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Periodic Review Report of Findings

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-80
Regulation title	General Procedures and Information for Licensure
Date this document prepared	April 15, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

None

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The State Board of Social Services has authority to adopt regulations as may be necessary to carry out the mandated purposes of the Department of Social Services. Sections 63.2-217, 63.2-1732, 63.2-1733, and 63.2-1734 of the Code of Virginia provide the legal authority for the State Board of Social Services to adopt regulations for assisted living facilities, adult day care centers, and child welfare agencies.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

An alternative for achieving the purpose of the regulation would be to use the Code of Virginia for enforcement of the requirements for licensure of assisted living facilities, adult day care centers, and child welfare agencies. The General Procedures and Information for Licensure regulation contains general requirements that are applicable to all the department’s licensed programs but are not included in the programmatic regulations. Sections 63.2-1732 and 63.2-1733 of the Code of Virginia state the Board shall have authority to adopt and enforce regulations and § 63.2-1734 states the Board shall adopt regulations for programs required to be licensed. This regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not used in this periodic review.

Commenter	Comment	Agency response
Kathleen Hendrickson-Montessori Children’s House	<p>22 VAC 40-80-70. Nontransferability of license. 22 VAC 40-80-80. Conditional license. Should be amended to allow transferability of a license for a 6 month interim period, or fast-track approval of a new conditional license when there is a change in ownership but the Center Director/day-to-day manager remains the same, more than 50% of the staff remain the same, the location of the facility remains the same, and the seller has a satisfactory compliance record.</p> <p>This would reward compliant, successful owners by making it much more likely that they can sell their business when they are ready to retire. This is an increasingly important issue for the state to address, as small business owners are an aging demographic.</p> <p>The current regulations place an undue burden on center owners by making it extremely difficult for them to sell their businesses. In the child care industry profits are low, risk is high, and purchasers have little incentive to buy an existing compliant business instead of opening a new business. If owners cannot sell their centers when they wish to retire, they may choose to close instead. This is a lose-lose situation; the disruption is bad for the children and their families, staff lose their jobs, owners lose their potential sale proceeds, and</p>	The agency will consider this comment when the regulation is revised.

