



## Periodic Review / Retain Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40-100
<b>Regulation title</b>	Minimum Standards For Licensed Child Caring Institutions
<b>Document preparation date</b>	February 18, 2009

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 36 (2006) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.*

Section 63.2-217 of the Code of Virginia (Code) gives the State Board of Social Services (Board) authority to adopt and enforce regulations to carry out the purposes of Title 63.2 of the Code. Sections 63.2-1701, 63.2-1817, 63.2-1734, 16.1-278.2, 16.1-278.4, and 16.1-278.8 mandate licensure of child welfare agencies, except those that meet the exemptions contained in §§ 63.2-1715 through 63.2-1718. Child caring institutions are defined as children's residential facilities (CRF), and CRF fall under the definition of child welfare agencies. Those child caring institutions established prior to January 1, 1987 that receive no public funds are licensed under the Minimum Standards for Licensed Child-Caring Institutions. Child caring institutions established on or after January 1, 1987 are licensed under the regulation established for children's residential facilities.

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

There are no alternatives to this regulation without legislative action. The Code mandates child caring institutions established prior to January 1, 1987 that receive no public funds be licensed under minimum standards for licensed child caring institutions as adopted by the Board and in effect on January 1, 1987. Child caring institutions established on or after January 1, 1987 are licensed under the regulation

established for children’s residential facilities. There are currently seven facilities licensed under the regulation for child-caring institutions.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

Commenter	Comment	Agency response
<p>Krista Back, Patrick Henry Boys &amp; Girls Home, Inc., Brookneal</p>	<p>Please take another look at the plan to abolish the Minimum Standards. I work as the Director of Communications for Patrick Henry Boys and Girls Plantation. We do NOT want to be licensed under CORE standards. No matter how you look at it, switching will NOT aid us in offering care to our kids. Not only will we be required to change the way we operate, but it will in fact cost us a significant amount of money to switch to the CORE standards, and we have never accepted government aid in any form, so raising money to make this transition would cause strain in an already difficult economy for fund raising for Non-Profits. We have looked over the difference and we cannot see any significant bonus to switching, especially since the CORE standards would not in any way improve our care of our children. Please do NOT get rid of the Minimum Standards in exchange for the CORE standards.</p>	<p>Agency agrees that current regulation needs to be retained.</p>
<p>Jason B. Watson, Patrick Henry Boys &amp; Girls Plantation, Brookneal</p>	<p>I believe that the current regulation should be retained in its current form. Terminating the regulation would be extremely detrimental to three institutions with proud and lengthy histories of service to children in Virginia for a combined period of more than 220 years. The concept of one-size-fits-all in the regulating of residential child care facilities is ill advised. It is important to understand that there are some genetic differences in child care</p>	<p>Agency agrees that current regulation needs to be retained.</p>

<p>Jason B. Watson, Patrick Henry Boys &amp; Girls Plantation (continued)</p>	<p>programs that require separate attention. No one would argue that minimum requirements to ensure the basic safety, health and general welfare of the children in care are essential, but these requirements already exist in the minimum standards. Requiring a change would grossly interfere with private enterprise. Part of the purpose for these agencies not accepting government funding is to remove the requirement to also accept overly burdensome government regulation. Unfortunately, altering or terminating the minimum standards would effectively bring all private institutions under the dominant control of the public sector and the individuality of all programs would diminish. Accordingly any action other than retaining the minimum standards in their current form would be more burdensome and intrusive. On behalf of Miller Home of Lynchburg, Union Mission, and Patrick Henry Boys and Girls Plantation, I ask that you act favorably upon my request to retain the Minimum Standards in their current form.</p>	<p>Agency agrees that current regulation needs to be retained.</p>
<p>Patty E. Hammock, Patrick Henry Boys &amp; Girls Plantation, Inc, Brookneal</p>	<p>Switching to CRF Standards would in no way benefit Patrick Henry Boys &amp; Girls Plantation. CRF would possibly require us to compromise most of our religious convictions. CRF is designed to meet the needs of facilities that accept government funding and we do not accept and never plan to accept government funding. CRF would change our entire system that has been and is continuing to work very well for the children and the staff. CRF in no way would change the basic care, safety and welfare of the children that we aren't already doing with our present Minimum Standards. CRF would dictate policies that we must follow pertaining to our program but in no effect how we help our</p>	<p>Agency agrees that current regulation needs to be retained.</p>

