MINIMUM STANDARDS
FOR
LICENSED FAMILY DAY HOMES
22 VAC 40-110
Effective December 15, 1993

Technical Assistance

Updated 06/09

DEPARTMENT OF SOCIAL SERVICES
COMMONWEALTH OF VIRGINIA

TECHNICAL ASSISTANCE

VIRGINIA DEPARTMENT OF SOCIAL SERVICES
MINIMUM STANDARDS FOR LICENSED FAMILY DAY HOMES
22 VAC 40-110
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NAVIGATION NOTES (some of which are only available in the electronic version):

- Dates in the Table of Contents signify updates incorporated since the last revision.
- The number of "Q#"s corresponds to the number of updates to that section.
- The Table of Contents is hyperlinked to the corresponding section of the document.
- The numbers in the parentheses at the end of each answer are the Division of Licensing Programs' (DOLP) internal reference number and the answer's latest revision date.

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PART I. GENERAL

ARTICLE 1. DEFINITIONS

22 VAC 40-110-10. Definitions

22 VAC 40-110-10 – Family Day Home provider
Question: *A question has come to CO about a family day home provider working outside the home.*
Answer: The definition of a "family day home provider" in both the Family Day Homes and Voluntary Registration standards states that this individual has "primary responsibility in providing care, protection, supervision and guidance for the children in the family day home." "Primary responsibility" means the licensee is expected to be in the home and have at least 51% of the care-giving responsibilities in order to qualify as the primary caregiver. The 1998 Code change requires all family day home providers (licensed or VR) to disclose to the parents the percentage of time that persons other than the provider will care for the child. The Code change did not change the above definition of a "family day home provider" in standards. (0002 2/12/99)

Question: *A "family day home provider" is defined in the standards as "an individual who… has primary responsibility in providing care, protection, supervision, and guidance for children in the family day home." Technical Assistance sent out in February 1999, stated that in order to meet this definition, a licensee is expected to be in the home and have at least 51% of the care-giving responsibilities. How is 51% of the care-giving responsibilities computed for a provider who offers care for various groups of children 24 hours a day in her home, but also has a job outside the home?*
Answer: Any child in care at any time must receive 51% of his direct care from the licensee. (0003 3/17/00)

22 VAC 40-110-10 - Residence
Question: *What is a "residence?"*
Answer: For licensing purposes, a residence means the provider's principal, legal dwelling place. The person's legal dwelling place can be verified by:

1. Confirming with neighbors or other collateral contacts that the person lives in a certain location;
2. Observing the home to see if it contains indicators of someone living there (furnishings, household items, clothing); and
3. Viewing the individual's voter registration card or driver's license.

The Uniform Statewide Building Code considers buildings that are unattached to the residence to be accessory buildings for storage and does not consider them to be dwelling places. Unattached buildings may be used by children in care for some activities, e.g., location of large gross motor skill activities on rainy days, but may not be used for child care for the majority of time children are in care. (0004 10/08)

22 VAC 40-110-10 – Substitute provider
Question: *If the provider leaves children in care with a parent, family member or friend while she goes to get milk, would the person left be considered a "substitute provider"?*
Answer: 22 VAC 40-110-650 of the standards states "children shall be supervised by a caregiver at all times." Again, a "care giver" is defined at 22 VAC 40-110-10 as the provider, substitute provider, or assistant. The person with whom the children are left alone would be considered either a substitute provider or an assistant (who must be 18 years of age if left alone with children). A substitute provider by definition must meet the qualifications for a family day home provider listed in 22 VAC 40-110-40 through 22 VAC 40-110-90 of the LFDH standards and be approved by the department (22 VAC 40-110-10). If a child is left alone in the care of an adult assistant, the assistant must have the qualifications of a provider/caregiver listed in 22 VAC 40-110-40 through 22 VAC 40-110-90 of the LFDH standards. (0005 4/19/99)

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PART II. PERSONNEL

ARTICLE 1. QUALIFICATIONS FOR FAMILY DAY PROVIDERS AND ASSISTANTS

22 VAC 10-110-40 and 50. General and Attributes

22 VAC 40-110-40 and 50.2 – Speaking English
Question: *Is there a discrimination issue in requiring providers to speak, read and write in English?*
Answer: There is no discrimination issue because this is a safety requirement. As standard 22 VAC 40-110-40 currently states, care givers must be able to understand the minimum standards, and standard 22 VAC 40-110-50.2 states that caregivers must be able to speak, read and write in English. "Care giver" is defined at 22 VAC 40-110-10 as "the provider, substitute provider or assistant" so each of these individuals must be able to understand the minimum standards and be able to speak, read and write in English. Standard 22 VAC 40-110-650 states that children must be supervised by a care giver at all times. Under the current standards/regulations, all care givers must be able to speak, read and write in English. This ensures that all caregivers can read prescriptions and safety precautions, and can communicate effectively with emergency service personnel, parents, children, and Licensing personnel. (0006 6/11/07)

22 VAC 40-110-50.2 - Attributes
Question: *This standard requires the care giver to have the ability to speak, read and write in English as necessary to meet the requirements of this regulation. We have many providers who speak English as a second language and it is often difficult to accurately assess their ability. We believe there should be some type of objective criteria or test that someone could take that would remove it from a judgment call by Licensing staff. The issue is sensitive and very open to feelings on the part of the provider that they're being discriminated against. No matter how carefully we try to deal with this issue, it remains a problem in our area.*

