

**Voluntary Registration
of Family Day Homes
Requirements for Providers
22 VAC 40-180
Effective April 15, 1993**

**Technical Assistance
October 2009**

**Department of Social Services
Commonwealth of Virginia**

Technical Assistance for Voluntarily Registered Family Day Homes

This technical assistance document is a collection of the current, interpretive guidelines from the Virginia Department of Social Services on how to apply the *Voluntary Registration of Family Day Homes Requirements for Providers (22 VAC 40-180)*. It provides in-depth information, interpretation, and clarification of Virginia law. The technical assistance set forth in this document must be followed by Voluntarily Registered Family Day Homes.

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.
- Once in the sections, “Q#”s in the section header are hyperlinked to the specific update in 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.

TABLE OF CONTENTS

PART I. INTRODUCTION	3
22 VAC 40-180-10 Definitions	3
PART II. PROVIDER REGISTRATION AND GENERAL PROCEDURES	4
22 VAC 40-180-30 Provider eligibility	4
22 VAC 40-180-40 Application for registration	5
22 VAC 40-180-110 Staffing requirements	5
PART III. HEALTH and SAFETY CHECKLIST	6
22 VAC 40-180-120 Health and safety checklist criteria	6
SECTION 2. I Take Precautions To Prevent Accidents and Injuries (10/09-Q1).....	6
SECTION 3. I Take Precautions To Protect The Health of The Children Entrusted To Me	8

PART I. INTRODUCTION

22 VAC 40-180-10 Definitions

22 VAC 40-180-10 Definitions

Question: *When is a provider required to be licensed versus voluntarily registered?*

Answer: Section 63.2-100 of the Code of Virginia defines a family day home as “a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider’s children and any children who reside in the home, when at least one child receives care for compensation...Family day homes serving six through 12 children exclusive of the provider’s own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider’s own children and any children who reside in the home unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.”

Therefore:

- Family day homes serving **six through 12 children** (excluding the provider’s own children or any children who reside in the home) **must be licensed.**
- Family day homes serving **five or fewer children**, (excluding the provider’s own children or any children who reside in the home) **may choose to be voluntarily registered.**
- Family day homes serving **more than four children under the age of two (including the providers own children and children who reside in the home)** **must be licensed or voluntarily registered.** (0009 – 05/09)

Question: *Are children for whom the provider has military guardianship considered to be residing in the provider’s home?*

Answer: Not necessarily. The provider may have been appointed to act as guardian for a child in case the parent is deployed. However, until the parent is deployed and the provider assumes full-time responsibility for the care of the child, the child is residing with the parent, not the provider, and must be counted towards capacity and points. (0003 – 05/09)

Question: *Where may a VR family day home be operated?*

Answer: A VR family day home may be operated in the residence of the provider or a home of any of the children in care. A residence means the provider’s principal, legal place of abode. A person’s legal address can be verified by, but not limited to:

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 location of the VR family day home operation must be in the provider’s principal legal place of residence or the home of one of the children who is in care. It may not be a detached garage or other outlying building on the provider’s property. However, use of an attached garage is permissible because it is included in the home structure and considered part of the primary residence. (0004 – 05/09)

Question: *May a VR family day home provider work outside of the home?*

Answer: Yes, as long as the provider is present in the home the majority of time each child is in care. The definition of “provider” in the VR standards states that this individual has “primary responsibility for providing care, protection, supervision and guidance for the children in the registered home.” “Primary responsibility” means this individual is expected to be providing care at least 51% of the time each child is in care. In the absence of the provider, a substitute provider or adult assistant must assume the care-giving responsibilities.