<p>Patty E. Hammock, Patrick Henry Boys &amp; Girls Plantation, Inc, Brookneal (continued)</p>	<p>children. CRF would be an extreme expense for Patrick Henry Boys &amp; Girls Homes as well as all others. Please reconsider allowing Patrick Henry Boys &amp; Girls Plantation, Inc. to maintain Minimum Standards!</p>	<p>Agency agrees that current regulation needs to be retained.</p>
<p>Wanda Holt, Patrick Henry Boys &amp; Girls Plantation, Brookneal</p>	<p>It is my understanding that Minimum Standards are being reviewed at the state level for possible elimination, amendment or retention. If the CRF are abolished, the Patrick Henry Boys/Girls Plantation will be greatly affected. Our facility is a Christian based organization that has been serving children for 45 years. We are able to discuss Christianity openly with the residents that reside in our program. Minimum Standards regulations at this time allow us to not compromise some of our religious convictions. If this is changed, our program would greatly change from the standards we currently use. In the entire time our facility has been open, Patrick Henry has not, nor do we plan to ever accept any type of Government Funding. If our facility were placed under CRF standards which are designed for agencies that accept government funding, it would much more burdensome in outlining exactly how a program must be run, including administrative and operations policies. It may be very expensive for Patrick Henry to change over to CRF regulations. At the present time there is nothing in CRF standards regarding basic care, safety and welfare of children that we are not already doing and that is not adequately addressed in Minimum Standards. If our program was changed over to CRF standards, it would not in any way improve the level of care being provided for our children at Patrick Henry Boys/Girls Plantation. As a life time resident and voter in the</p>	<p>Agency agrees that current regulation needs to be retained.</p>

<p>Wanda Holt, Patrick Henry Boys &amp; Girls Plantation, Brookneal (continued)</p>	<p>Commonwealth of Virginia I am asking that Minimum Standards for Children’s Residential Facilities not be abolished. As the old saying goes “If it ain’t broke, why fix it” applies here.</p>	<p>Agency agrees that current regulation needs to be retained.</p>
<p>Norman D. Darden, III Flippin, Bruce &amp; Porter, Inc.</p>	<p>I am writing regarding the notice in The Virginia Register that the Virginia Department of Social Services is currently reviewing regulation 22 VAC 40-100, the so-called Minimum Standards for Licensed Child Caring Institutions. I believe the current regulation should be retained in its current form. The regulation simply ensures that three private, long-serving institutions (The Miller Home of Lynchburg, Patrick Henry Boys and Girls Plantation and Union Mission Children’s Home) provide quality child care to boys and girls in need of assistance. If regulation 22 VAC 40-100 were to be terminated, the ability of these organizations to continue to provide this care would be seriously jeopardized. I am most familiar with The Miller Home of Lynchburg, a residential facility for girls that was established in 1875. Throughout its long and distinguished history, The Miller Home has provided a privately-funded, safe and comfortable home for girls. The Miller Home is not a large institution with dozens of employees or multi-million dollar budgets and endowments. The Miller Home serves its girls with an annual budget of approximately \$400,000 and a small but dedicated group of administrators and child-care workers. Presumably, if the regulation were terminated, the organizations would be subject to much more detailed and involved reporting. For a small organization such as The Miller Home, that additional reporting would be costly, time-consuming</p>	<p>Agency agrees that current regulation needs to be retained.</p>

<p>Norman D. Darden, III Flippin, Bruce &amp; Porter, Inc. (continued)</p>	<p>and labor intensive. In reality, it would actually <i>detract</i> from the care the girls receive as the staff would be forced to spend hours and hours filling out paperwork rather than serving the children under their care. I acknowledge that certain standards are essential to ensure the welfare of each child is protected. For years and years, those standards have been met through 22 VAC 40-100. I urge you to retain the regulation as currently written.</p>	<p>Agency agrees that current regulation needs to be retained.</p>
<p>Amy Rae Hubbard, Boys Home, Inc.</p>	<p>While there is a definite need for regulating out of home care, a single set of regulations does not do justice to the children and young adults being served. The intent of regulations should be to ensure that the needs of children are being met, but not over regulated so they have the maximum opportunity to grow and develop. Those facilities that come under the minimum standards are serving children with fewer needs and thus should be allowed to continue to operate under those.</p>	<p>Agency agrees that current regulation needs to be retained.</p>
<p>Kay M. Pierantoni, Powhatan, Virginia</p>	<p>I understand that the Department of Social Services is currently reviewing the regulation 22 VAC 40-100, Minimum Standards for Licensed Child Caring Institutions. I am in support of this regulation being retained in its current form. From my knowledge, the argument for changing or abolishing would be to make all residential programs the same. Even worse, I understand there may be a push for residential care facilities to be eliminated. Patrick Henry Boys and Girls Plantation (PHBGP), as well as some other residential homes in Virginia, are based on Christian principals. No government funding is received. Because of this, Christian principals can, and are, followed. I, along with thousands of other supporters, believe this is a good thing and are willing to support</p>	<p>Agency agrees that current regulation needs to be retained.</p>

