



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-60-10 et seq.
<b>Regulation Title:</b>	Standards and Regulations for Licensed Adult Day Care Centers
<b>Action Title:</b>	Final
<b>Date:</b>	December 8, 1999

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The agency made changes to the regulation to bring it into compliance with statutory mandates that have been enacted since the regulation was last revised in 1987. The amendments include requirements for criminal record checks for employees, training requirements for medication aides, and re-wording because of changes to building and fire codes. Changes were also made to increase clarity, decrease intrusiveness and ensure the protection of participants of adult day care centers.

Following the public comment period, the following changes were made to the regulation: (1) a definition of “direct care staff” was added and an explanatory note was added to the requirement regarding staff-to-participant ratio to help clarify the calculation of staff-to-participant ratio; (2) added a standard to explain that the required 24 hours of orientation training can be obtained through a variety of methods; (3) added an exception to “grandfather” the current qualifications

for director of a currently licensed center; (4) added a requirement that the size and physical layout of the building are to be considered in determining if additional staff are needed; (5) deleted a Code citation that has been repealed and re-worded the standard regarding refresher training for medication aides; (6) restored the word “social” to the standard regarding the center’s activity program supporting the “physical, social, mental and emotional abilities of the participant;” (7) deleted references to “rescue breathing” because this procedure is covered in CPR training; (8) added examples of reportable situations to the standard requiring centers to notify the Division of Licensing Programs when emergencies occur in the center.

### Changes Made Since the Proposed Stage

*Please detail any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication. Please provide citations of the sections of the proposed regulation that have been altered since the proposed stage and a statement of the purpose of each change.*

The following lists the substantial changes that were made to the regulation entitled Standards and Regulations for Licensed Adult Day Care Centers after the 60 day public comment period that ran from July 19, 1999 through September 17, 1999.

22 VAC 40-60-10. Added a definition of “direct care staff” to help clarify the calculation of staff-to-participant ratio.

22 VAC 40-60-280. Added a standard (numbered E.) that explains that the required 24 hours of orientation training can be obtained through a variety of methods.

22 VAC 40-60-320.B.2. Added an exception to “grandfather” the current qualifications for the director or assistant director of an adult day care center that is currently licensed. Centers licensed after the effective date of the regulation will be required to have a director who has a bachelor’s degree or appropriate substitute qualifications.

22 VAC 40-60-380. Added an explanatory note after the standard to clarify that the staff-to-participant ration is to be calculated for the center rather than for a room or activity.

22 VAC 40-60-390. Added a requirement that the size and physical layout of the building are to be considered in determining if additional staff are needed in a center.

22 VAC 40-60-698. Deleted a Code citation that has been repealed and re-worded the standard regarding refresher training. Removed the word “authorized” because it related to the repealed Code citation. Deleted standard “c.” because it related to the repealed Code citation.

22 VAC 40-60-700. Restored the word “social” to the standard, which states that the center’s activity program must “support the physical, social, mental, and emotional abilities of participants.”

22 VAC 40-60-960. Deleted the reference to “rescue breathing” from the standard requiring staff to be trained in cardiopulmonary resuscitation and first aid because rescue breathing is included in CPR training.

22 VAC 40-60-1020. Added examples of reportable situations to the standard requiring centers to notify the Division of Licensing Programs when emergencies occur in the center.

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On December 8, 1999 the State Board of Social Services adopted the final regulation entitled “Standards and Regulations for Licensed Adult Day Care Centers (22 VAC 40-60-10 et seq.).

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law*

Section 63.1-194.2 of the Code of Virginia gives the State Board of Social Services authority to promulgate and enforce regulations to protect the health, safety, welfare and individual rights of participants of adult day care centers and to promote their highest level of independence.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of amending the regulation is to bring it into compliance with Code mandates that have been enacted since the regulation was last revised in 1987. These include requirements for criminal record checks for employees, training requirements for medication aides, and revisions related to changes in the building and fire codes. The purpose of the amended regulation is also to strengthen the requirements regarding the care of current adult day care center participants and to prepare for changes anticipated in the future. In the past 10 years, there has been an increase in the number of programs and participants, an increase in the health care needs of participants, and a decrease in the functional level and independence of those served. The amended regulation will require a greater degree of care and oversight than has been required in the existing regulation.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The regulation increases requirements for education and training of staff who provide care to participants and it provides for increased oversight of the care needs of participants. There is an increased emphasis on working closely with family members or care givers to assure that the participant's care needs are met at all times.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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 include a sentence to that effect.*

Implementing the proposed changes to the regulation should increase the quality of care give to adult day care center participants and maintain or improve their highest levels of functioning. Families and care givers should have increased confidence in the care being give their center participant.

## Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

The following is a summary of the comments expressed during the public comment period on the proposed adult day care center regulation that ran from July 19, 1999 through September 17, 1999. The numbers in parentheses indicate how many individuals provided the comment.

22 VAC 40-60-10. Definitions.

“Administer medication”—the new definition of the requirements for persons who administer medication no longer allows signed permission from the family physician. We would have to satisfactorily complete training approved by the State Board of Nursing. We feel these changes are unnecessary. (1)

Agency response: A change in §54.1-3408 of the Code of Virginia requires that persons who administer medications be appropriately authorized and trained to do so. The law no longer permits physicians to sign permission for staff to administer medication to their patients.

“Adult day care center”—the requirement for for-profit centers to be licensed and non-profit centers exempt from licensure is discriminatory. (2)

Agency response: Section 63.1-194.1 of the Code of Virginia defines adult day care centers.

GENERAL PROVISIONS:

22 VAC 40-60-60.7. Facilities not covered.

The strong medical orientation of this revised regulation adds unnecessary cost. Would like to be a social or recreational activity program but do provisional services. (1)

Agency response: The Code of Virginia requires that adult day care centers provide care and maintenance to participants. A facility that conducts a socialization or recreation activity program, such as a senior center, is not required to be licensed.

ADMINISTRATION:

22 VAC 40-60-100. Posting of license. (Repealed.)

Centers will no longer be required to post their licenses. (1)

Agency response: The requirement for licensed facilities to post their licenses is found in a promulgated regulation entitled General Procedures and Information for Licensure that contains general requirements applicable to all licensed facilities.

22 VAC 40-60-140. Liability insurance.

The amount of liability insurance required should be based on the licensed capacity of the center. (1)

Increasing the required amount of liability insurance from \$500,000 to \$1,000,000 was based on standard practice among licensed adult day care centers and information obtained from insurance providers.

PERSONNEL:

22 VAC 40-60-190. Record storage.

Centers should be allowed to store retained records off-site. Five years of retention is excessive. (1)

Agency response: Licensing personnel sometimes need to review retained records and it is necessary for them to be accessible. It is standard practice for adult day care centers to retain records for five years or longer.

22 VAC 40-60-200.A.6. General qualifications.

The requirements for criminal record checks should be included in this regulation. Adult day care center staff need direct access to this information. (1)

Agency response: The requirements for criminal record checks are in a separately promulgated regulation entitled Regulation for Criminal Record Checks for Homes for Adults and Adult Day Care Centers. This regulation is provided to all adult day care centers.

22 VAC 40-60-280.B.and D. Orientation and staff training.

The proposed regulation does not take into account the varying levels of employee skill, experience and training already received. Twenty four hours of training is not cost effective or reasonable to obtain three weeks after employment. Decrease the required orientation hours from 24 to 12. Training should be optional for nurse aides and RNs. (5)

Agency response: The agency believes that 24 hours of training in a three-week period is not excessive or unreasonable and that even staff who are professionally trained need to learn about the specific needs of participants in the center. A standard was added to clarify that the required 24 hours of training could be accomplished through a variety of methods.

22 VAC 40-60-300. Staff development.

The requirement that the director and staff must complete a specific number of hours of continuing education annually will increase costs to run a center. Staff should be required to obtain 12 hours of training and it should include CPR and first aid. (2)

Agency response: The number of hours of required training was not increased in the proposed regulation. The agency believes that adult day care center staff need on-going training to enhance quality of care and staff performance.

22 VAC 40-60-320.B.2. Director.

The current qualifications for director should be “grandfathered” for existing programs. (10 responses; 8 of these responses were from representatives of one adult day care center)

Agency response: An exception was added to “grandfather” the current qualifications for the director or assistant director of an adult day care center that is currently licensed. Centers licensed after the effective date of the regulation will be required to have a director who has at least a bachelor’s degree or approved substitute qualifications. A survey was conducted of members of the Virginia Adult Day Services Association (the adult day care center provider organization) and all centers had a director with at least a bachelor’s degree.

22 VAC 40-60-320.B.5. Director.

Three different respondents suggested that there should be ten hours, eight hours, and 20 hours of continuing education for directors. Another respondent stated that 24 hours of continuing education is unrealistic and expensive. (4)

Agency response: The agency believes that 24 hours of continuing education training annually is not excessive. All staff, including the director, need on-going training to enhance quality of care and staff performance.

22 VAC 40-60-330. Assistant director.

Should require an “officially designated professional” rather than an “assistant director.” (1)

Agency response: The reference to “assistant director” was not amended in the proposed regulation. As long as the intent of the standard is met, the person does not have to be called “assistant director.”