The Code of Virginia (Code) requires VR providers to disclose to the parents of children in care, the percentage of time that persons other than the provider will care for the child. A statement notifying parents of the percentage of time others care for the children is included on the back of the “Children’s Record” model form or the provider may have a written statement to the effect that she is the sole caregiver, or that other providers care for children ____% of the time in the handbook or other written information signed by the parent and placed in each child’s record. (0005 – 05/09)

Question: *Who may a provider leave children with while running an errand?*

Answer: The provider may leave the children with a “substitute provider” or with a “provider assistant” who is 18 years of age or older. A “substitute provider” must be approved by the Division of Licensing Programs (DOLP) or the Contracting Agency. If the children are to be left with a provider assistant, the total points must be reduced to a level that an additional person is not needed. Example: When all children are present, the total points is greater than 16 and therefore an assistant is required. If the provider takes two of her children on an errand and lowers the points to 16 or less, then the other children in care may be left alone with an adult assistant. (0006 – 05/09)

-[\[Table of Contents\]](#)-

PART II. PROVIDER REGISTRATION AND GENERAL PROCEDURES

22 VAC 40-180-30 Provider eligibility

22 VAC 40-180-30.A Provider eligibility

Question: *May an assistant under 18 years of age walk enrolled children to and from the school bus or pick up a child at school while the provider is with the other enrolled children?*

Answer: No, because the “Health and Safety Checklist” requires that children never be left alone with an assistant younger than 18 years of age and that the provider must make sure that children are appropriately supervised at all times. (0007 – 05/09)

22 VAC 40-180-30.C Provider eligibility.

Question: *Why does the DOLP require a provider to be able to read, write, and understand English?*

Answer: This is a safety requirement. 22 VAC 40-180-30 C *Voluntary Registration of Family Day Homes Requirements for Providers* states that the provider, assistant(s) and substitute provider(s) shall be able to read, write, understand and carry out the responsibilities in the regulation. This is to ensure that a provider can read the applicable regulations and forms; communicate with contracting organizations, the Department, emergency personnel, parents, children, and licensing representatives; read prescription or medication labels; and read safety precautions found on items in the home. Certain areas of Virginia have larger non-English speaking populations and have translators available to handle emergency calls. However, this is not true in every city and county throughout the Commonwealth and safety of children is the highest concern. (0008 – 05/09)

-[\[Table of Contents\]](#)-

22 VAC 40-180-40 Application for registration

22 VAC 40-180-40. A Application for registration

Question: *How many people can be listed on the VR certificate?*

Answer: Standard 22 VAC 40-180-30 C *Voluntary Registration of Family Day Homes Requirements for Providers* states that “The commissioner shall issue the certificate of registration, which shall not be transferable, to a specific provider at a specific location. The reference to a “specific provider” means “one individual” who has primary responsibility for providing care, protection, supervision, and guidance to the children in a VR family day home. (0010 – 05/09)

[-Table of Contents-](#)

22 VAC 40-180-110 Staffing requirements

22 VAC 40-180-110. A and B Staffing requirements

Question: *What is the difference between capacity and the point system?*

Answer: The capacity of a Voluntarily Registered (VR) family day home is the number of enrolled children that may be in care at one time (a child means an individual under age 13). The capacity does NOT include the provider’s own children or children who reside in the home. The point system is used only in determining the need for an assistant and includes all children in care, including the provider’s children or children who reside in the home.

Capacity:

The capacity of a VR home may never exceed five enrolled children at any one time. Whether care is provided in the provider’s home or the home of any of the children in care, the provider’s own children and any children who reside full-time in the home are not counted in the capacity.

Point System:

All children in the home, including the provider’s own children under eight years of age and any children under eight years of age who reside full-time in the in the home must be assigned a point value to determine the need for an assistant. If the point total is greater than 16 during any period of time, both the provider and an assistant must be present.

Point Values by Child’s Age

CHILD’S AGE	POINT VALUE
Birth through 15 months	4 points each child
16 months through 23 months	3 points each child
2 years through 4 years	2 points each child
5 years through 9 years	1 point each
10 years and older	0 points

EXAMPLE: A VR home cares for children as follows:

Provider’s Child #	AGE
Enrolled Child # 1	12 months
Enrolled Child # 2	15 months
Enrolled Child # 3	3 yrs
Enrolled Child # 4	4 yrs
Enrolled Child # 5	10 yrs
Provider’s Child # 1	6 months
Provider’s Child # 2	6 yrs

Determining Capacity:

8 Number of children in care
-3 Provider's own children
5 Since the number does not exceed five, the provider is NOT over capacity.