Answer: The agency would have to go through an extensive and expensive validation procedure to develop a reliable and valid test of English proficiency. A licensing inspector could determine a care giver's ability to carry out the health and safety requirements of the standards by asking the care giver to role-play some situations (without the use of an interpreter). Suggestions are: calling the rescue squad and describing a child's head injury; calling a parent and explaining a child's physical symptoms and requesting that the child be picked up by the parent; reading a prescription and explaining what needs to be done; reading one or more of the standards and explaining how to comply with them; explaining a rule or task to a child. These procedures could be used with any care giver, regardless of the provider's language proficiency, to determine the care giver's ability to carry out the responsibilities and requirements of the standards. (007 5/11/00)

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22 VAC 40-110-80. First aid certification

22 VAC 40-110-80 – Training that includes rescue breathing

Question: *Where can I receive pediatric first aid training that includes rescue breathing?*

Answer: Training in rescue breathing is not included in pediatric first aid training offered by the American Red Cross, the American Heart Association, nor the National Safety Council. In order to comply with the requirement of this standard for training in rescue breathing, licensed family day home providers and substitute providers must obtain pediatric cardiopulmonary resuscitation (CPR) certification. (0008 6/11/07)

Question: *What are the guidelines for obtaining first aid training for substitute providers?*

Answer: Substitute providers must also have first aid training, but they have six months from the date of employment to obtain the training. (0009 4/07/98)

22 VAC 40-110-80, 90, and 100 – Substitutes and defining "occasional".

Question: *In 22 VAC 40-110-10 – Definitions, "care giver" is defined as the "provider, substitute provider, or assistant." As per this definition, is it understood that anyone used as an assistant or substitute provider must have First Aid/CPR training and six (6) hours annual training and each person must have this documented on file? In the event that this substitute or assistant is used "infrequently", do these standards still apply to every "caregiver?" What guideline is used to determine "frequent" or "infrequent" use?*

In 22 VAC 40-110-10, Definitions: "Family day home assistant" means an individual person who is 14 years of age or older and who helps the provider in the home. Is it understood that any spouse or other household member who is used as an assistant when necessary to maintain ratio, or as a substitute, is required to have documented evidence of CPR/First Aid training and six (6) hours annual training? Do these standards apply even though the assistant is used only on an occasional basis? What determines "occasional?"

Answer: The terms "caregiver," "provider," "substitute provider," and "assistant" are used interchangeably throughout the licensed family day home standards. In a child day

program, a person or organization has assumed the responsibility for the supervision, protection, and well-being of a child during the absence of a parent or guardian (*Code of Virginia* § 63.2-100). A child and the parents should have the benefit of all the standards all the time. Most of the standards refer to the "care giver" which by definition means the provider, substitute provider, or assistant. It is the responsibility of the provider to ensure that there is always a care giver present in the home who is "able to understand and carry out responsibilities and requirements of *Minimum Standards for Licensed Family Day Homes*."

If a child is left alone in the care of an adult assistant, the assistant must have all the qualifications of a provider/care giver listed in 22 VAC 40-110-40 through 22 VAC 40-110-90 of the standards.

The following standards refer only to "the provider" or to "the provider and substitute provider", but should be interpreted as applying to any care giver:
22 VAC 40-110-590. Routine – Talking with, playing with, and offering physical comfort to children in care;
22 VAC 40-110-700. Stimulation;
22 VAC 40-110-710. Level of supervision – Following the guidance of the standard in deciding how closely to supervise children;
22 VAC 40-110-800. General – Meeting the standards relating to transportation;
22 VAC 40-110-850. Time out – Meeting the standards relating to time-out;
22 VAC 40-110-870. Punishment by children – Not giving a child authority to punish another child nor consenting to a child punishing another child;
22 VAC 40-110-890. Food groups – Supplementing meals from home that do not meet the standard relating to nutrition;
22 VAC 40-110-1210. Abuse – Reporting child abuse or neglect;
NOTE: The *Code of Virginia* at § 63.2-1509 requires all paid caregivers to report child abuse or neglect.
§ 22 VAC 40-110-1260. Records – Recording the name of the adult caregiver administering medication;
22 VAC 40-110-1370. Disclosure – Maintaining confidentiality;
22 VAC 40-110-1390. Information to accompany child – Having copies of emergency contacts and medical information when leaving the home with children; and
22 VAC 40-110-1400. Communication with parents – Sharing information daily with parents.
Other standards having to do with physical environment, equipment, and record keeping are the responsibility of the provider/licensee. (0010 3/24/99)

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22 VAC 40-110-120. Staffing (06/09-Q1)

22 VAC 40-110-120. Staffing
Question(Q1): *In a family day home, do the resident children count for points and need for assistant if the children are not in the care of the provider? The provider has three children under the age of three years and they are in care on the second floor with the provider's spouse. The family day home operation is on the first floor.*

Answer: The intent of the standard is to determine the need for an assistant caregiver for children receiving care in the family day home operation. If the provider is not caring for the children, they would not be counted in the point system. (0046-06/09)

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PART III. HOUSEHOLD

22 VAC 40-110-160. Criminals (06/09-Q1)

22 VAC 40-110-160. Criminals

Question(Q1): *A grandmother comes daily to the family day home to care for only the provider's children. Are background checks needed for this individual?*
Answer: No, the grandmother is not a caregiver in the family day home operation nor is she a household member. (0047-6/09)

22 VAC 40-110-160. Background checks for 18 year old residents

Question: *When a person living in the family day home becomes 18, when is a criminal record check required?*
Answer: *Background Checks for Child Welfare Agencies* (22 VAC 40-191-40) requires the individual living in the family day home to have a criminal background check and to submit a sworn disclosure or affirmation within 30 days of his becoming 18 years old. A central registry search was required within 30 days of this individual's becoming 14 years old. (0011 7/31/07)

