



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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**22 VAC 40-181 –Standards for Voluntary Registration of Family Day Homes**  
**Department of Social Services**  
April 11, 2011

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### **Summary of the Proposed Regulation**

The State Board of Social Services (Board) proposes to repeal 22 VAC 40-180 (Standards for Voluntary Registration of Family Day Homes) which now governs the registration standards for child care providers who care for five or fewer children in their homes. The Board proposes to replace 22 VAC 40-180 with 22 VAC 40-181 (which will have the same chapter title). Many of requirements that are proposed for the new regulations are currently in the Health and Safety Checklist that providers currently use as a safety guideline for their homes. So, for instance, these proposed regulations require a impenetrable hedge or fence separating play areas from hazards (such as roads) that are within 30 feet but such a barrier is already required to meet safety guidelines in the Checklist. In addition to incorporating the Health and Safety Checklist, the Board proposes many new substantive changes to existing requirements; some of these changes are driven by legislative mandates and some are to be imposed at the Board's discretion.

The changes that are proposed on account of legislative mandate include:

1. Requiring providers to document proof of each child's identity and age,
2. Requiring disclosure to parents of the percentage of time that any individual other than the primary provider will be caring for children and
3. Requiring that any provider who will be administering prescription medication normally given by a parent or guardian complete medication aid training.

At its discretion, the Board proposes to:

1. Require all individuals who care for children to have CPR and first aid certification,
2. Require continuing education for all caregivers and helpers,
3. Change the minimum age of child care helpers from 14 to 16,
4. Require that all providers and substitute providers be able to read, write and communicate in English well enough to understand these regulations and communicate with emergency responders,
5. Limit the hours per year that a substitute provider may care for children to 240 hours,
6. Disallow children who are not potty trained from wading in toddler wading pools,
7. Ban the use of time-out as behavior correction for both infants and toddlers between the ages of 16 and 24 months,
8. Ban the use of pillows and filled comforter style blankets for children under the age of two,
9. Ban the use of pack and play style beds for babies who are sleeping more than 4 hours at a time,
10. Require hand washing be accomplished with liquid soap and paper towels,
11. Require providers to have a phone that works for both incoming and outgoing phone calls and
12. Ban smoking in outdoor areas occupied by children.

## **Result of Analysis**

The benefits exceed the costs for several proposed regulatory changes. The costs likely exceed the benefits for several other regulatory changes. There is insufficient data to ascertain whether benefits exceed costs for at least one other change. Detailed analysis of costs and benefits can be found in the next section.

## Estimated Economic Impact

Before a discussion of specific costs and benefits for these proposed regulatory changes it is worth discussing the practice of this registration program. The registration that is governed by these regulations is completely voluntary in theory but, in practice, is more restricted for many of the providers who participate. About 500 of the providers who are registered currently serve families that receive a state subsidy to cover child care costs. These providers must remain registered in order to continue providing care for these families. Board staff also reports that 554 providers participate in the USDA food program which requires that these providers be registered. There is likely a great deal of overlap between these two groups but, even if complete overlap is assumed, this would mean that over half of registered day homes are required to remain registered in order to continue to participate in these programs.

For the changes that the Board proposes to make on account of changing statutory requirements, the age and identity requirement and the requirement to disclose to parents of the percentage of time that any individual other than the primary provider will be caring for children, will have costs for collecting and storing documentation that are minimal. Parents are very likely to benefit from disclosure requirements that allow them to make informed decisions as to who will be watching their children. The requirement that providers undergo medication aid training will likely be more expensive. Board staff estimates that providers who choose to offer the service of administering prescription medications will have to pay approximately \$75 ever three years to receive medication aid training. Board staff also indicates that most providers have indicated that they will not choose to take this training. Families that are served by these providers may incur extra costs for driving back and forth between job and day care to administer medications themselves in situations where their child has a medication that must be given midday.

Currently, there is no blanket requirement that day home providers be first aid and CPR certified. Board staff reports that providers that serve families that receive a state subsidy are currently required to have these certifications. The 500 providers that are not currently required to have these certifications, as well as any assistants and substitute providers who will also be so required, will incur costs the Board staff estimates will be approximately \$105 per person every

two years. These costs must be weighed against the benefit to children who might need first aid or CPR while in the care of the provider.

Currently there are no educational requirements to become registered as a day home provider. The Board proposes to require 8 hours of continuing education each renewal cycle. Board staff reports that there are many low cost options for continuing education and that participants in the USDA program already are required to get continuing education. For the other approximately 500 providers, Board staff estimates that that training will cost approximately \$40 ever biennium. In addition to these explicit costs, providers will likely incur implicit costs for their time spent and for any traveling they might have to do to get the educational hours needed. It is hard to argue, however, that individuals who need no initial training to enter a field of endeavor would somehow need continuing education to remain competent in that field. Given this, the minimal costs of training likely outweigh its benefits.

