposed changes include clarifying definitions and other regulation text and incorporation of person-centered language throughout the regulation. Other revisions to the regulation content may also be proposed, based on public comment.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

No alternative action was considered because the Code of Virginia addresses the provision of home based services for adults and adult foster care and that regulations addressing these services are to be promulgated by the State Board of Social Services. The Code of Virginia also authorizes criminal background checks for providers and for the promulgation of regulations to address the process for criminal background checks.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this

background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to **Paige McCleary, Adult Services Program Consultant, 801 East Main Street, Richmond, VA 23219; paige.mccleary@dss.virginia.gov; or 804-726-7895 (fax)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

A public hearing will not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Department of Social Services plans to use a participatory approach in the development of this regulation. Input will be sought from stakeholders, including in-home and out-of-home providers, representatives from local departments of social services, and representative of agencies and organizations advocating on behalf of elderly individuals and individuals with disabilities.

Family impact

Assess 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.

The proposed amendments will have a positive impact on family stability by ensuring that family members who are elderly or disabled have their needs met by in-home or out-of-home providers. The review of the regulation will ensure that language is consistent when addressing criminal background checks prior to approval.

Incorporating person-centered language into the regulation will promote personal dignity by recognizing that everyone is unique and removes labels that categorize (and sometimes stigmatize) individuals who use state services and benefits.

The proposed regulatory action will have no impact on the institution of the family. It will have no effect on the authority and rights of parents in the education, nurturing, and supervision of their children. The proposed regulatory action will not impact marital commitment or disposable family income.

Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The regulation is needed to ensure standards for provider approval are met. The regulation does not overlap, duplicate or conflict with federal or state laws or regulations. The regulation only impacts individuals whose business may be providing services to adults. No other types of small businesses are impacted. The areas addressed by this regulation have not been impacted by technology. The regulation ensures individuals have the knowledge, skills and abilities to provide services to adults and have undergone the appropriate criminal background checks.