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PART IV. PHYSICAL ENVIRONMENT AND EQUIPMENT

ARTICLE 1. PHYSICAL ENVIRONMENT

22 VAC 40-110-200. Hazards

22 VAC 40-110-200. Hazards

Question: *Should a heat pump or air conditioning unit without a protective barrier outside a family day home be cited as a safety hazard?*
Answer: The "National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care" published by the American Academy of Pediatrics, the American Public Health Association, and the Maternal and Child Health Bureau of the U.S. Department of Health and Human Services does not identify a heat pump or air conditioning unit as a hazard in child care programs. Unless the unit has exposed fan blades (with no covering), providers are not required to have a protective barrier surrounding the unit. Children must be supervised so that they do not stick anything into the rotating fan blades. (0042-04/09)

22 VAC 40-110-200. Fences

Question: *In regards to ensuring the safety of the children while playing in the outdoor play area, how is the need for a fence protecting the children from the street determined?*

Answer: When determining the need for a fence, such issues as the following should be considered: whether or not there is a traffic light on the street; the number of children playing in the designated play area at any one time; the quality of supervision; the proximity of the play are to the street; the posted speed limit, including the extent to which the speed limit is observed by motorists. Consideration should also be given to the location of the home. For example, is the home located on a corner? Or on a curve in the road, a narrow road, or a hill where the vision of motorists may be obstructed? Consideration may also be given to any existing warnings to motorists. For example, does the street have a caution sign warning motorists that children are at play? The key here is to safeguard children from open and obvious hazards. (0012 4/07/98)

Question: *How do you consult with providers on protecting children from raised hearths?*
Answer: Pillows, bumpers, carpet pieces, sleeping bags, blankets, etc., combined with direct supervision, are encouraged to protect children from fireplace hearths. In addition, several catalogs have safety equipment designed for fireplaces, etc. Recommend contacting: "One Step Ahead", 1-800-274-8440 or "The Right Start" at 1-800-548-8531. (0013 4/07/98)

Question: *A provider is using a high chair that was manufactured in 1992. The chair has long metal legs and metal arms. The chair is in good condition, however, it is not as strong or sturdy as the high chairs currently on the market. Does this high chair meet current ASTM standards? Are the ASTM standards printed in the FDH appendix current?*
Answer: Research on the Internet under ASTM's website indicates that the standards in Appendix N are the most current standards regarding high chairs. Standard F404-89 provides guidelines for high chairs. Their website is http://www.astm.org.

Inspectors should use judgment since ASTM is not specific about sturdiness. Consider quality of supervision, the number of children in care, their ages – particularly if there are more infants and toddlers to supervise (children that need to be more closely supervised then others). In addition, consider the sturdiness of the chair, the weight, age and level of activity of the child, and whether or not the chair provides some type of head support.

In addition, if the chair does have "skinny" metal or wooden legs, there should be a support bar across the legs to reinforce them. Please refer to Appendix N in the *Minimum Standards for Family Day Ho*mes when determining the safety of a high chair. (0014 6/26/98)

Question: *How do you ensure the safety of the children when a trampoline is available for outdoor play?*
Answer: In May, 2006, the American Academy of Pediatrics' reaffirmed their May 1999 policy statement, "Trampolines at Home, School, and Recreational Centers" that states, "Despite all currently available measures to prevent injury, the potential for serious injury while using a trampoline remains. The trampoline should not be used at home, inside or outside."

Since a trampoline has been identified as being a hazard to children's safety, children in care may not use a trampoline. If one is on the family day home provider's property, a stipulation must be added to the license that the children in care may not use the trampoline. (0041 10/08)

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22 VAC 40-110-310. Chemicals

22 VAC 40-110-310. Determining compliance.
Question: *How do you determine compliance with this standard?*
Answer: Inaccessible is the key factor. All toxic materials should be stored out of reach of small children, and/or locked up. When determining "out of reach", consider the height of the storage area, and make certain children are not able to access the toxic materials by climbing on something to reach them. In addition, children should be constantly supervised. (0015 4/07/98)

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ARTICLE 2. FIRE AND SHOCK PREVENTION AND EMERGENCY PROCEDURES

22 VAC 40-110-370. Alternate heating devices

22 VAC 40-110-370. Gas fireplaces.
Question: *Should gas fireplace logs be included as an alternate heating device?*
Answer: Although gas fireplace logs are not specifically mentioned in this standard as an "alternate heating device", it is recommended that the provider have them inspected once a year. (0016 4/07/98)

Question: *Should inspection of an alternate heating device that is used only in the evening be required?*
Answer: The standard says that all alternate heating devices be inspected once a year. It does not exclude those devices that may be used only in the evening, or only when children are not in care. Therefore, even if the device is only used in the evening, it still needs to be inspected once a year. The evening use of the device should be noted in the case record, or on visit notes, with a reminder to have it inspected annually. (0017 4/07/98)

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22 VAC 40-110-380. Heating devices

22 VAC 40-110-380. Compliance determination next to a furnace.
Question: *How do you determine compliance when the children are cared for in an area of the home where a furnace is located?*
Answer: The standard says that radiators, oil and wood burning stoves, floor furnaces, portable electric space heaters, fireplaces and similar heating devices in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials. Some form of sturdy barrier needs to be used to protect the

children from the furnace, and children need to be closely supervised at all times when playing in the area where the furnace is located. (0018 4/07/98)

