



Economic Impact Analysis Virginia Department of Planning and Budget

22 VAC 40-121 –Standards for Licensed Family Day Home Systems
Department of Social Services
October 6, 2011

Summary of the Proposed Regulation

The State Board of Social Services (Board) proposes to repeal 22 VAC 40-120 (Standards for Licensed Family Day Home Systems) which now governs licensure standards for Day Home Systems and standards for child care providers who are members of a system and care for 9 or fewer children in their homes. The Board proposes to replace 22 VAC 40-120 with 22 VAC 40-121 (which will have the same chapter title). Many of the requirements that are proposed for the new regulations are in current regulations. For instance, these proposed regulations require an impenetrable hedge or fence separating play areas from hazards (such as roads) that are within 30 feet but such a barrier is already required. In addition to requirements that are in current regulations, the Board proposes many new substantive changes to existing requirements; some of these changes are driven by legislative mandates and some are to be imposed at the Board's discretion.

The changes that are proposed on account of legislative mandate include:

1. Requiring providers to document proof of each child's identity and age,
2. Requiring disclosure to parents of the percentage of time that any individual other than the primary provider will be caring for children and
3. Requiring that any provider who will be administering prescription medication normally given by a parent or guardian complete medication aid training.

At its discretion, the Board proposes to:

1. Require daycare providers who are new to the day home system to receive 40 hours of mentoring before they can start caring for children referred by the system,
2. 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,
3. Increase the number of day homes a visitation staff person may oversee from 30 to 40 over a four year period,
4. Slightly increase recordkeeping requirements for both day home systems and their member providers as well as mandate which records will be made available to the public,
5. Change the minimum age of child care helpers from 14 to 16,
6. Require that all providers and substitute providers be able to read, write and communicate in English well enough to understand these regulations and communicate with emergency responders,
7. Disallow children who are not potty trained from wading in toddler wading pools,
8. Ban the use of time-out as behavior correction for both infants and toddlers between the ages of 16 and 24 months,
9. Ban the use of pillows and filled comforter style blankets for children under the age of two,
10. Ban the use of pack and play style beds for babies who are sleeping,
11. Require hand washing be accomplished with liquid soap and paper towels,
12. Require providers to have a landline phone and
13. Require toys and activities that reflect the cultural and ethnic diversity of children in care be provided in member homes.

Result of Analysis

The benefits exceed the costs for several proposed regulatory changes. The costs likely exceed the benefits for many of the proposed regulatory changes. There is insufficient data to ascertain whether benefits exceed costs for at least one regulatory change. Detailed analysis of costs and benefits can be found in the next section.

Estimated Economic Impact

For the changes that the Board proposes to make on account of changing statutory requirements, the age and identity requirement and the requirement to disclose to parents of the percentage of time that any individual other than the primary provider will be caring for children, will have costs for collecting and storing documentation that are minimal. Parents are very likely to benefit from disclosure requirements that allow them to make informed decisions as to who will be watching their children. The requirement that providers undergo medication aid training will likely be more 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.

Currently, member day home providers must be certified in first aid and CPR and also must complete initial training that covers 11 specific topics. The Board proposes to add two new topics to those that must be covered in initial training as well as require 40 hours of mentoring for new providers. Staff for the Infant and Toddler Day Home System estimates that their mentoring program costs \$325-\$400 per new provider. While this system does currently provide mentoring for its new member providers, adding a requirement for mentoring to the proposed regulations will eliminate the flexibility that this day home system has to change or do away with the mentoring program if it proves to be not worth the cost or if they find a better way to get the same benefit in a different manner.

Currently there are no specific hours of continuing education required for system staff; member providers are currently required to complete 8 hours of continuing education a year which may include hours spent recertifying in first aid and CPR. The Board proposes to require

eight hours of annual training for system staff, to increase the number of annual training hours required for member providers from 8 to 16 between now and 2013 and to exclude biennial recertification in first aid and CPR from counting toward annual training requirements.

Staff for the Infant and Toddler Day Home System estimates that they currently spend approximately \$7,000 per year for currently required annual training for their member providers. These costs are likely to roughly double with the doubling of the number of annual training hours that are in the proposed regulations. Board staff reports that first aid and CPR recertification costs \$105 per person. Under the proposed regulations, member providers or day home systems will have to incur costs for recertification in addition to, rather than as a part of, other annual training requirements. Fees that member providers pay to be part of the day home system would likely have to increase significantly to cover these increased costs. In addition to these explicit costs, providers will likely incur implicit costs for their time spent and for any traveling they might have to do to get the educational hours needed. Board staff does not report any evidence that current training requirements are inadequate to ensure the health and safety of children in care nor does there appear to be a good rationale for excluding first aid and CPR training from counting toward annual training requirements as it does now. Given this, the costs of the proposed additional training requirements likely far outweigh their benefits.

