



Fast Track Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-151
Regulation title	Standards For Licensed Children's Residential Facilities
Action title	Create new regulation for children's residential facilities
Date this document prepared	June 18, 2008

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposed regulation establishes a new regulation for licensed children's residential facilities and group homes that provide social services programs. The proposed regulation no longer contains references and standards specific to the Departments of Juvenile Justice Services and Mental Health, Mental Retardation and Substance Abuse Services.

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 this fast track action on June 18, 2008.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

The following sections of the Code of Virginia (Code) are the sources of legal authority to promulgate the regulation: § 63.2-217 (mandatory) states that the State Board of Social Services (Board) shall adopt regulations as may be necessary or desirable to carry out the purpose of Title 63.2. Chapter 873 of the 2008 Acts of Assembly and § 63.2-1719 (mandatory) states that the Board shall adopt regulations establishing the Department of Social Services (Department) as the single licensing agency for the regulation of children’s residential facilities, including group homes, that provide social services programs.

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 the regulation 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 proposed regulation is required as a result of the passage of Chapter 873 of the 2008 Acts of Assembly (Senate Bill 472), legislation that dissolves the interdepartmental model for the regulation of children’s residential facilities and creates the Department as the single licensing agency for regulation and licensure of children’s residential facilities and group homes that provide social services programs. This regulation applies only to the Department. All references therefore regarding interdepartmental regulation and the Departments of Juvenile Justice Services and Mental Health, Mental Retardation and Substance Abuse Services have been removed. This proposed regulation comports with the General Procedures and Information for Licensure, 22VAC40-80, and it is essential to protecting the health, safety and welfare of children placed in children’s residential facilities in Virginia.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The fast-track process is being used because the Chapter 873 of the 2008 Acts of Assembly and § 63.2-1719 mandate the Board to promulgate regulations to implement these provisions later than October 31, 2009.

We expect this rulemaking to be non-controversial because the Department involved providers of licensed children’s residential facilities, provider associations and other interested state agencies in the development of the proposed changes and there appears to be agreement regarding the revisions.

The following persons serve on the Children’s Residential Facility Advisory Committee and were involved in the revision process: Martha Stone, licensed provider Harvest Child Care Ministries, representing the Virginia Association of Children’s Homes; Cindi McGirt, licensed provider New Beginnings, representing mother/baby programs; Dave Ottinger, licensed provider New Dominion School, representing wilderness and adventure activities facilities; Chris Schultz, licensed provider Virginia Home for Boys and Girls, representing larger campus style programs; Brady Nemeayer, representing the Office of Comprehensive Services; Sandra Ruffin, representing the Virginia Department of Education; Robin Ely, Licensing Administrator for children’s residential facilities, Virginia Department of Social Services; Stacey Cook, licensed provider Destiny’s Fulfilled, representing group homes under eight persons; Terri Stott, licensed provider Prince William County, representing publicly operated facilities; Travis Baisden, licensed provider Elk Hill, representing independent living programs; Mark Stevens, Virginia Office for Protection and Advocacy; Douglas Newsome, Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services; Letha Moore-Jones, representing independent living, Division of Family Services, Virginia Department of Social Services; Leslie Knachel, Program Manager of Program Development Unit and Acting-Division Director, Division of Licensing Programs, Virginia Department of Social Services; Jeff Williams, Program Development Consultant, Division of Licensing, Virginia Department of Social Services; and Joni Baldwin, Program Development Consultant, Division of Licensing, Virginia Department of Social Services. The Department contacted the Virginia Association of Independent Special Education Facilities and the Virginia Coalition of Private Providers Association with a request for each organization to appoint someone to serve on the committee. They did not respond.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

This proposed regulation is a new regulation. It abolishes the interdepartmental model for the regulation of children’s residential facilities. In place of the interdepartmental model, it established the Department as the single licensing agency for regulation and licensure of children’s residential facilities and group homes that provide social services programs.

The basis for this regulation is the current Standards for Regulation of Interdepartmental Regulation of Children’s Residential Facilities, 22VAC42-11. This proposed regulation incorporates the existing standards but removes all references regarding interdepartmental regulation and the Departments of Juvenile Justice Services and Mental Health, Mental Retardation and Substance Abuse Services. This proposed regulation comports with the General Procedures and Information for Licensure, 22VAC40-80.

This regulation does not contain any substantive change from current practice.

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.

The primary advantage to this proposed regulatory action is it implements a new statutory requirement.

There are no known disadvantages to the public, individual private citizens or the Commonwealth. A disadvantage to some group home businesses currently licensed by the Departments of Education or Mental Health, Mental Retardation and Substance Abuse Services is that, effective July 1, 2008, some of these businesses may be required to change their regulatory agency because they are under the purview of the Department. The legislation requires programs providing social services to be under the regulatory purview of the Department.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

By deleting references and standards or portions of standards that specifically apply only to interdepartmental regulation, the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Juvenile Justice Services, the regulation will be simplified for those facilities that are or will be regulated and licensed by the Department.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None
Projected cost of the regulation on localities	None
Description of the individuals, businesses or other entities likely to be affected by the regulation	Children’s residential facilities
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Approximately 107; according to the definition of small business, all the entities are small businesses

<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>None</p>
---	-------------

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.

