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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-185
Regulation title(s)	Standards for Licensed Child Day Centers
Action title	Amend Standards for Licensed Child Day Centers to Address Federal Health and Safety Requirements
Date this document prepared	December 9, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

This regulation provides criteria for the public and the Department of Social Services to evaluate the safety of care that children receive in licensed child day centers. The current regulation, 22VAC40-185 (formerly 22VAC15-30), in effect since 1993, has undergone seven revisions between 1996 and 2012 and does not reflect most recent child care policy changes. The agency has a pending regulatory action to repeal 22VAC40-185 and replace it with a new regulation, as part of a comprehensive review and update. This regulatory action addresses new federal health and safety requirements to be implemented as soon as possible.

The federal Child Care and Development Block Grant Act of 2014 requires ten health and safety topics to be addressed for providers receiving federal Child Care and Development Funds. The intent of this action is to align requirements of licensed programs with requirements for providers receiving Child Care and Development Funds; this includes unregulated and unlicensed programs. Amending the existing

regulation to reflect federal health and safety standards will provide additional protections of the health, safety, and welfare of children in care.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Sections 63.2-100, 63.2-217, and 63.2-1734 of the *Code of Virginia* provide the legal authority for the State Board of Social Services (SBSS) to adopt regulations and requirements for licensed child day centers. The *Code of Virginia* mandates promulgation of regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed...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. Section 63.2-1734 further mandates that:

Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such regulations shall not require the adopting of a specific teaching approach or doctrine or require the membership, affiliation, or accreditation services of any single private accreditation or certification agency.

Purpose

Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.

In accordance with § 2.2-4007.01 of the Code, the State Board of Social Services intends to consider amending current Standards for Licensed Child Day Centers, 22VAC40-185 to revise current regulations and incorporate new standards that reflect federal health and safety requirements.

The planned regulatory action seeks to update the regulation and align it with federal requirements described in the Child Care and Development Block Grant Act of 2014. Adding these federal health and safety requirements is essential to protect the health, safety, or welfare of citizens.

The goals of this proposed action are: (i) to update regulations to comply with new federal requirements for child care providers; (ii) to update current licensing regulations to ensure consistency with requirements for Child Care and Development Fund recipients; and (iii) to present a clearly written regulation that reflects current federal guidelines and practices in child care. Amendment of the existing regulation was determined by the State Board of Social Services as the most efficient and effective way to make the necessary changes to achieve clarity, consistency, and to protect children.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Provisions included in the amended standards to be considered include revisions to address federal law changes that necessitate the development of new standards in current areas as well as areas not previously considered to address ever-changing national health and safety guidelines and practices. Substantive amendments to the regulations include but are not limited to the following areas:

1. Grace period for immunization requirements for homeless/foster care children
2. Prevention of and response to emergencies due to food and allergic reactions
3. Prevention of shaken baby syndrome and abusive head trauma
4. Revised emergency preparedness plan requirements
5. Preservice or orientation training for all child care staff/providers with content including health and safety requirements
6. Updated annual training requirements to include health/safety topics
7. Group size requirements
8. Requirements to report serious injuries of children in care to the Department

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No alternatives to the proposed regulatory action are available that would meet the essential purpose of the action. In addition, there are no less intrusive or less costly alternatives for small businesses to achieve the purpose of this regulation.

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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Tatanishia Armstrong, 801 East Main**

Street,9th Floor, Richmond, Virginia 23219-2901, phone (804) 726-7152 ,fax number (804) 726-7132, e-mail tatanishia.armstrong@dss.virginia.gov . Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

A panel will be appointed and the agency's contact if you're interested in serving on the panel is Tatanishia Armstrong, Program Consultant, (804) 726-7152 or tatanishia.armstrong@dss.virginia.gov.