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ARTICLE 3. SMALL APPLIANCES AND KITCHEN EQUIPMENT

22 VAC 40-110-490. Sharp kitchen utensils

22 VAC 40-110-490. Ensuring inaccessibility of sharp kitchen utensils

Question: *What is an acceptable means of ensuring the inaccessibility of the sharp kitchen utensils to the children?*

Answer: The use of children-resistant latches is sufficient for younger children. However, to ensure inaccessibility for school age children, the utensils should be stored high enough out of reach, or locked up. Also remember that there is no substitute for close supervision. Please see phone numbers for catalog companies "One Step Ahead" 1-800-274-8440 or "The Right Start" at 1-800-548-8531. The Division is not endorsing products available by these companies, rather suggesting these companies are a place to start if a provider is looking for safety devices and/or equipment. (0019 4/07/98)

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ARTICLE 4. SPACE AND EQUIPMENT FOR CHILDREN

22 VAC 40-110-510. Spaces

22 VAC 40-110-510. Adequate spaces

Question: *How do you determine if there is adequate space?*

Answer: When determining the amount of space per child indoors, consideration should be given to the "evidence" of free movement. For example, children are not in danger of tripping into furniture, etc. At least 25 square feet per child can be used as a rough guide for determining adequate space, but it is not a requirement. Consideration should be given to the size and amount of furniture/equipment, the nature and type of activities, and the level of supervision in all areas designated for providing care for the children. (0020 4/07/98)

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22 VAC 40-110-540. Cribs

22 VAC 40-110-540. Cribs

Question: *Request guidance in the area of the use of port-a-cribs.*

Answer: It is recommended that the provider be given information printed by the Division entitled "Portable Crib-Playpen Alert!" If providers are using a port-a-crib, they should be responsible for obtaining current information regarding all portable crib/playpens that have been recalled. If the provider is using a crib that has been recalled, she is in violation of 22 VAC-110-200 of the *Minimum Standards for Licensed Family Day Homes*, as the children are being exposed to "obvious hazards." In addition, the age, size and developmental stage of the children using the portable crib should be considered. Children in the cribs should be checked on frequently, and should be within

sight and sound supervision at all times. It is recommended that port-a-cribs not be used. (0021 4/07/98)

Question: *What is the most recent information regarding mesh sided portable cribs and the proper use of them? More detailed information is needed on the difference between a port-a-crib, playpen, play yard, etc.*
Answer: The Consumer Product Safety Commission reported, in *Deaths Associated with Playpens, July 2001,* that over the years, "playpens, portable cribs, and play yards have evolved into virtually identical products. More than 2.5 million of these products are sold annually."

A "portable crib" is defined in the CPSC standards as "a non-full-size baby crib designed so that it may be folded or collapsed, without disassembly, to occupy a volume substantially less than the volume if occupies when it is used." "Non-full-size cribs" as defined by CPSC are cribs that (1) are intended for use in or around the home, for travel and other purposes and (2) that have an interior length dimension either greater than 55 inches or smaller than 49 ¾ inches, or, an interior width dimension either greater than 30 5/8 inches or smaller than 25 1/8 inches, or both.

The CPSC standards include a definition for a "crib-pen." A crib-pen is a non-full-sized baby crib the legs of which may be removed or adjusted to provide a "play pen" (two words) or yard for a child.

Mesh/net/screen cribs, non-rigidly constructed baby cribs, cradles (both rocker and pendulum types), car beds, baby baskets and bassinets (also known as junior cribs) are not subject to the provisions of the CPSC standards for full-size and non-full-size cribs. Also, they are not subject to the provisions of § 1500.18 which bans certain toys and equipment intended for use by children. Because they are not covered in the law and because both CDC and FDH standards require use of cribs for sleeping that meet CPSC standards, mesh/net/screen cribs are not permitted for sleeping in child day centers and licensed family day homes.

Play yards may be used in child day centers and family day homes, but may not be used as sleeping areas. The American Society for Testing and Materials (ASTM) developed standards for play yards in 1997. The current standards were published in 1999. According to ASTM, a play yard "is a framed enclosure with a floor made for the purpose of containing a child who (1) is unable to climb out of the play yard; (2) is 35 inches tall or less; or (3) weighs no more than 30 pounds. Mesh-fabric play yards are constructed with a rigid frame assembly and a fabric or mesh assembly, or both, used to function as sides, ends, or a floor, or a combination thereof. Rigid-sided play yards have sides/ends constructed of rigid materials like wood, plastic, or metal generally configured as a horizontal rail/vertical slat assembly. The filling material of the floor pad in a play yard (foam, fiber fill, etc.) must not exceed 1 inch in thickness. If a play yard is designed to use a floor pad, the floor pad must be provided by the manufacturer.

Mesh-sided portable cribs do not meet CPSC standards for full-sized and non-full-size cribs, therefore may not be used in licensed child day centers or family day homes for sleeping.

Mesh-sided play yards may not be used if the following hazards exist:

- Have been recalled (check CPSC's website: www.cpsc.gov)
- Mesh has large weave (1/4 inch openings or greater)
- Mesh has tears, holes, or loose threads
- Mesh is not securely attached to top rail and floor plate
- Top rail cover has tears or holes
- If stapes are used, some are missing, loose or exposed
- Provided with a pillow, comforter, or other soft bedding
- Latching or locking device requires a minimum force of 10 pounds to activate the release mechanism. (0022 5/02)

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22 VAC 40-110-580. Maintenance

22 VAC 40-110-580. Pools and fencing.
Question: *Define a safety fence around a pool. All pools have a fence but you can enter the pool through the house, thus, a child could walk out of the door into a pool. Or does this mean a fence within a fence? What about an above-ground pool with a self contained collapsible stairway which when up presents a protective access situation?*
Answer: "Outdoor swimming pools shall be enclosed by safety fences and gates with child-resistant locks …." The intent of this standard is to prevent children from accessing an above-ground or in-ground pool without supervision in order to prevent drowning accidents.