	<p>VDSS loses a compliant and experienced center from their center portfolio.</p> <p>If compliant, successful centers are able to continue their operations through ownership transitions, all parties would benefit, with no apparent downside. The current regulation is not necessary for the protection of public health, because continuity of staff, management, and facility are sufficient to predict continued compliance.</p> <p>Specifically, the regulations should be amended as follows:</p> <ol style="list-style-type: none"> 1. A six month interim licensing process or fast-track approval of a new conditional license should be established for purchasers of existing, compliant centers. 2. The new applicant purchasing an existing, compliant center should be exempt from the obligations under 22 VAC 40-80-160. Investigation. Section B. If the facility has current health and fire inspections and is making no changes to the facility, it is unduly burdensome to require new inspections for the change of ownership. These unnecessary inspections also burden the health and fire inspectors themselves, as many of them are already overscheduled. 3. The new applicant purchasing an existing, compliant center should be required to complete an application with fewer elements, similar to the license renewal application, which only requires the applicant to submit forms and processes that have substantially changed since the last review. 4. The regulations should be amended to specifically allow students' records and staff's records to transfer to the new center owner as long as the parents and staff agree in writing. The current process requires a center purchaser to complete all new student and staff records even if they are already complete and current, which unduly burdens center staff and parents. <p>22 VAC 40-80-70. Nontransferability of license. 22 VAC 40-80-110. Provisional license. Should be amended to specifically allow temporary relocation to a different facility if the licensed facility is unexpectedly damaged by flood, fire, wind, hurricane, or another emergency situation.</p> <p>Large sections of Virginia are at significant risk of hurricane damage, which could suddenly force a large number of centers to close permanently or for weeks to months. This happened in North Carolina in 2016 and 2018 with Hurricane Matthew and Hurricane Florence. According to official estimates published on governor.nc.gov, Hurricane Florence alone caused more than 90,000 public school students to be out of schools for weeks to months. More than \$25M in emergency spending was needed to restore schools for re-</p>	<p>The agency will consider this comment when the regulation is revised.</p>
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	<p>occupancy. Although specific data on child care centers does not appear to be available, North Carolina estimated that more than 300,000 businesses were impacted by Hurricane Matthew, and their action plan for restoration specifically cites daycare centers as essential to communities' needs, and therefore a high priority for restoration (see State of North Carolina CDBG-DR Action Plan).</p> <p>The current regulations do not meet Virginia's emergency preparedness needs. The regulations should be amended to specifically permit a six month provisional license for temporary emergency relocation, and describe the process for how to obtain the emergency provisional license. The regulations should be amended to allow for temporary relocation to a facility where:</p> <ol style="list-style-type: none"> 1. Space requirement is 25 sq ft per student 2. Parent and grandparent volunteers may be temporarily used to augment staff and meet staffing ratios, provided that training and supervision controls are in place 3. Facilities such as churches, libraries, and recreation centers may be used during the provisional period, even if they are not specifically zoned for child care 4. During the provisional period, centers may be permitted to relocate to facilities that do not meet all facility regulations, as long as reasonable controls are in place to assure student safety. <p>22 VAC 40-80-130. Provider support services. This regulation currently requires applicants for licensure to complete a prelicensure orientation program. As of December, 2018, the required orientation part 1 (online course) contained inaccurate and outdated information about the licensing process. The required orientation part 2 (classroom course) is only offered under certain circumstances and may take several months to schedule. The material covered in both part 1 and part 2 of the training is limited to the regulations themselves, which are freely available on the VDSS website.</p> <p>The regulations should be amended to remove the requirement for prelicensure training, since it is unduly burdensome for applicants, not necessary for the protection of public health, and in certain ways actually detrimental to the intended goal of making sure that applicants have the correct information about the licensing process.</p>	<p>The agency is currently reviewing prelicensure training modules to update and revise the content.</p>
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Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set out in Executive Order (as amended 7/16/2018). The regulation is necessary for the protection of public health, safety, and welfare because it provides explanation on licensing processes and the responsibilities of both the department and the applicant or licensee in those processes. Providers seeking licensure must be equipped to provide for the safety and welfare of vulnerable populations such as children and the elderly. This regulation is clearly written and easily understandable.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency recommends that the regulation be amended. Examples of needed amendments include removing outdated definitions, adding enforcement procedures for child welfare agencies and assisted living facilities that are agencies of the Commonwealth, and reorganization of sections for ease of understanding and clarity. Public comment received will be considered in drafting amendments to the regulation. This regulation has not been significantly revised since 2006, when the Child Day-Care Council and the State Board of Social Services both had authority over the regulation. The Child Day-Care Council was abolished in 2012.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

This regulation is required by the Code of Virginia to provide information about requirements that are applicable to the department's licensed programs. The majority of licensed programs are small businesses. The regulation includes licensing requirements and information on enforcement and sanctions that is also included in the Code of Virginia, however the regulation provides the detailed information about the processes for licensure and enforcement that is not included in the Code. The additional detail in the regulation helps providers and the public to better understand existing licensure requirements. Code language can be confusing to understand, and explaining the requirements in a regulation, all in one place, increases compliance. One comment from the public was received which addressed multiple sections of the regulation. This input will be considered in drafting amendments to the regulation. There have been exempt regulatory actions completed in 2011, 2013, 2017, and 2019. This regulation has not been significantly revised since 2006 when the Child Day-Care Council and the State Board of Social Services both had authority over the regulation. The Child Day-Care Council was abolished in 2012. There are changes to the Code of Virginia that need to be added to this regulation. The Department will work to minimize economic impact to providers when developing regulatory changes.