Current regulations set the minimum age of a day home helper who works under supervision at 14. The Board proposes to increase this minimum age to 16. Board staff does not know of any instances where children in care have been harmed by the standard currently in place and does not know of any teenagers under the age of 16 who are currently working as day home helpers. Nonetheless, the current standard gives providers more flexibility to hire the staff that they see fit. Given that many teenagers as young as 13 babysit in situations where they are completely alone with their charges and that day home helpers have the added failsafe of having to work supervised, the proposed increase in age likely costs providers more in loss of flexibility than it benefits anyone.

Current regulations require that caregivers be able to read, write and understand enough to carry out their duties. The Board proposes to change this standard to include the requirement that caregivers left alone with children must be able to read, write and understand English enough to carry out their duties and be able to effectively communicate to emergency personnel, if necessary. Caregivers that are not currently able to effectively communicate in English will likely incur costs for getting their English skills up to par. These costs are likely outweighed by the benefits that will accrue for children who are in the care of someone who can safely administer non-prescription medication and communicate with EMT's or 911 staff if there is an emergency.

Current regulations set minimum age of substitute providers (18) and require that they be able to carry out the duties of a provider but there is no current limit to how often providers may use substitute providers. The Board proposes to allow the use of substitute providers no more than 240 hours in a year in order to facilitate continuity for the children in care. Under this proposed rule, providers will lose some flexibility to arrange their schedules and use substitutes for more than the hour limit per year. Children may benefit from having more days with the same caregiver who may know them better. There is insufficient evidence to ascertain whether benefits will outweigh costs for this particular change.

Although current regulations are silent on the specifics of the use of wading pools, so long as the Safety Checklist is adhered to, the Board proposes to disallow wading as an activity for children who are not potty trained. Board staff reports that this change is proposed to remove the risk of fecal matter contamination that may spread disease. Although children may benefit from rules that limit their exposure to such contaminants, providers and children may also incur costs on account of this rule. Providers who wish to allow outdoor water play that includes a wading pool might have to pay for extra help to care for children who would fall under this new rule. Alternately, providers might eschew these activities for all children under their care thus depriving them of the benefit of a fun and enriching activity. In any case, a less proscriptive measure than that proposed might be to have the same rule as many commercial pools now do and require that children who are not potty trained wear swim diapers which contain waste better.

Current regulations ban spanking for all children in care. The Board proposes new regulatory language that would also disallow the use of time-out as a means of behavior modification in both infants and toddlers. While it is likely the case that infants less than sixteen months are not developmentally ready to allow them to understand what is being conveyed by having to sit in time out, toddler readiness will likely vary more. Parents and caregivers are likely better judges of the individual appropriateness of any given behavior modification technique than would be someone who does not know the individual child. While there would likely be few explicit costs for implementing this new rule, there would likely be implicit costs for both caregivers and parents. Care givers would likely lose the ability to use a punishment that can be effective depending on the child and parents will lose control and continuity of consequences for their child between home and day care.

Likewise, the proposed ban on the use of pillows and filled comforters for children under the age of two likely encroaches on an area where parents are much more likely to be able to make informed decisions about what their particular child is ready for. There is a large amount of data available that shows the risk of Sudden Infant Death Syndrome (SIDS) went down dramatically once people stopped using loose fluffy bedding for babies that were too young to turn their heads or turn over if their mouths and noses got covered by their bedding.<sup>1</sup> That data also shows that children older than one year are not generally at risk for SIDS. Given this, the benefits of banning pillows and filled comforters for older toddlers does not appear to outweigh the implicit costs of this ban for care givers and parents who are dealing with toddlers who often have very firm ideas about what comfort items they need to sleep.

Currently, full-sized cribs and/or pack and play type mesh portable cribs may be used for infant and toddler sleeping so long as they meet standards and are in good repair. The Board proposes to no longer allow pack and plays to be used for infants or toddlers who are asleep for more than four hours. Board staff reports that, although there is no evidence of decreased safety in mesh portable cribs, the Board believes that they do not provide the level of support and comfort that is optimal for sleeping. Under this proposed standard, either care givers or parents would have to pay for a (usually more expensive) full-sized crib for infants that now sleep longer stretches in a pack and play. Given that there is no safety issue addressed by disallowing pack and plays, costs will likely outweigh benefits for this particular regulatory change.