In-ground pools should be completely surrounded by a fence or barrier that is at least four feet high, with slats less than four inches apart, or link fence openings no larger than 1 ¾ inches. If there is a barrier to the backyard, or to the area on the premises where a pool is located, and the house is part of this barrier, the door(s) exiting to the pool should be locked while children are in care with a sliding latch or chain lock that is inaccessible to children (this was verified with a fire prevention officer) or should have an audible alarm.

Collapsible pool steps and ladders on a above-ground pools should be removed when the pools are not in use to protect children from accessing these pools. (0023 2/17/94)

Question: *Do above ground pools need to be enclosed?*
Answer: The standard specifies that "outdoor pools" shall be enclosed by safety fences and gates. Technically, this covers all pools, including above-ground pools. The answer is yes. Above ground pools need to be enclosed by safety fences (in the absence of collapsible pool steeps and ladders). (0024 4/07/98)

Question: *A provider has a wading pool in her backyard which measures 9 ft. x 2 ft. and holds 975 gallons of water. The provider does not empty and store the wading pool when it is not in use due to the large quantity of water it takes to fill the pool. She does, however, keep a cover on the pool when not in use and also has a small filter in the water to ensure the water is kept clean. Would this wading pool require a fence to be installed around it since the water is kept in it at all times during the summer months?*

Answer: Both the Consumer Product Safety Commission and the BOCA National Building Code define swimming pool as a structure containing water 24" deep or deeper. If it is less than 24" deep, it is a wading pool and standards require that it be emptied and stored away when not in use.

If this pool meets the definition of a wading pool, but the provider does not want to empty it when not in use, she will have to comply with the requirements in § 4.38 for swimming pools. This standard requires the pool to be enclosed by a safety fence with child-resistant locks and to be set up and maintained according to manufacturer's instructions. The filter and cover will only take care of debris in the pool. If the provider has no manufacturer's instructions for maintaining the pool, she needs to follow the guidance of her local health department on water treatment including proper pH control and the use of chemical germicide and algicide. (0025 8/06/99)

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PART V. CARE OF CHILDREN

ARTICLE 2. SUPERVISION

22 VAC 40-110-710. Level of supervision

22 VAC 40-110-710. Sleeping infants in other area of the house

Question: *How should compliance be determined when infants are sleeping in other rooms of the house?*

Answer: Consideration should be given to where in the house the infant(s) are sleeping in relation to the area(s) where the other children are being supervised. Is the provider able to see and/or respond (go directly to the children) quickly if necessary to the sleeping infant(s)? The provider should consider using an operating baby monitor if the infants sleep in a separate area. However, if infants sleep on a floor different from where the provider routinely cares for other children, a baby monitor should definitely be used. Providers should also be encouraged to leave doors open, and develop a schedule that ensures frequent checks. (0026 4/07/98)

Question: *How are staff interpreting this standard in a family day home where care is provided on different levels of the home? When children are awake, must preschool children be with the care giver at all times? When children are asleep, can the provider be on another level without a monitor? Can school-age children be on another level of the home to do their homework?*

Answer: It is difficult to answer these questions because of the number of variables. When determining if children are being supervised to insure that the care giver is aware of what the children are doing at all times, the following should be considered: layout of the house and play area, the number, ages and developmental level of each child.

The standard says that the care giver must supervise children in a manner that insures that he/she is aware of what children are doing at all times, and can promptly redirect, or assist when necessary. The following should be considered: ages, individual differences and abilities, layout of the house and play area, neighborhood circumstances or hazards, and risk activities children are engaged in. In addition, the quality of supervision, and the compliance history of the provider should be considered. Suggest

recommending to provider that preschool children be supervised at all times with the exception of when the provider needs a break for the restroom, or takes a brief amount of time to prepare food for the children.

When determining whether or not children should be allowed to do homework on a different level of the house, many safety issues should be considered. For example, are windows locked with screens where children are not able to unlock and open them? Are hazardous materials out of reach of the children? Can the children exit quickly and safely during an emergency, such as a fire? The number of children in question regarding each of the above situations should also be taken into consideration. Recommend having the provider document a plan for supervising children under the circumstances written above. This plan should include as many of the principles of supervision in the Child Day Standards as possible. (0027 6/26/98)

Question: 22 VAC 40-110-710 *requires that children be "supervised in a manner which ensures that the care giver is aware of what the children are doing at all times and can promptly assist or redirect activities when necessary." Are LFDH providers who provide nighttime care for children required to remain awake?*
Answer: Although providers do not have to remain awake when children are in care during the night, the following is required and justified by the standard in parentheses:

- A care giver shall remain awake until all children are asleep (22 VAC 40-110-710);
- A care giver shall be awake to assist children who are being picked up during the night (22 VAC 40-110-710);
- The provider shall have a written, posted emergency escape plan that includes plans on evacuating sleeping children (22 VAC 40-110-420);
- The provider shall maintain documentation of monthly practiced emergency escape plans for all shifts in which children are in care (22 VAC 40-110-430);

The provider shall provide to the licensing inspector sufficient documentation of the ways in which the provider can ensure a care giver is aware of what the children are doing at all times such as the use of motion sensors, alarms on doors, assistants who are awake, or electronic monitors; caregivers always on the same floor level as the children, etc. (0028 3/17/00)