Current regulations allow qualified visitation staff for day home systems to oversee 25 day home system providers. The Board proposes to increase this number to 40 homes per qualified visitation staff member over a four year period. This change will likely lower costs for day home systems as they will be able to retain fewer staff members to visit and inspect member day homes. There does not appear to be any indication that the Board feels the proposed visitation staff to home ratios will be inadequate to ensure the health and safety of children in care. For this proposed change, benefits will likely outweigh costs.

Currently, day home systems and member providers are required to keep a variety of records on providers, children in care and on compliance with regulations. The Board proposes to modify record keeping requirements so that parent contact information is updated each year and so that certain records (confirmation of which day homes are members of the system, evaluation and monitoring reports, enforcement letters and correspondences to the system about enforcement actions) are available to the public. These changes will likely have only minimal

costs attached and will provide several benefits. Requiring that contact information be updated periodically will ensure that both system staff and daycare providers are able to quickly contact parents if a child becomes sick or is injured. Allowing public access to certain system records will allow parents who are considering using member provider services to make informed decisions about who will care for their children. For both of these changes to records requirements, benefits likely outweigh costs.

Current regulations set the minimum age of a day home helper who works under supervision at 14. The Board proposes to increase this minimum age to 16. Board staff does not know of any instances where children in care have been harmed by the standard currently in place and does not know of any teenagers under the age of 16 who are currently working as day home helpers. Nonetheless, the current standard gives providers more flexibility to hire the staff that they see fit. Given that many teenagers as young as 13 babysit in situations where they are completely alone with their charges and that day home helpers have the added failsafe of having to work supervised, the proposed increase in age likely costs providers more in loss of flexibility than it benefits anyone.

Current regulations require that caregivers be able to read, write and understand enough to carry out their duties. The Board proposes to change this standard to include the requirement that caregivers left alone with children must be able to read, write and understand English enough to carry out their duties and be able to effectively communicate to emergency personnel, if necessary. Caregivers that are not currently able to effectively communicate in English will likely incur costs for getting their English skills up to par. These costs are likely outweighed by the benefits that will accrue for children who are in the care of someone who can safely administer non-prescription medication and communicate with EMT's or 911 staff if there is an emergency.

Although current regulations are silent on the specifics of the use of wading pools, the Board proposes to disallow wading as an activity for children who are not potty trained. Board staff reports that this change is proposed to remove the risk of fecal matter contamination that may spread disease. Although children may benefit from rules that limit their exposure to such contaminants, providers and children may also incur costs on account of this rule. Providers who wish to allow outdoor water play that includes a wading pool might have to pay for extra help to

care for children who would fall under this new rule. Alternately, providers might eschew these activities for all children under their care thus depriving them of the benefit of a fun and enriching activity. In any case, a less proscriptive measure than that proposed might be to have the same rule as many commercial pools now do and require that children who are not potty trained wear swim diapers which contain waste better.

Current regulations ban spanking for all children in care. The Board proposes new regulatory language that would also disallow the use of time-out as a means of behavior modification in both infants and toddlers. While it is likely the case that infants less than sixteen months are not developmentally ready to allow them to understand what is being conveyed by having to sit in time out, toddler readiness will likely vary more. Parents and caregivers are likely better judges of the individual appropriateness of any given behavior modification technique than would be someone who does not know the individual child. While there would likely be few explicit costs for implementing this new rule, there would likely be implicit costs for both caregivers and parents. Care givers would likely lose the ability to use a behavior modification tool that can be very effective and parents will lose control and continuity of consequences for their child between home and day care.

Likewise, the proposed ban on the use of pillows and filled comforters for children under the age of two likely encroaches on an area where parents are much more likely to be able to make informed decisions about what their particular child is ready for. There is a large amount of data available that shows the risk of Sudden Infant Death Syndrome (SIDS) decreased dramatically once people stopped using loose fluffy bedding for babies that were too young to turn their heads or turn over if their mouths and noses got covered by their bedding.¹ That data also shows that children older than one year are not generally at risk for SIDS. Given this, the benefits of banning pillows and filled comforters for older toddlers does not appear to outweigh the implicit costs of this ban for caregivers and parents who are dealing with toddlers who often have very firm ideas about what comfort items they need to sleep.

Currently, full-sized cribs and/or pack and play type mesh portable cribs may be used for infant and toddler sleeping so long as they meet standards and are in good repair. The Board

¹ The Centers for Disease Control report, at <http://www.cdc.gov/sids/>, that SIDS deaths have decreased by over 50% since 1990.

proposes to no longer allow pack and plays to be used for sleeping infants or toddlers. Board staff reports that, although there is no evidence of decreased safety in mesh portable cribs, the Board believes that they do not provide the level of support and comfort that is optimal for sleeping. Under this proposed standard, either caregivers or parents would have to pay for a (usually more expensive) 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.

Current regulations allow caregivers to provide individual cloth towels to children who are washing and drying their hands. At the behest of the Virginia Department of Health, the Board proposes to now require all day homes to only use liquid soap and paper towels for hand washing. Providers who had been using cloth towels will likely incur costs for stocking paper towels instead. Children in care will likely benefit from a somewhat reduced spread of germs. Without knowing differential rates of disease spread, there is insufficient information to ascertain whether costs or benefits will be greater.