Current regulations allow care givers to provide individual cloth towels to children who are washing and drying their hands. At the behest of the Virginia Department of Health, the Board proposes to now require all day homes to only use liquid soap and paper towels for hand washing. Providers who had been using cloth towels will likely incur costs for stocking paper towels instead. Children in care will likely benefit from a somewhat reduced spread of germs. Without knowing differential rates of disease spread, there is insufficient information to ascertain whether costs or benefits will be greater.

Current regulations require providers to have access to a phone but do not require that they actually have a working phone in the day home itself. The Board proposes to require that

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<sup>1</sup> The Centers for Disease Control report, at <http://www.cdc.gov/sids/>, that SIDS deaths have decreased by over 50% since 1990.

day home providers now have a working phone (either cellular or land-line) in their home. Board staff reports that most homes likely already have a working phone. For those that do not, Board staff estimates that providers will incur costs of approximately \$15 per month to get a phone. These costs are likely outweighed by the benefit of being able to reach help quickly in an emergency and being able to stay in contact with parents.

Current regulations ban smoking in indoor areas that are accessible by children while they are in care. The Board proposes to extend this so that smoking is also banned in outside areas that are occupied by children. Providers that smoke will incur implicit costs from the loss of ability to indulge that habit while outside with the children in their care. Data is mixed on whether children are generally harmed by second hand smoke (about half the studies show an ill effect and half show no effect)<sup>2</sup>. There is likely insufficient information of the effects of outdoor second hand smoke on asthma and allergies to be able to tell whether children are harmed by this either in general or in specific cases where children are already suffering from reactive airways.

Although none of the costs that would be incurred on account of these proposed regulatory changes is huge individually, all changes taken together do raise the implicit (time, effort, aggravation) and explicit (dollar) costs of being registered to a level that some registrants will be unwilling to bear them. This may cause some providers to drop registration which may have some unintended consequences for low income families who get subsidies for daycare and, so, have to be in a registered or licensed facility. These families may lose their daycare arrangements on account of this package. Alternately, some providers may choose to remain registered and just pass their costs along to the families they serve. This will raise the cost of daycare for these families and may cause some of them to have to seek out cheaper arrangements that are less optimal.

## **Businesses and Entities Affected**

Board staff reports that there are approximately 1,050 day homes currently registered by the Board. All of these day homes qualify as small businesses and all will be affected by these proposed regulations.

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<sup>2</sup> *Multicenter Case – Control Study of Exposure to Environmental Tobacco Smoke and Lung Cancer in Europe* published in the Journal of the National Cancer Institute, Vol. 90, No. 19, October 7, 1998 and the 1986 Surgeon General's Report on The Health Consequences of Involuntary Smoking (which can be found at <http://profiles.nlm.nih.gov/ps/access/NNBCPM.pdf>) are two such studies.

## **Localities Particularly Affected**

No locality will be particularly affected by these proposed regulations.

## **Projected Impact on Employment**

Because these regulations raise the total explicit and implicit costs of being registered by the state, some day homes will likely choose to give up registration. A number of low income families who receive state subsidies for child care, and who would not be able to continue using day homes once those homes were no longer registered, are likely to lose their day care arrangements on account of any decrease in number of registered day homes. In cases where this happens, the ability of low income parents to keep a job may be affected at least temporarily. Day home providers that choose to pay the additional costs of continued registration will likely pass at least some of those costs on to their clients, including clients that are low income families. This may likely cause some families to lose their day care arrangements because of increased costs and, therefore, may affect those parents ability to remain employed. This is likely particularly true for parts of the population that are only marginally attached to the work force (the portions of the population that are more likely to be receiving a state day care subsidy).

## **Effects on the Use and Value of Private Property**

Affected businesses will likely see increased costs that reduce profits and, therefore, reduce the value of those businesses.

## **Small Businesses: Costs and Other Effects**

All affected businesses qualify as small businesses.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

There are likely many changes that the Board can make to these proposed regulations to lower the costs and make them less onerous. The Board could, for instance, eliminate the new requirement for continuing education for day care providers thus eliminating both the dollar costs of that education and the cost in time of completing it. Unless and until there is evidence that current rules (14 year age minimum for helpers, allowing child care providers to decide how often to use substitute care givers, etc) actually harm children, the Board could keep current rules to allow care givers maximum flexibility in arranging their businesses in the most efficient way for them individually. The Board could lower both explicit and implicit costs for both care givers

and parents by keeping current rules that allow these parties to cooperatively decide what type of crib to use, whether time-out is appropriate for any given individual child, whether any individual child is developmentally ready to sleep with a pillow or filled blanket, etc. The Board could also lower costs and provide more flexibility by offering providers options in addressing health issues. If the Board is worried about sickness that might be spread by un-pottytrained children in wading pools, for instance, they could allow the option of such children wearing swim diapers for wading rather than banning wading outright.

## **Legal Mandate**

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