<p>Kay M. Pierantoni, Powhatan, Virginia (continued)</p>	<p>such a program so that this opportunity for children can continue. From a dollars and cents platform, how many millions and millions of dollars has PHBGH saved this state? They have saved the state: first, because they do not accept government funding and, secondly, because children at risk are nurtured into fine citizens. While many of the children are “at risk” not because of their own actions, they are still in situations that cause them to be labeled “at risk.” “At risk” children certainly have a better chance at ending up in court, detention homes or crowded in jails and prisons. Let’s give them every good opportunity to succeed instead. Residential homes can give just as nurturing an environment as any foster home. PHBGP is one of the finest examples of this. I have been familiar with the organization for the past 40 years. I have heard several generations of my family speak of the wonderful job done by the staff. My family so believed in the organization that they gave the Robertson home place and land so that a satellite home could be built in Charlotte County. I’ve seen PHBGP track record and it is a very good one. For all the reasons I have stated, I ask that the State allow regulation 22 VAC 40-100 to remain the same. Allow PHBGP to continue delivering the wholesome, nurturing environment it has for so many years. This will save the taxpayers millions upon millions of dollars. Much more importantly, even in these dire economic times for the State, is that children who are at risk, often through no fault of their own, will be given a chance for a brighter future.</p>	<p>Agency agrees that current regulation needs to be retained.</p>
<p>Dr. Joey T. Anthony, Midway Baptist Church</p>	<p>The Minimum Standards that the Plantation is following continue to</p>	<p>Agency agrees that current regulation needs to be retained.</p>

	<p>achieve positive results. I strongly encourage you to retain the Minimum Standards at the Patrick Henry Boys and Girls Plantation.</p>	
<p>David J. Marshall, President, PHBGP Board of Trustees</p>	<p>We do not understand why there is any reason to consider a change in the Minimum Standards under which we have operated so successfully for so long. We do not believe that a change would do anything to improve the quality of care we provide. Our conclusion is that it would merely add to the burden of management, record-keeping and bureaucracy and rob our organization of the precious resources of time and funds with no corresponding benefit to the children in our care. As an organization that is 100% privately funded, we do resist the <u>unnecessary</u> intrusion of any government body in this enterprise. We trust that the Commonwealth of Virginia and, in turn, the Department of Social Services (DSS), will give very careful consideration to any changes to the regulations that govern the operation of this ministry.</p>	<p>Agency agrees that current regulation needs to be retained.</p>
<p>Mary Posey, The Learning Center, Kilmarnock</p>	<p>The standards are not clearly written nor are they easy to understand. Many educated people have a hard time finding the regulations easily accessible for each age group. If I want to know about standards for infants I should be able to access an infant manual. The regulations should be categorized according to age and there should be some consistency for interpretation. Violations are given as "a need to find a violation" as opposed to what is clearly the best practice for our children. Most of us want to do the best for our children but are so worried about misinterpreting a standard that ultimately the focus is removed from our client - these wonderful kids - and more</p>	<p>The comments made by the commenter in her December 22, 2008 written comment were not directed toward the Minimum Standards for Child Caring Institutions, which is a regulation pertaining to licensing residential facilities. The comments could not be considered in the department's determination of whether the minimum standards should be terminated, amended or retained in the current form.</p>



