



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-185
Regulation title	Standards for Licensed Child Day Centers
Action title	Adopt new Standards for Licensed Child Day Centers
Date this document prepared	August 16, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

In accordance with § 2.2-4007.01 of the Code of Virginia, the State Board of Social Services (SBSS) intends to consider repealing the following regulation: 22VAC40-185 (formerly 22VAC15-30), Standards for Licensed Child Day Centers and establish a new regulation 22VAC40-186. Legislation enacted at the 2012 General Assembly session abolished the Child Day-Care Council (Council) and transferred authority for promulgating Council regulations to the SBSS. As a result of this transfer, the Registrar of Regulations created a new number for the Standards for Licensed Child Day Centers, 22VAC40-185. The renumbering of the regulation becomes effective November 1, 2012, to allow time for systems updates.

This proposed regulatory action is a joint action to repeal the existing regulation, 22VAC40-185 (formerly 22VAC15-30), and establish a new regulation, 22VAC40-186, for licensed child day centers.

This regulatory action has several purposes. The first purpose is to ensure that parents have sufficient information to make informed decisions about placing their children in licensed child day centers. The second is to facilitate the social, emotional and intellectual development of children receiving care in licensed child day centers. The third is to ensure the safety of children receiving care in licensed child day centers. The fourth is to improve understanding and interpretation leading to enhanced compliance and enforcement by the adjusted structure, format, and simplified language.

The current regulation has been amended six times since its adoption in 1993 and its current terminology and format is burdensome and confusing for providers, parents, and Division of Licensing Programs

(DOLP) staff to navigate. In fact, the current regulations are supplemented by a 63-page guidance document to assist providers, parents, and DOLP staff in interpreting and enforcing the current regulation.

Repeal of the existing regulation and adoption of a new regulation was determined by the Council as the most efficient and effective way to make the necessary changes to achieve clarity and consistency, and to protect children.

Legal basis

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

Sections 63.2-100, 63.2-217, and 63.2-1734 of the *Code of Virginia* provide the legal authority for the SBSS to adopt regulations and requirements for licensed child day centers. The *Code of Virginia* mandates promulgation of regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed...which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies. Section 63.2-1734 further mandates that:

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

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Code mandates that the SBSS promulgate child day center regulations. This regulation provides criteria for the public and the Department of Social Services (DSS) to evaluate the safety of care that children receive in licensed child day centers. The existing regulation, 22VAC40-185 (formerly 22VAC15-30) in effect since 1993, has undergone six revisions between 1996 and 2012. The revisions addressed and resolved many critical and problematic issues, but did not address the regulation's structure and format. The outcome of the repeated content and language additions and deletions has become burdensome and confusing for both licensees and DSS staff in interpretation, understanding, and compliance. Repeal of the existing regulation and adoption of a new regulation will allow greater flexibility to adjust the structure, format, and language, thereby creating requirements conducive to greater protection of the health, safety, and welfare of children in care.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

Areas of concern to be addressed in the new regulation include: (1) restructure and reformat of content by subject matter; (2) increased options for program director and lead teacher qualifications; (3) clarification and simplification of staff training requirements including protective factors for strengthening families and the acceptance of Medication Administration Training and CPR/first aid training toward annual training requirements; (4) simplification and updating of playground surfacing requirements to bring centers into compliance with national safety standards; and (5) updates to address ever-changing national health and safety guidelines and practices.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The following options were considered: (1) make no changes to the existing standards and retain the current structure and language; (2) continue to amend the standards in their current structure and format; and (3) repeal the existing standards and adopt a new set of standards. The SBSS determined that it would be in the best interest of the health, safety, and welfare of children in care to repeal the existing regulation and adopt a new set of restructured, re-formatted standards.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate, pursuant to your Public Participation Guidelines, whether a Regulatory Advisory Panel or a Negotiated Rulemaking Panel will be used in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

While under the authority of the Council, Section 63.2-1735 of the Code mandated membership on the Council to ensure representation of Virginia's child day care stakeholders. In 2009, at the request of the Council, DOLP created a survey to collect comments concerning the need to modify or clarify the existing regulation, 22VAC40-185 (formerly 22VAC15-30). The survey was distributed to Council members, 2,628 licensed child day centers, licensing staff, and other interested parties.

In addition, pursuant to 22VAC40-12, Public Participation Guidelines, the Council established regulatory advisory panels made up of Council members (representative stakeholders) and DSS staff. These regulatory advisory panels met 26 times between March 2009 and June 2011 and reviewed the existing standards by section; provided guidance on structure, format, and language; and considered all comments received from the survey.

Due to the legislation enacted during the 2012 General Assembly that transferred this regulation to the SBSS, the previous regulatory advisory panel work done while under the authority of the Council will be used in establishing 22VAC40-186, Standards for Licensed Child Day Centers. The SBSS does not plan on establishing additional advisory panels.

The agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to: Debra O'Neill, Virginia Department of Social Services, Division of Licensing Programs, 9th Floor, 801 E. Main Street, Richmond, VA 23219; telephone (804) 726-7648; fax (804) 726-7132; email: debra.oneill@dss.virginia.gov Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

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

Family impact

Assess the potential 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 strengthen the authority and rights of parents since this regulation establishes standards to ensure that parents have sufficient information to make informed decisions that will impact the education, nurturing, and supervision of their children in out-of-home care. This regulation encourages economic self-sufficiency and self-pride and helps to strengthen the marital commitment by helping parents locate safe and appropriate child care so they can work to support themselves or bring in additional income. Additional costs to parents due to changes in the proposed regulation are not anticipated.