

State Board of Social Services

22VAC40-121 Standard for Licensed Family Day Systems (Proposed)

Agency Response to Economic Impact Analysis

The Department of Social Services offers the following response to the October 6, 2011 Economic Impact Analysis (EIA) prepared by the Department of Planning and Budget (DPB):

For purposes of background, system-approved homes meet the threshold for licensure outlined in the definition of “family day home” in § 63.2-100 of the Code of Virginia and would have to be licensed if they were not approved by a family day system. The State Board of Social Services’ (Board) goal for this regulation is to offer children cared for in system-approved homes the same protections and advantages as children receiving care in licensed family day homes. Therefore, except for some reporting and record-keeping requirements and the requirement for the provider to have a high school education and three months of programmatic experience, the proposed requirements for system-approved homes are the same as those for licensed family day homes in 22VAC40-111 (effective July 1, 2010). Many of the proposed requirements for system-approved homes have been in effect for licensed family day homes since 1993.

DPB EIA: The new requirement that providers undergo medication aid training will likely be expensive. Board staff estimates that providers who choose to offer the service of administering prescription medications will have to pay approximately \$75 every three years to receive medication aid training. Alternately, families that are served by providers who do not complete medication aid training 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.

Agency Response: *Section 54.1-3408 O of the Code of Virginia mandates that child care providers (family day homes and centers) complete the training prior to administering prescription medication to enrolled children. The Board has no discretion in this requirement and any associated costs.*

DPB EIA: Adding a requirement for 40 hours of mentoring for new providers approved by the system will result in the elimination of the system’s flexibility to change or do away with the 40 hours of mentoring currently provided by the system.

Agency Response: *During the public comment period on the Notice of Intended Regulatory Action, Infant Toddler Family Day Care (the state’s only family day system) objected to a proposed requirement that providers have a high school education and three months of programmatic experience as required for licensed family day home providers. Infant Toddler Family Day Care stated that most of their providers were immigrants so would not be able to provide proof of high school completion. They stated that their current policy requiring new providers to have “40 hours of on the job mentoring before the [home] can even have a family referred to them for an interview” goes above the proposed requirement for providers to have three months of experience. As a response to this comment, the Board waived the requirements for a high school education and three months experience for new providers in lieu of the mentoring.*

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DPB EIA: Costs of annual training for providers “are likely to roughly double with the doubling of the number of annual training hours that are in the proposed regulation.”

Agency Response: *Under the current regulation, system-approved providers must initially have a total of two hours of training on each of 11 topics (22 hours). In the proposed regulation, two more topics are added to this initial or orientation training, but there is no longer a requirement for the orientation training to be a certain number of hours. The system could shorten the time spent on orientation and use that cost savings to cover the cost of the increased hours of annual training. The orientation and annual training are recommended because:*

Research, including that of the National Scientific Council on the Developing Child, indicates that quality early education programs that include highly skilled caregivers can enhance a child’s cognitive and social development and can help provide the foundation for later school achievement, economic productivity, and responsible citizenship. Better trained providers are better able to prevent, recognize and correct health and safety problems.

The National Association of Child Care Resource & Referral Agencies (NACCRRA) surveyed parents and found that nearly 2/3 of parents polled assumed that caregivers have some training to work with children; more than 95% of parents favor requiring training in child development and safety; and nearly 2 in 3 believe that caregivers are trained in first aid and CPR and in reporting and recognizing the signs of child abuse.

DPB EIA: The proposed regulation will require additional continuing education for all system staff, daycare providers and helpers, and disallow time spent on CPR and first aid training from counting toward required annual continuing education. Fees that member providers pay to be part of the day home system would likely have to increase significantly to cover these increased costs.

Agency Response: *Currently, system-approved providers are not required to have CPR or first aid certification. The current regulation requires providers to have two hours of initial training in “first aid, home safety and fire safety.” Subsequently, each quarter they are required to have two hours of training that reinforces or expands on the 11 topics. Since 1993, licensed family day home providers have been required to have first aid and CPR certification as part of the job qualifications (or the required knowledge, skills, and abilities) for caregivers. Recertification training in first aid and CPR has not counted toward the annual training requirements of licensed providers because these certifications are qualifications for the position of caretaker in a licensed family day home.*

DPB: Current regulations set the minimum age of a day home helper who works under supervision at 14. The agency proposes to increase this minimum age to 16. The proposed increase in age will likely cost providers more in loss of flexibility than it benefits anyone.