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ARTICLE 3. DIAPERING, TOILETING, AND WASTE DISPOSAL

22 VAC 40-110-760. Sanitation of hands

22 VAC 40-110-760. Sanitation of hands
Question: *May hand sanitizer be used as an extra precaution by children?*
Answer: The standard requires children's hands to be washed with soap and water. There is nothing in the standard to prohibit children from using germicidal cleansing agents in addition to washing their hands with soap and water. However, the manufacturer's instructions must be followed and the germicidal cleansing agent must be inaccessible to children (only used under supervision of an adult). (0043-04/09)

Question: *Are family day homes required to use antibacterial soap?*
Answer: Family day homes are not required nor is it necessary to use antibacterial soap because:

- Bacteria, viruses, and funguses are common causes of illnesses, and antibacterial soaps are designed to kill bacteria-not viruses or fungus.
- They are not usually applied in a way that allows them to work properly, since they are not left on the skin long enough before being rinsed off.
- Studies have shown that there is little or no evidence of the antibacterial products offering any additional protection against bacteria. On the contrary, antibacterial products may add to the existing problem of antibiotic-resistant bacteria.

Not all liquid soaps are hazardous, only those that claim to be an antibacterial, disinfecting, antiseptic or sanitizing product. When the soap product makes that claim, the soap is considered to be an over-the-counter (OTC) drug. All OTC drugs are required to have "Keep out of the reach of children" on the labels. The warning is not designed to prohibit the use of the product by children, but is intended to caution that children are to only use the product with adult supervision. There are a few labeling exceptions; therefore, if the provider has a bottle of antibacterial soap that does not contain a warning, the provider should request the information for that product (every product has a "Material Safety Data Sheet") and keep it on file. (0044-04/09)

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ARTICLE 5. BEHAVIOR AND GUIDANCE

22 VAC 40-110-830. Prohibited behavior

22 VAC 40-110-830. Prohibited behavior
Question: *When the providers' children are present in the home, how are they affected by the standards? Do we expect the provider to treat their children the same as the day care children as to napping, meals, discipline, transportation, etc. or do things differently with their own children in front of the day care children? This has come up because of some unsafe or questionable practices involving the providers own children such as spanking in front of or within earshot of day care children or not using appropriate child restraint devices for their own children while transporting all children.*
Answer: Licensing does not have jurisdiction over a provider's own child or a child residing in the home. Licensing cannot dictate what/when those children are fed, where they nap, if they have their immunizations, etc. because those children are not in the "child day program" as defined in the Code of Virginia. Licensing also does not enforce seat belt laws for those children.

Although Licensing cannot prohibit a provider from disciplining her own child, Licensing can note a violation if the provider's discipline of her own child in some way violates a licensing standard. (0045-04/09)

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ARTICLE 6. NUTRITION AND FOOD SERVICES

22 VAC 40-110-960. Menus

22 VAC 40-110-960. Snacks and menus

Question: *Does this standard require that snacks be posted along with meals? The standard states "when meals are provided."*
Answer: The intent of the standard is that menus for all meals and snacks provided by the family day home "shall be planned, written, dated, and placed or posted at least a day in advance in an area accessible to parents." This is necessary in order for parents to know what snacks are planned to be served and for specialists to know if providers are complying with 22 VAC 40-110-900 ("snacks that are served to children shall include a variety of foods from two or more food groups"). (0029 3/17/00)

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PART VI. PHYSICAL HEALTH

ARTICLE 1. HEALTH REQUIREMENTS FOR FAMILY DAY HOUSEHOLD MEMBERS AND CARE GIVERS

22 VAC 40-110-1090. Maintenance of health information (06/09-Q1,Q2)

22 VAC 40-110-1090. Maintenance of health information

Question(Q1): *A grandmother comes daily to the family day home to care for only the provider's children. Is a TB test needed for this individual?*
Answer: No, the grandmother is not a caregiver in the family day home operation nor is she a household member. (0048-06/09)

Question(Q2): *When should friends/family staying in a licensed family day home be required to obtain TB screening?*
Answer: Licensing considers a person to be residing in the home (not just staying in the home or being a guest in the home) when that home is the person's principal, legal dwelling place. The person's principal, legal dwelling place can be verified by viewing the individual's voter registration card or driver's license, or confirming with neighbors or other collateral contacts.

If it is verified that an adult friend or family member resides in the family day home, this standard requires that household member to obtain tuberculosis screening within 90 days prior to his contact with children. (0049-06/09)

22 VAC 40-110-1090. TB tests

Question: *A family day home applicant was just recertified for the Foster Parent Program through a local social service office. The TB test (less than two years old), Criminal Record Check, and Child Protective Service Check have all been done. She is not locally certified or voluntarily registered—only a foster parent. Does she need to have the CRC, CPS and TB tests again?*
Answer: Refer to 22 VAC 40-191-40 C 8 of the *Background Checks for Child Welfare Agencies* regulation. The criminal history record check and the search of the central

registry must have been done within 90 days of the completion of the application. According to 22 VAC 40-110-1090 of the *Minimum Standards for Licensed Family Day Homes*, the TB screening must have been done within 90 days prior to licensure as a family day home. (0030 7/31/07)

22 VAC 40-110-1090. Department of Health recommendations

Effective January 1, 1999, the Division of Tuberculosis Control at the Virginia Department of Health has revised its recommendations to health districts and other providers on screening for tuberculosis disease and infection. These new guidelines suggest that all screening programs include an assessment for tuberculosis disease (e.g., symptom review) and that the skin testing component be targeted exclusively toward high-risk populations. Since these are recommendations, their application in modifying existing policies is left to the discretion of local health authorities.