Determining Points:

CHILD	AGE	POINT VALUE
Enrolled Child # 1	12 months	4 points
Enrolled Child # 2	15 months	4 points
Enrolled Child # 3	3 yrs	2 points
Enrolled Child # 4	4 yrs	2 points
Enrolled Child # 5	10 yrs	0 points
Provider's Child # 1	6 months	4 points
Provider's Child # 2	6 yrs	1 point
Provider's Child # 3	9 yrs	0 points
	TOTAL POINTS	17 points

Since the total number of points in this example is greater than 16, an assistant is needed if all children are present. If some of the children are not present and the total number of points falls to the level of 16 or less, an assistant is not needed during those times.

NOTE: If a VR provider assumes responsibility for the care, protection, supervision and guidance of a child that is not enrolled in the home (i.e., a grandchild, a neighborhood child, or a friend's child while the parent is at an appointment), the child must be counted towards capacity and points. The fact that a provider is not being paid for child care does not exclude the children from being counted in the capacity and points. However, if a person other than the provider and assistant (i.e., spouse, other age-appropriate family or friend) is assuming responsibility for these added children in an area away from the children in care, the added children are not counted in the capacity and points. (0001 – 05/09)

22 VAC 40-180-110.B Staffing requirements.

Question: *If there is a 13 year old child in care in the home, does that child count in the capacity or points?*

Answer: No, a 13 year old is not considered a child for the purposes of the voluntary registration program. (0002 – 05/09)

[-\[Table of Contents\]-](#)

PART III. HEALTH and SAFETY CHECKLIST

22 VAC 40-180-120 Health and safety checklist criteria

22 VAC 40-180-120 Health and safety checklist criteria

SECTION 2. I Take Precautions To Prevent Accidents and Injuries (10/09-[Q1](#))

Section 2. I Take Precautions To Prevent Accidents and Injuries

Question: *What criteria are used to determine when a fence or other barrier is needed to protect children from a dangerous area?*

Answer: When determining the need for a fence or other barrier, the first and foremost concern is to provide safeguards to protect children from open and obvious hazards. A non-climbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge, should surround outdoor play areas located within 30 feet of hazards such as, but not limited to, streets with speed limits in excess of 25 miles per hour or with heavy traffic, or railroad tracks. In addition, the following includes a list of possible issues to consider when determining the needs for a fence or other barrier:

- Whether or not there is a traffic light on the block (if so, it is probably considered a “busy” street);
- The number of children playing at any one time;
- The quality of supervision;
- The proximity of the play area to the street;
- The posted speed limit, including the extent to which the speed limit is observed by motorists;
- Location of the home – is the home located on a corner, on a curve in the road, on a narrow road, or on a hill where vision of motorists may be obstructed;
- Existing warnings to motorists – does the street have a caution sign warning motorists that children are at play; and
- Local ordinances requirements for fences or barriers. (0012 – 05/09)

Question: *What types of barriers are acceptable to protect children from dangerous areas?*

Answer: A barrier can be a fence or any other structures that prevents passage or access such as shrubs, planters, safety netting (i.e., KIDCATCHER), barricades (steel, plastic, wood, etc.) and portable fencing. Local ordinances may specify what type of barrier is required for certain hazards. (0013 – 05/09)

Question: *How is “a body of water” defined and what specific precautions must be taken to protect children from drowning?*

Answer: A “body of water” is defined as any significant accumulation of standing water. A child can drown in as little as 2 inches (5 cm) of water! Water hazards can occur both indoors and outdoors. Safeguards and adequate supervision must be in place to ensure that drowning accidents do not occur. Please see [Best Practices for VR Homes](#) document for precautions to take with indoor sources of water accumulation.

Outdoor water hazards can occur in the form of a pond, creek, fountain, or pool. Barriers should surround outdoor play areas located within 30 feet of water hazards (see previous questions). Pools are the most obvious hazard and children must be prevented from accessing an above-ground or in-ground pool without supervision. Check with your locality for specifics, but in-ground pools are usually required to 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 the area on the premises where a pool is located, and the house is part of this barrier, while children are in care the door(s) exiting to the pool should be locked with a sliding latch or chain lock that is inaccessible to children or should have an audible horn.