<p>Mary Posey, The Learning Center, Kilmarnock (continued)</p>	<p>focus is given to interpreting the legal-ese standard. I am an advocate of consistency and best practice for all Centers. I do not believe we have to make rules confusing in order to be consistent. Let's work together to develop a "dos and don'ts list" to avoid confusion and encourage real family advocates to undertake the real life job of caregiver.</p>	<p>The comments made by the commenter in her December 22, 2008 written comment were not directed toward the Minimum Standards for Child Caring Institutions, which pertains to licensing of residential facilities for children. The comments could not be considered in the department's determination of whether the minimum standards should be terminated, amended or retained in the current form.</p>
<p>Joan G. Helm, Director, Sunnybrook Day School</p>	<p>Yes, DSS Licensing Standards need to be re-evaluated, re-formatted and published in a document that is easy to read, understand, follow and void of multiple interpretations. It saddens me to learn that Sentara Hospital's childcare program is closing in June, 2009 as a result of DSS regulation and other reasons. This should not be! In addition, DSS needs to develop a collaborative approach with the child care centers it regulates. Child care workers desperately need support from DSS. If DSS related to the centers it oversees the way good child care professionals relate, educate, and nurture the children they serve, the child care programs throughout the Commonwealth would be at the top of national lists. It is time to come together. I look forward to hearing that the Comment Period has been extended.</p>	<p>The comments made by the commenter in her December 28, 2008 written comment were not directed toward the Minimum Standards for Child Caring Institutions, which pertains to licensing of residential facilities for children. The comments could not be considered in DSS' determination of whether the minimum standards should be terminated, amended or retained in the current form.</p>
<p>Kimberly P. Nolte, Courthouse Academy</p>	<p>The regulations are not clearly written or organized. For instance there are different regulations for Montessori, residential, preschool, religious entities, etc. However, to find all the information that pertains to a certain type of facility it is necessary to search throughout the standards. Many of the standards are difficult to put in to practice. While they are all understandable, they are not practical. An example being the changing table mats. Of course they need to be cleaned and</p>	<p>The comments made by the commenter in her December 28, 2008 written comment were not directed toward the Minimum Standards for Child Caring Institutions, which pertains to licensing of residential facilities for children. The comments could not be considered in DSS' determination of whether the minimum standards should be terminated, amended or retained in the current form.</p>

<p>Kimberly P. Nolte, Courthouse Academy (continued)</p>	<p>sanitized after each use, but air-dry them? When you have a room full of two year olds needing to be changed, air drying is not really reasonable. Should a clothes line be installed in the classroom so that the staff can hang 10 mats? I agree with most of the standards, but at times I feel that the standards are created by people who do not spend a great deal of time in a classroom. I also feel that some of the standards are put in place because some foolish person has jeopardized the children in her care. Overall I think the standards are good and reasonable, but I feel some are so difficult that it becomes nearly impossible to avoid being written up.</p>	<p>The comments made by the commenter in her December 28, 2008 written comment were not directed toward the Minimum Standards for Child Caring Institutions, which pertains to licensing of residential facilities for children. The comments could not be considered in DSS' determination of whether the minimum standards should be terminated, amended or retained in the current form.</p>
--	---	---

No informal advisory group was formed for the purpose of assisting with the periodic review. Child caring institutions and interested parties were contacted by email for comment.

**Effectiveness**

*Please indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

The purpose of this regulation is to establish minimum standards of care to protect children who are placed in child-caring institutions by their parents or legal guardians. The standards govern the sponsorship, organization and administration, personnel, buildings and grounds, programs, services, and record-keeping requirements in these facilities.

The regulation is essential to protect the health, safety, and welfare of children receiving care from child caring institutions receiving no public funds established prior to January 1, 1987. Section 63.2-1737(C) requires licensure of child caring institutions.

The regulation is written in language understood by the licensed child caring institutions and regulators. However, because the current regulation was effective in 1987, some of the standards are outdated and inaccurate and Code citations referenced in the regulation are outdated.

**Result**

*Please state that the agency is recommending that the regulation should stay in effect without change.*

DSS recommends that the regulation stay in effect without change. Revisions are needed but can not be made without legislative action.

**Family impact**

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

---

To a minimum degree the regulation strengthens the authority and rights of parents who place their children in the child caring institutions. Written consent for the child's placement in the institution is given by the parents and cooperation between parent and administration is required. Placement of a child is allowed without the surrender of parental rights. Visitation between parent and child is encouraged through flexible visitation hours.

This regulation has no impact on the self-sufficiency, self-pride or on the assumption of responsibility for oneself, one's spouse or one's children. It has no impact on marital commitment or on disposable family income.