Current regulations require providers to have a working phone available in the day home. The Board proposes to require that day home providers now have a working landline phone in their homes. Board staff reports the Board is proposing this change to ensure that day home providers can contact emergency services in situations where there is a widespread emergency (9-11, hurricanes, earthquakes, etc) where cell phone lines will likely be overwhelmed and because the Department of Homeland Security recommends that every home have at least one landline. The Infant and Toddler Day Care system reports that 30%-40% of their member homes have only cell phone service². These cell phone only households would have to add a landline phone to their home and pay for monthly service either in addition to, or in place of, their current cell phone service. A Verizon representative reports that the installation fee for a new landline in Northern Virginia is approximately \$40 and that monthly service fees for basic service would range between \$11.39 and \$47.99, depending on whether the service is for strictly local calls or whether it includes long distance. This representative also reports that these monthly fees do not include taxes or other charges which would likely add between \$5 and \$10 to monthly costs. These costs would likely represent a burden for lower income member providers who currently

choose to only have cell phone service because they consider it a more useful product or because they cannot afford both types of service. Requiring landline phones would provide a benefit in situations where cell phone “lines” are overwhelmed with calls but these benefits may not outweigh the convenience of cell phone service and the ability to call 911 from wherever an emergency may be (outside in a play area, on a field trip or even in another room from where the landline is located) without having to leave an injured or sick child to do so.

Current regulations require that day homes provide activities and age appropriate toys for children in care. 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. For instance, the Board proposes to require that day homes must provide activities and toys that “reflect the diversity of enrolled children’s families, cultures and ethnic backgrounds”. Adding this requirement may increase costs for caregivers who would be responsible for buying more toys if their toy selection does not currently reflect the ethnic diversity of the children they care for or if they start caring for a different ethnic mix of children. While there is likely some benefit that accrues to children who have, for instance, dolls that look like them to play with, this benefit is likely outweighed by the costs to providers and to parents who might have those costs passed along in the form of higher fees. In any case, parents are the best judge of whether their child has a proper play environment at daycare and are able to address any perceived deficiencies by sending some of the child’s own toys with them to daycare without the need for a regulatory mandate.

Taken together, all of these proposed regulatory changes have the potential to raise the implicit (time, effort, aggravation) and explicit (dollar) costs of being part of a day home system to a level 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.

² This roughly matches estimates of cell phone only households nationally. See

Businesses and Entities Affected

Board staff reports that there is one day home system that operates in Northern Virginia and that this system has approximately 120 member providers. All of these day homes, as well as the system itself, qualify as small businesses and all will be affected by these proposed regulations.

Localities Particularly Affected

Localities in Northern Virginia where member day homes offer daycare services will be particularly affected by these proposed regulations.

Projected Impact on Employment

Because these regulations raise the total explicit and implicit costs of being part of a licensed day home system, some day homes will likely choose to give up membership or even employment in the childcare field. A number of low income families who receive state subsidies for child care, and who would not be able to continue using day homes once those homes were no longer registered, are likely to lose their day care arrangements on account of any decrease in number of available day homes. In cases where this happens, the ability of low income parents to keep a job may be affected at least temporarily. Day home providers that choose to pay the additional costs of continued participation in a day home system will likely pass at least some of those costs on to their clients, including clients that are low income families. This may cause some families to lose their day care arrangements because of increased costs and, therefore, may affect those parents ability to remain employed. This is likely particularly true for parts of the population that are only marginally attached to the work force (the portions of the population that are more likely to be receiving a state day care subsidy).

Effects on the Use and Value of Private Property

Affected businesses will likely see increased costs that reduce profits and, therefore, reduce the value of those businesses.

Small Businesses: Costs and Other Effects

All affected businesses qualify as small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

There are likely many changes that the Board can make to these proposed regulations to lower the costs and make them less onerous. Absent a showing that current training is inadequate, the Board could keep current requirements for continuing education for day care providers as well as system staff thus eliminating both the dollar costs of additional proposed annual training and the cost in time of completing it. Unless and until there is evidence that current rules (14 year age minimum for helpers, allowing child care providers and parents to decide what kind of diversity toys and activities will reflect, etc) actually harm children, the Board could keep current rules to allow care givers maximum flexibility in arranging their businesses in the most efficient, least costly, way for them individually. The Board could lower both explicit and implicit costs for both care givers and parents by keeping current rules that allow these parties to cooperatively decide what type of crib to use, whether time-out is appropriate for any given individual child, whether any individual child is developmentally ready to sleep with a pillow or filled blanket, etc. The Board could also lower costs and provide more flexibility by offering providers options in addressing health issues. If the Board is worried about sickness that might be spread by un-pottytrained children in wading pools, for instance, they could allow the option of such children wearing swim diapers for wading rather than banning wading outright.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other

administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.