As health departments implement these guidelines, they may not routinely provide skin testing services to low-risk groups. These changes are likely to affect child care providers who are not, as a consequence of their occupation, at risk for TB disease or infection. Therefore, in the absence of other risk factors, these providers may be unable to comply with licensing standards for TB skin testing without incurring the expense of being tested for TB by a physician.

Patients who go for tuberculosis screening to health departments that have implemented the new guidelines will undergo an assessment for risk(s) of tuberculosis infection and disease. This assessment will also include a review of the symptoms of active tuberculosis disease. Those persons found to be at risk will undergo tuberculin skin testing and additional testing as indicated. Those without risk factors or symptoms will be issued a written statement documenting the absence of risk factors and therefore the absence of a need for additional testing for tuberculosis disease or infection.

The Division of Licensing Programs will accept such a statement signed and dated by a local health department official as verification that the child care provider has satisfied the tuberculosis screening requirement. (0031 4/19/99)

Question: *Is the substitute provider required to obtain TB testing as required in 22 VAC 40-110-1090 through 22 VAC 40-110-1100?*

Answer: Yes, the substitute provider is required to obtain TB testing. The standards at 22 VAC 40-110-1090 require "care givers and any other adult household members who come in contact with children or handle food served to children" to be tested for TB. A "care giver" is defined at 22 VAC 40-110-10 as the provider, substitute provider, or assistant. (0032 4/19/99)

Question: *Do the requirements of 22 VAC 40-110-1090 through 22 VAC 40-110-1100 apply to all substitute providers regardless of whether they are paid or how infrequently used (i.e., in an emergency)?*

Answer: Yes, these standards (and all other standards referring to "care givers") apply to all care givers regardless of the amount of time they are with children or whether or not they are paid. The only exception is that unpaid caregivers are not required by the *Code of Virginia* to report child abuse or neglect. (0033 6/19/07)

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ARTICLE 2. HEALTH REQUIREMENTS FOR CHILDREN

22 VAC 40-110-1130. Form and content of medical reports

22 VAC 40-110-1130. Form and content of medical reports
The Virginia Department of Health has updated the form that must be used to record immunizations received and the results of the required physical examination. A copy of the MCH 213 F form and instructions are available at the following web site: http://www.vdh.virginia.gov/epidemiology/immunization/documents/SchoolForm.pdf (0037 6/11/07)

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ARTICLE 4. MEDICATION AND FIRST AID SUPPLIES

22 VAC 40-110-1220. Dosing and consent

22 VAC 40-110-1220. Blanket and long term authorization
Question: *Are parents able to sign "blanket" or long term authorization for administration of medication?*
Answer: It is recommended that if a child needs to be on medication for an extended period of time, that the parent be provided with the form located in the Child Day Center Standards (Appendix II). It is also recommended that the duration of the authorization not exceed 10 working days, unless the Medical Authorization form in Appendix II is filled out and signed by a doctor. (0034 4/07/98)

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22 VAC 40-110-1260. Records

22 VAC 40-110-1260. Ointments, sunscreens and over-the-counter medications
Question: *During our recent phone conference, the subject of diaper ointment and sunscreens was discussed and it was decided that these ointments should be treated as medications. Evidently this is already being done in some regions. We did not discuss, however, whether ALL requirements for medications in Family Day Home regs would also be enforced. In the FDH standards, there is the requirement to record information each time the medication is administered. These standards will place quite a burden on home providers regarding the use of diaper ointments. It is recommended that these additional requirements should not be applied to diaper ointments and possibly sunscreen. These items should be inaccessible to the children (22 VAC 40-110-1250), labeled correctly with the child's name and have the permission slip on file, but a record of each use should be waived for these items.*
Answer: The United States Department of Health and Human Services' Food and Drug Administration has determined that sunscreens and diaper ointments are "over-the-counter drugs." All the requirements concerning medications in Standards 22 VAC 40-110-1220 through 22 VAC 40-110-1260 would apply to the use of these products as they would to any other non-prescription medication. (0035 5/11/00)

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PART VII. RECORD KEEPING RESPONSIBILITY

22 VAC 40-110-1360. Information

22 VAC 40-110-1360. Substitutes and what documents they must have access to.

Question: *FDH standards require a document/statement signed by a parent giving the provider blanket authorization to utilize a substitute provider as necessary. The Information and Agreement form (032-05-011/5 Rev. 6/99) contains a statement to be agreed to by the parent authorizing the family day provider to use a substitute provider as necessary. By definition, a substitute provider is an approved adult who would provide care in the family day provider's home. However, in practice, one provider might depend upon another provider to take a child(ren) into their separate family day home for a brief, incidental period of time (i.e., while a provider goes to a medical appointment). In these situations, what documents does the substitute provider need?*

1. *There appears to be no requirement that the family day provider inform the parent(s) of the use of a substitute provider, but if the substitute is at a different address, this would seem essential.*
2. *Should the provider be required to notify parents whenever incidental substitute provider care at a different location is utilized?*
3. *The emergency information and permission forms do not detail the substitute provider by name, which might be needed if the substitute had an emergency.*
4. *FDH standard 22 VAC 40-110-1390 does not appear to require the emergency medical treatment, emergency transportation, and illness permission to treat forms (22 VAC 40-110-1360.3.b.(3)) to accompany the child when s/he leaves the home. Should the provider require parents to sign emergency medical treatment, emergency transportation, and emergency care in case of illness forms specific to the substitute provider, or are the original forms held by the provider deemed to be sufficient?*

If substitute care will be provided at a separate location, parents should sign an authorization form that would show substitute's name, address and dates of care. Emergency authorization forms should be signed by parents for the substitute provider. Copies of the child(s) health and immunization records should be provided. If the second substitute provider is also licensed, she would need all information required for a child in care.