The proposed regulation is the least intrusive and least burdensome alternative to accomplish the Board's compliance with the legislation.

Family impact

Please assess the 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 regulation will have no impact on the institution of the family or family stability. The requirements of the current interdepartmental regulation, 22VAC42-11, were incorporated into this proposed regulation with minimal changes. No substantial changes were made.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The proposed regulation is necessary to ensure compliance with the Chapter 873 of the 2008 Acts of Assembly and § 63.2-1719 of the Code that direct the Board to adopt regulations establishing the Department as the single licensing agency for the regulation of children's residential facilities, including group homes, that provide social services programs.

This proposed regulation is a new regulation and replaces the current interdepartmental regulation, 22VAC42-11. Changes from the current interdepartmental regulation are minimal and only include points

of clarification; statutory requirements that will be effective July 1, 2008; and the removal of references to interdepartmental regulation and the Departments of Juvenile Justice Services and Mental Health, Mental Retardation and Substance Abuse Services.

This proposed regulation includes definitions that comport with current definitions contained in the Code and in new statutory requirements that will be effective July 1, 2008. This regulation comports with the General Procedures and Information for Licensure, 22VAC40-80, and it is essential to protecting the health, safety and welfare of children placed in children’s residential facilities in Virginia.

Other than adding requirements specified in legislation passed during the 2008 General Assembly, no substantial changes were made in this proposed regulation from the currently existing interdepartmental regulation, 22VAC42-11.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22VAC42-11-880.9	22VAC40-151-820.9	<p>Prohibition.</p> <p>Under the prohibitions the current requirement of element 9 of this standard is to prohibit the deprivation of health care.</p>	<p>The Advisory Committee agreed with suggested clarification of this element by adding language to list the components of health care; medical, dental and mental health. The proposed standard now reads “The following actions are prohibited:...9. Deprivation of medical, dental and mental health care;”</p>
22VAC42-11-1020.A	22VAC40-151-960. A	<p>Serious Incident Reports.</p> <p>Element A requires “any serious incident, accident or injury to the resident; any overnight absence from the facility without permission; any runaway; and any other unexplained absence shall be reported within 24 hours to the placing agency, to either parent or guardian, or both as appropriate and noted in the resident’s record”.</p>	<p>The providers stated that the option to file the incident report in another place besides the child’s record may help to ease concerns expressed by their insurance carriers and legal counsel.</p> <p>The Advisory Committee agreed with suggested clarification of the documentation component of this standard “noting in the resident record.” The proposed language of the standard now reads: “The provider shall make a written reference in the child’s record that a report was made.” Making a reference to an incident will still alert necessary parties that an incident has occurred. This proposed language also provides flexibility for the provider to maintain the required documentation of the incident in an area different than the resident’s record. There is another standard that specifically lists required elements of detailed documentation pertaining to an incident.</p>

<p>22VAC42-11-1030.B</p>	<p>22VAC40-151-970. B</p>	<p>Suspected Abuse and Neglect.</p> <p>Any case of suspected child abuse or neglect shall be reported to the local child protective services unit as required by the Code of Virginia.</p>	<p>The proposed language reads: “Any case of suspected child abuse or neglect shall be reported to the local child protective services unit as required by the Code of Virginia. The provider shall make a written reference in the child’s record that a report was made.”</p> <p>The proposed language adds a requirement for a written reference in the resident’s record thus providing a mechanism to alert necessary parties that a case of suspected abuse or neglect incident has occurred. The proposed language goes hand in hand with the flexibility afforded in another standard (970.D) which allows the provider the ability to maintain the required documentation of an incident in area other than the resident’s record.</p> <p>The current standard 970.D requires a provider to document specified elements of the report pertaining to cases when suspected abuse or neglect has occurred. The providers stated that the option to file the full report as required above in another place besides the child’s record may help to ease concerns expressed by their insurance carriers and legal counsel.</p>
<p>22VAC42-11-1030.C</p>	<p>22VAC40-151-970. C</p>	<p>Suspected Abuse and Neglect.</p> <p>Any case of suspected child abuse or neglect occurring at the facility, on a facility-sponsored event or excursion, or involving facility staff shall be reported immediately to the Department, the placing agency, and to either the resident’s parent or legal guardian, or both, as appropriate.</p>	<p>The proposed language reads: “Any case of suspected child abuse or neglect occurring at the facility, on a facility-sponsored event or excursion, or involving facility staff shall be reported immediately to the Department, the placing agency, and to either the resident’s parent or legal guardian, or both, as appropriate. The provider shall make a written reference in the child’s record that a report was made.”</p> <p>The proposed language adds a requirement for the provider to document a written reference in the resident’s record thus providing a mechanism to document that the reports were made to the required parties and to alert necessary parties that a case of suspected abuse or neglect incident has occurred.</p>