#### SUPERVISION:

22 VAC 40-60-380. Staff-to-participant ratio.

Clarify what is meant by 1:6 ratio. The proposed wording is vague. It is difficult to maintain the 1:6 ratio if assisting participants with toileting, administering medications, or any other interaction. The standard has been strictly interpreted to mean that each activity within the center be assigned a 1:6 ratio. (6)

Agency response: The intent of the standard is to ensure that an adequate number of staff persons are in the center to care for participants, to respond to their needs and to ensure safe evacuation of the building if necessary. The standard intends for the staff-to-participant ratio to be calculated for the center and not for individual rooms or activities. A note has been added to the standard stating that the staff-to-participant ratio is to be calculated for the center rather than for a room or an activity. A definition of “direct care staff” was added to the definitions to further identify who should be counted in the staff-to-participant ratio.

#### BUILDINGS AND GROUNDS:

22 VAC 40-60-490. General areas.

The requirements for increased square footage will reduce the number of participants that can be served in the future. Existing programs should be “grandfathered” at 40 square feet of space per participant. Square footage requirement should be left at 40 square feet. (4)

Agency response: The proposed regulation already had “grandfathered” the space requirement for currently licensed centers. The agency believes that 50 square feet of indoor space is reasonable for the adult day care center participants, particularly since many participants use wheel chairs.

#### ADMISSION, RETENTION AND DISCHARGE

22 VAC 40-60-564.E. Assessment procedures.

The assessment should be reviewed only once a year rather than every six months. (1)

Agency response: The needs of participants of adult day care centers change frequently and should be reviewed more frequently than once a year.

22 VAC 40-60-570.C. Plan of care for each participant.



The written plan of care should be reviewed only once a year rather than every six months. (1)

Agency response: The needs of participants of adult day care centers change frequently and the plan of care should be reviewed and adjusted accordingly.

22 VAC 40-60-610.A.1. Medical reports after admission.

Annual physical examinations for participants should not be required. It is an unnecessary expense for families. Center staff has a better handle on health status of participants than their physicians. (1)

Agency response: Center staff are not qualified to make diagnoses and order treatments. In developing a plan of care for each participant, it is essential to know the current health status of the individual.

22 VAC 40-60-680.B. Center initiated discharge.

Centers should have the flexibility to discharge participants immediately in case of severe behavioral problems. (1)

Agency response: Standard 22 VAC 40-60-680.C. provides for immediate discharge if a participant's condition presents an immediate and serious threat to the health, safety or welfare of the participant or others.

#### PROGRAMS AND SERVICES:

22 VAC 40-60-699.1.b. Assistance with activities of daily living.

Should delete "eating assistance techniques" because no formal training relates to feeding unless it is syringe feeding. (1)

Agency response: There are eating assistance techniques other than syringe feeding.

22 VAC 40-60-700.D.1. Planning the activities.

The word "social" should not be eliminated. (2)

Agency response: The word "social" was restored to the regulation.

22 VAC 40-60-940. Supervision during transportation. (Repealed)

Did we really intend to allow participants to be left unattended and unsupervised while being transported? (1)

Agency response: The provision for supervision of participants while being transported is found in standard number 22 VAC 40-60-880.C.

22 VAC 40-60-1020.I. Plan for emergencies.

It is not clear what emergency incidents in the center should be reported to the Department of Social Services. (1)

Agency response: Examples of emergencies to be reported have been added to the requirement.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

### PART I. GENERAL PROVISIONS (previously titled Introduction)

- Revises definitions of some words because of Code changes
- Adds some definitions that were needed because of changes to the text of the regulation

### PART II. ADMINISTRATION (same title in existing regulation)

- Adds requirements for licensee regarding such things as financial responsibility, protection of participants, and record keeping
- Increases the requirement for liability insurance coverage from \$500,000 to \$1,000,000

### PART III. PERSONNEL (same title in existing regulation)

- Adds reference to requirement for criminal record checks for all employees
- Adds a requirement for staff to be considerate and respectful of aged and disabled persons; for staff to be clean and well-groomed; for staff to be able to communicate in English; for staff to be able to understand and apply the standards as they relate to job responsibilities, and for staff who work directly with participants and who are counted in the staff-to-participant ratio be at least 18 years of age
- Revises requirements pertaining to screening for tuberculosis to conform with current Department of Health recommendations
- Adds specific training topics or areas that must be covered before staff work directly with participants
- Adds a requirement for staff to receive 24 hours of training in specific areas following their initial orientation training and to be overseen by a supervisor or trained staff person until this training is complete
- Leaves the requirement for eight hours of contact training per year for each staff person but adds that these hours must be in addition to the required first aid, CPR and orientation training
- Adds a requirement for the director to be in the center 51% of the center's weekly hours of operation