Answer: Both the definition of "family day home' and "substitute provider" in the *Minimum Standards for Licensed Family Day Homes* require that the care be provided in the home of the licensed provider or the home of a child in care. If a provider is arranging for the children to be cared for in a location other than the provider's home or the home of a child in care (even if it is for a brief, incidental period of time), the provider is not complying with the standards.

If the provider is arranging for care to be provided in another licensed family day home, then the second provider is the child's day care provider and the second provider would have to have all the records for the child that are required in 22 VAC-40-110-1350

through 22 VAC 40-110-1360 (including a written agreement with the parent as required in 22 VAC 40-110-1360.3).

If a parent has signed a statement allowing a licensed provider to "release" the child from the licensed family day home to an unlicensed provider, then upon that "release" the child is no longer in the care of the licensed family day home provider and the *Minimum Standards for Licensed Family Day Homes* do not apply (unless that home is subject to licensure). (0036 3/17/02)

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CODE OF VIRGINIA

46.2-1100.

46.2-1100 Child Restraint Devices

46.2-1100 Child Restraint Devices

Effective July 1, 2007, § 46.2-1095 of the *Code of Virginia* requires any child up to age eight (8) transported in a motor vehicle must be properly secured in a child restraint device that meets the standards adopted by the US Department of Transportation.

Rear-facing child restraint devices must be placed in the back seat of the vehicle. If the vehicle has no back seat, the child restraint device may be placed in the front passenger seat only if i) the vehicle is not equipped with a passenger side airbag, or ii) the passenger side airbag has been deactivated.

If a physician licensed to practice medicine in Virginia or any other state determines that the use of a child restraint system by a child from the age of four (4) to eight (8) would be impractical because of the child's weight, physical fitness, or other medical reason, the child may be secured in a seat belt which is standard equipment in the vehicle. The person transporting this child must carry with him a signed written statement from the physician that contains the child's name and the reasons for the determination. (§ 46.2-1100 of the *Code of Virginia) (*0040 6/11/07)

54.1-3400.

54.1-3408 N. Medication Administration

54.1-3408 N. Medication Administration

Virginia law prohibits administering prescription drugs without either a professional health care license or training that is specified in the Drug Control Act (§ 54.1-3408 of the *Code of Virginia)*.

The Budget Bill passed in April by the 2007 session of the Virginia General Assembly contains law that affects the Medication Administration Training (MAT) Program's requirements for the administration of prescription medications to children in regulated child day programs. Please note that these instructions refer

solely to citations related to training requirements; actual errors in administration or storage of medications will continue to be cited under the applicable regulation.

- Through December 31, 2007, staff members in regulated child day programs (licensed child day centers, religiously exempt child day centers, licensed family day homes, voluntarily registered family day homes, family day homes approved by licensed family day systems, and certified preschools) may administer prescription medications to children without completing the MAT course if the child's parent or guardian has given permission and direction for the administration of the medications.

  Although this law does not become effective until July 1, 2007, effective immediately, Licensing Inspectors will not issue citations to child day programs whose staff members are otherwise appropriately administering prescription medications but have not yet completed the MAT course.

  Licensing inspectors will continue to review facilities' plans, difficulties or progress in achieving MAT course completion by the 1/01/08 deadline, to assist as appropriate and to reflect these discussions under the technical assistance portion of the inspection report.

- Effective January 1, 2008, in order to administer prescription medications to children, staff members in regulated child day programs must have successfully completed the MAT course.

  Exception: A program that was a regulated child day program on December 31, 2007, whose staff members for good cause have not completed the MAT course, may apply to the Commissioner for a good cause extension, not to exceed 90 days. If the extension is granted, the staff members may continue to administer prescription medications during the extension period without having completed the MAT course. At the end of the extension period, the staff members must successfully complete the MAT course prior to administering prescription medications to children.

  NOTE: The Board of Nursing is considering the approval of a shorter medication administration training program for staff members in regulated child day programs who will administer only "emergency medications" (those necessary to alleviate a life-threatening condition until emergency responders can arrive). The Board of Nursing has made no decisions about the length of this abbreviated training program or about the types of emergency medications the training will enable staff to administer. It is suggested that you regularly check the following website for updates on the MAT training:
  http://www.dss.virginia.gov/family/cc_providertrain/mat/index.cgi (0039 6/11/07)

63.2-1800. Chapter 18

63.2-1809.1 Liability Insurance

63.2-1809.1 <u>Liability Insurance</u>
A change in the law regarding liability insurance became effective July 1, 2007. Please note that the law does not require that each provider have liability insurance. It requires each family day home provider (licensed, voluntarily registered, and licensed system-approved) to furnish written notification to the parent or guardian of each enrolled child that states whether there is liability insurance in an amount established by the Virginia Department of Social Services (at least $100,000 per occurrence and $300,000 aggregate) in force to cover the operation of the family day home. Each parent must acknowledge, in writing, receipt of the written notification.

In the event there is no longer liability insurance coverage, the provider must give written notification to each parent or guardian within 10 business days after the effective date of the change. Each parent must acknowledge, in writing, receipt of the written notification of change.

The acknowledgement of receipt of written notification to the parent or guardian, including the change notification, must be maintained on file in the family day home at all times that the child attends and for 12 months after the child's last day of attendance. (0038 6/11/07)