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Agency Response: *The proposed change is recommended because:*

- *A caregiver in a family day home is not a babysitter hired directly by the parent, but, by definition, is one who provides care, protection, supervision, and guidance to children in care to as many as four infants at once;*
- *The 16 year old age requirement is consistent with Standards for Licensed Family Day Homes, 22VAC40-111, that became effective July 1, 2010;*
- *The system was in agreement with the change.*
- *While some 14 year olds may be mature enough to babysit children, overall, 14 year old children are not mature enough to handle a group of children (up to a total of 12 children) especially when four of those children can be under the age of two;*
- *“Caring for Our Children” (National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care Programs by the American Academy of Pediatrics, the American Public Health Association, and the Maternal and Child Health Bureau of the Health Resources and Services Administration) recommends that aides and volunteers be at least 16 years of age, participate in training, and that they not be counted in child-to-staff ratios even when working under continual supervision of qualified staff. The proposed change is a compromise in requiring an older age for an assistant, but allowing them to be counted in the child-to-staff ratio as a caregiver working under the direct supervision of a provider or substitute provider. In this proposed regulation, direct supervision of the assistant means the provider or substitute can see or hear the children and assistant so the assistant is not always in sight of the provider.*

DPB: The proposed regulation disallows children not potty trained from wading in toddler wading pools. Rather than banning children who are not potty trained from using wading pools, those children should be allowed to use swim diapers.

Agency Response: *The proposed regulation requiring children to be potty trained prior to using a wading pool is:*

- *Consistent with Standards for Licensed Family Day Homes, 22VAC40-111;*
- *Consistent with recommendations by the Virginia Department of Health (VDH) and the American Academy of Pediatrics;*
- *Recommended because swim diapers are not truly “leak-proof” and therefore cannot prevent the transmission of E-coli and other contaminants;*
- *Recommended as wading pools are not treated with the same chemicals as large public and private pools; and*
- *Approved by the system.*

DPB: The proposed regulation disallows the use of time-out as a means of behavior guidance for infants and toddlers. There are implicit costs for both caregivers and parents to not allow time-out to be used with children under two years of age.

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Agency Response: *The proposed change is:*

- *Consistent with other regulations, including Standards for Licensed Family Day Homes, 22VAC40-111 and Licensing Standards for Independent Foster Homes, 22VAC40-141;*
- *Approved by the system; and*
- *Recommended in “Caring for Our Children” which states time-out should not be used on children under two years of age because they are too young to cognitively understand the concept of time-out. Other techniques to encourage positive behavior are recommended such as basing expectations on the child’s developmental level; modifying the schedule, routine, or activities to support appropriate behavior; showing the child positive alternatives; and using encouragement and descriptive praise.*

DPB: The proposed regulation bans the use of pillows and filled comforters for children less than two years of age. There are implicit costs of this ban for parents and providers.

Agency Response: *The proposed regulation is:*

- *Consistent with Standards for Licensed Family Day Homes, 22VAC40-111, and Standards for Licensed Child Day Centers, 22VAC15-30. The center standards have banned pillows and filled comforters for children this age since before 1988;*
- *Consistent with a recommendation from the American Academy of Pediatrics that states pillows should not be given to children until they move from a crib to a bed at age 2-3 due to suffocation risks. Children over the age of one are still at risk for suffocation even if the risk is not as great as for an infant; and*
- *Approved by the system.*

DPB: The proposed regulation prohibits the use of a play pen (including a pack and play) as a designated sleeping area. Either caregivers or parents would have to pay for a full-sized crib for infants and toddlers that now sleep 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.