Collapsible pool steps and ladders on above-ground pools should be removed when the pools are not in use to protect children from accessing these pools. However, based on the children in care other precautions may be necessary. (0014 – 05/09)

Question: *How do you ensure the safety of the children when a trampoline is available for outdoor play?*

Answer: The American Academy of Pediatrics’ policy statement, “Trampolines at Home, School, and Recreational Centers” that was published in May, 1999 and reaffirmed in May, 2006, is “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 VR provider’s property, a stipulation must be added to the certificate that the children in care may not play on the trampoline. (0015 – 05/09)

Question: *May a provider use older high chairs, toys, cribs, etc. that are in good condition?*

Answer: Yes, as long as the equipment is safe, in good condition, and has not been recalled.

When determining whether older equipment may be used consider:

- The sturdiness of the equipment;
- The weight, age and level of activity of the children using the equipment;
- For high chairs, does it provide head support and support bars across the legs for reinforcement;
- Is the item free of lead paint;
- A check of the Consumer Product Safety Commission to ensure that the equipment is not the subject of a recall. The CPSC website is www.cpsc.gov ; and
- The American Society for Testing and Materials (ASTM), standard F404-89 provides guidelines for high chairs. The website is www.astm.org. (0016 – 05/09)

Question(Q1): *How do you determine if a substance is toxic/poisonous/hazardous?*

Answer: To determine if a substance is poisonous or hazardous and needs to be stored in areas inaccessible to children or in a cabinet or drawer with child-resistant locks, look for the statement “Keep out of the reach of children” AND any of the following words on the product’s label:

- Danger
- Caution
- Warning
- Flammable
- Harmful if Swallowed
- Causes Burns
- Vapor Harmful
- Poison

(U.S. Consumer Product Safety Commission Requirements under the Federal Hazardous Substances Act: Labeling and Banning Requirements for Chemicals and Other Hazardous Substances)

Exceptions: Hand sanitizers, liquid hand soaps, toothpastes, and sunscreens labeled “Keep out of reach of children” do not need to be inaccessible to children five years of age or older provided that the labels on the hand sanitizers, liquid hand soaps, toothpastes, or sunscreens do not contain any other warning words listed above and the products are used under adult supervision. (0021 – 10/09)

SECTION 3. I Take Precautions To Protect The Health of The Children Entrusted To Me

Section 3. I Take Precautions To Protect The Health of The Children Entrusted To Me

Question: *Are VR provider’s required to exclude sick children from care?*

Answer: No, a provider is not required to exclude sick children from care. Please see [Best Practices for VR Homes](#) document for things a provider should consider before making a decision regarding the inclusion or exclusion of a sick child. (0011 – 05/09)

Question: *What criteria are used in determining that child-care is provided in a smoke-free environment in rooms accessible to children in care?*

Answer: In order to be considered a smoke-free environment, rooms accessible to children in care must be free of ashes; cigarette, cigar or pipe related items including, but not limited to, butts or tobacco; lighters or matches; and free of any lingering smoke odor. Please see [Best Practices for VR Homes](#) document regarding recommendations for maintaining a smoke-free environment. (0017 – 05/09)

Question: *What vaccinations are required for pets that are kept in a VR home?*

Answer: Dogs and cats are required to be properly vaccinated. Although a veterinarian may recommend several vaccinations to ensure the health and safety of a dog or cat, the provider must only maintain documentation that a rabies vaccination is up-to-date. Please see [Best Practices for VR Homes](#) document for recommendations regarding keeping and maintaining pets in a VR home. (0018 – 05/09)

Question: *Are providers who care for only school-age children required to have electrical outlet covers, barriers on stairways and barriers around heat sources?*

Answer: No, however, if the children in care change so that younger children are in care, safety equipment must be put into place. To ensure the safety of younger children who may come into care in the home, the provider must have electrical outlet covers and barriers for stairways and heat sources available at all times in the home. (0019 – 05/09)

Question: *Are there any special requirements for providers who offer evening and overnight care?*

Answer: No. The provider is responsible for ensuring compliance with the standards and the Health and Safety Checklist during all operating hours, including overnight hours if children are in care. Providers need to maintain a high awareness of the fact that children must be kept safe and be appropriately supervised at all times. Please see [Best Practices for VR Homes](#) regarding providing evening and overnight care. (0020 – 05/09)