- Adds a requirement for the director to be at least 21 years of age (previously 18) and to have at least a bachelor's degree and two year's experience working with older adults or persons with disabilities; proposes that current licensure in Virginia as a nursing home administrator or current licensure in Virginia as an R.N. or L.P.N. can substitute for the bachelor's degree
- Adds a requirement for the director to have 24 hours of continuing education annually
- Expands the requirements for volunteers to include the need for qualifications appropriate to the services they render; requires them to be under the direct supervision of a staff person when participants are present; specifies the requirements for volunteers to be counted in the staff-to-participant ratio

#### PART IV. SUPERVISION (same title in existing regulation)

- Retains the requirement for one staff person for every 6 participants and includes the requirement for the ratio to be maintained for field trips as well as in the center

#### PART V. BUILDINGS AND GROUNDS (title in existing regulation is Physical Environment)

This section was rearranged for clarity and consistency.

- Rewords requirements regarding approvals from other agencies to conform to procedures already in use
- Requires outdoor areas of centers to be equipped with appropriate seasonal outdoor furniture
- Requires heat to be supplied from a central heating plant or approved electrical heating system
- Increases required minimum indoor temperature from 68° to 70° F unless otherwise mandated by state or federal authorities
- Requires the facility to develop and implement a plan to protect participants from heat related illness if air-conditioning is not available
- Increases the required indoor square footage per participant from 40 sq. ft. to 50 sq. ft. for centers licensed after the effective date of the regulation
- Requires one toilet that is suitable to accommodate a participant who needs human assistance or specialized equipment for every ten participants in care in centers licensed after the effective date of the regulation
- Requires that in restrooms with multiple stalls, there must be at least one toilet suitable to accommodate a participant who needs human assistance or specialized equipment
- Requires water temperature at taps used by participants to be maintained between 105° and 120° F
- Requires there to be at least one telephone that will operate during power outages

#### PART VI. ADMISSION, RETENTION AND DISCHARGE (previously was part of section titled Programs and Services)

- Requires admission policies to include admission criteria that will be discussed with each person entering the program
- Requires that only those persons meeting the admission criteria be admitted to the center

- Expands the information to be included in the admission assessment
- Requires assessment to be updated at least every six months
- Expands the information to be included in the plan of care for each participant
- Adds a requirement for information about advance directives and requires a current photograph or written description in the participant's record
- Adds a requirement for information regarding allergies and food intolerances
- Requires more specific test information for TB screening at admission
- Requires a report of physical examination for participants annually (annual TB screening not required)
- Clarifies information regarding center-initiated discharges; provides for the center to have a process for participants to appeal discharges

#### PART VII. PROGRAMS AND SERVICES (same title in existing regulation)

Some standards that were previously in this section were moved to Part VI. (above)

- Adds introductory statement about the aim of planning the programs and services
- Adds a list of participants' rights
- Requires each participant's physical and mental health, behavior and attitude to be continually monitored and discussed with the staff, participant and care givers
- Requires specific on-going health care monitoring in many areas including blood pressure, weight, circulation, respiration, skin integrity, nutrition
- Requires the facility to arrange for professional rehabilitative services for participant if needed
- Adds requirements for preventing the spread of disease
- Adds requirements regarding medication management based upon Code requirements
- Adds requirements for caring for participants who need assistance with activities of daily living (eating/feeding, ambulation/transfer, toileting, bathing and dressing)
- Expands requirements for planning and implementing activities
- Clarifies and simplifies the requirements for the provision of meals and snacks
- Clarifies and simplifies the requirements for transporting participants
- Adds a section regarding field trips

#### PART VIII. EMERGENCY PREPAREDNESS (title was Emergencies in existing regulation)

- Requires "current certification" in first aid and CPR rather than "annual renewal"
- Adds two or three new items to the list of things to be included in the first aid kit
- Requires plans for the specific emergencies of: medical and mental health emergencies; wandering and missing participants; building evacuation; severe weather and loss of utilities; and transportation emergencies
- Requires a written record to be maintained of all emergencies
- Requires staff to notify the Department of Social Services in the event of certain emergencies

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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 regulation has a positive impact on families of adult care center participants. It requires a close working relationship between the participant, his family members, and the adult day care center staff to help the participant reach and maintain his highest level of functioning in all aspects of daily living. It requires that the participant and his family members have input in the plan of care.

Being able to receive care in an adult day care center prevents or delays institutionalization, which can weaken marriages and family relationships. Adult day care also increases a family's disposable income in that it is far less costly than residential care.