Agency Response: *Since 1974, licensed family day homes have been required to provide each child with a designated crib, cot, rest mat or bed for resting or napping and disallowed the use of play pens for sleeping. Licensed child day centers have had this requirement since 1964. The proposed regulation is:*

- *Consistent with Standards for Licensed Family Day Homes, 22 VAC 40-111 and Standards for Licensed Child Day Centers 22 VAC 15-30 (which prohibit mesh-sided or portable cribs);*
- *Recommended by the Eunice Kennedy Shriver National Institute of Child Health and Human Development that states the use of a firm mattress in a crib approved for safety by the Consumer Product Safety Commission (CPSC) lowers the risk of Sudden Infant Death Syndrome;*
- *Recommended in “Caring for Our Children”;*

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- *Consistent with mandatory CPSC standards beginning on December 28, 2012 that require all cribs provided by child care facilities and family day care homes to meet new and improved federal crib standards;*
- *Consistent with recommendations of manufacturers of mesh-sided cribs that these cribs not replace standard full size cribs; and*
- *Approved by the system.*

DPB: Current regulations allow caregivers to provide individual cloth towels to children who are washing and drying their hands. The proposed regulation's requirement for use of paper towels will likely increase costs for providers.

Agency Response: *The cost of providing paper towels probably would not exceed the cost of providing individually assigned towels to multiple children coupled with the cost for regular laundering of these linens. This proposed standard is:*

- *Recommended by VDH;*
- *Recommended by the Centers for Disease Control and Prevention; and*
- *Consistent with requirements in Standards for Licensed Family Day Homes, 22 VAC 40-111 and Standards for Licensed Child Day Centers 22 VAC 15-30.*

DPB: The proposed regulation requires providers to have a working landline telephone. There will be costs incurred by providers who currently only have a cell phone.

Agency Response: *The agency is recommending this change not only to ensure providers can contact emergency services during widespread emergencies, but also for added safety for children because family day home providers usually work alone. If the provider is incapacitated and unable to converse with emergency responders, she or a child can call 911 from a landline and the responders will be able to quickly determine the exact location of the call (only the longitude and latitude of the location can be determined from a call from a cell phone). This proposed regulation is:*

- *Recommended by the Virginia Department of Emergency Management, the Department of Homeland Security, National Association of State 911 Administrators, departments of emergency services in other states, and several telephone companies; and*
- *Consistent with the requirement for telephones in the Standards for Licensed Family Day Homes, 22VAC40-111.*

DPB: The proposed regulation requires that providers "provide age-appropriate activities for children in care throughout the day that reflect the diversity of enrolled children's families, culture, and ethnic backgrounds." The Board proposes to expand what is required for toys and activities by adding a list of criteria that are in part vague and in part highly specific.

Agency Response: *There is no requirement in the proposed regulation for toys to be provided that reflect the diversity of enrolled children's families, culture, and ethnic backgrounds. The standard can be met by the provider's simply acknowledging cultural, ethnic and family differences (holidays, food restrictions, etc.). This proposed regulation is:*

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- *Recommended by “Caring for Our Children” which states that respecting differences “can foster children’s ability to relate to people different from themselves, their sense of possibility, and their ability to succeed in a diverse society, while promoting feelings of belonging and identification with a tradition.”*
- *Consistent with Standards for Licensed Family Day Homes, 22VAC40-111; and*
- *Approved by the system.*

DPB: All of the proposed changes have implicit and explicit costs that some providers will be unwilling or unable to bear. This may cause some providers to drop out of the day home system which will not only have detrimental effects for them but 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 member providers 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.

Agency Response: *According to Toddler Family Day Care, that system voluntarily implemented most of the requirements for providers in this regulation on July 1, 2010. Therefore, any providers unwilling or unable to bear the costs of the requirements would have already dropped out of the system. Families served by those homes would have been referred by the system to other system-approved homes so that no one lost childcare services.*

Children of families receiving daycare subsidy do not have to be cared for in a licensed or registered facility, so these families will not be in danger of losing their child care arrangement due to any requirements of this regulation. Child care subsidy can be paid to unlicensed and unregulated providers (see 22VAC40-661). Also, since the system has voluntarily implemented most of the requirements for providers in this regulation, any associated costs that would be passed along to families served by system-approved providers would have already occurred and there should be minimal, if any, increased costs to families as a result of this regulation.