

Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



Virginia Department of Planning and Budget Economic Impact Analysis

22 VAC 40-185 – Standards and Regulations for Licensed Child Day Centers
Department of Social Services
Town Hall Action/Stage: 4492/7590
July 30, 2017 (Revised August 7, 2017)

Summary of the Proposed Amendments to Regulation

The State Board of Social Services (Board) proposes to amend its regulation that governs licensure of child day centers to clarify existing requirements and to align the requirements of this regulation with the Board's proposed requirements for providers who receive Child Care and Development Block Grant (CCDBG) subsidies. In addition to making many clarifying changes to regulatory text, the Board proposes substantive changes to:

- 1) Remove the list of exemptions to licensure requirements from the regulation,
- 2) Require licensees to have written procedures for prevention of shaken baby syndrome and for safe sleeping practices,
- 3) Require licensees to document all known allergies, sensitivities and dietary restrictions of children in their care and require that parents provide instructions from a physician regarding their child's food allergies,
- 4) Allow children defined by the regulation as homeless who do not have documentation of immunization and/or physical examination to attend licensed facilities for 90 days before such documentation must be produced,
- 5) Allow any unimmunized children to attend a licensed child day center for 90 days (180 days in some cases) while they get their immunizations up-to-date so long as they have one dose of each required immunization before attendance,

- 6) Require 16 hours of orientation training for all new staff at licensed facilities,
- 7) Require completion of Virginia Department of Social Services (VDSS) provided orientation training (which is currently 10 hours of training),
- 8) Increase required annual training from 16 to 20 hours,
- 9) Require all direct care staff to complete first aid and cardiopulmonary resuscitation (CPR) and allow all hours of first aid and CPR training to count toward annual training requirements,
- 10) Institute new group size restrictions,
- 11) Require licensees to formulate and implement a plan to ensure that children receive care by consistent staff and
- 12) Require all staff under 18 years old to be directly supervised and not left alone with children.

Result of Analysis

Benefits likely outweigh costs for some proposed regulatory changes. For at least one proposed change, there is insufficient information to ascertain if benefits likely outweigh costs. For several proposed changes, costs likely outweigh benefits.

Estimated Economic Impact

Many changes that the Board proposes for this regulation will not change any substantive requirement for regulated entities but, instead, are aimed at clarifying existing regulatory requirements. Current regulation, for instance, requires licensees to have procedures for response to natural or manmade disasters¹. The proposed regulation expands language to clarify what must be in those procedures. The Board also proposes to add definitions to the regulation that are helpful in understanding regulatory requirements. No affected entities will incur costs on account of changes such as these. Interested parties will benefit from the changed structure of the regulation as it will make it both easier to find and read any particular standard. Benefits likely outweigh costs for all reorganizing and clarifying changes.

¹ A manmade disaster is a disaster attributed in part or entirely to human intent, error, negligence, or involving a failure of a man-made system, resulting in significant injuries or deaths.

Current regulation contains the list of entities that are exempted by §63.2-1715² of the Code of Virginia from licensure as child day centers. This list includes religious institutions that obtain an exemption pursuant to §63.2-1716³ as well as Sunday School and Bar and Bat Mitzvah classes, and child-minding services such as those offered at gyms and sports programs. The Board now proposes to remove these exemptions as they feel it is unnecessary and duplicative to have them in the regulation. The exemptions still exist in the Code of Virginia so no exempted entity is likely to incur costs on account of this proposed regulatory change⁴. Individuals interested in finding these exemptions will likely incur some small additional time costs from having to search the Code of Virginia because the exemptions will no longer be in the licensure regulation. This proposed change will make the regulation about a page and a half shorter.

Current regulation requires licensees to have written procedures for injury prevention. The Board now proposes to specify that they also have specific written procedures for the prevention of shaken baby syndrome and safe sleeping practices for prevention of sudden infant death syndrome. To the extent that licensees do not already address these specific topics in existing injury prevention procedures, they will likely incur some time and copying costs for creating them. These costs are likely outweighed by the benefits that would accrue to center staff, who would have greater certainty about center procedures, and infants in care.

Current regulation requires licensees to document the allergies of children in care and the actions they are to take if those children are exposed to substances they are allergic to. The Board proposes to require that licensees obtain instructions from the physician of a child with allergies regarding that child's allergies and the steps to be taken in the event of an allergic reaction. This proposed change may increase costs for parents if they have to pay for their child's physician's time, either for an extra office visit or if there is an office fee to provide paperwork, to provide information that the parents are currently allowed to provide to licensees. This proposed change may provide a benefit in increased safety only if current requirements have proven inadequate in some way that could be addressed by requiring a physician, rather than a child's parent, to provide information on the child's allergies.

² <http://law.lis.virginia.gov/vacode/title63.2/chapter17/section63.2-1715/>

³ <http://law.lis.virginia.gov/vacode/title63.2/chapter17/section63.2-1716/>

⁴ If this regulatory change did actually remove these exemptions from use, it would likely affect tens of thousands of entities and be enormously expensive.

Current regulation requires that documentation of up-to-date immunizations be provided before a child can attend a licensed facility (unless the child's parents claim a religious exemption or the child has had a past adverse reaction to vaccines that would preclude further vaccination) and requires that children have a physical examination either before center attendance or within 30 days of the first day of attendance. The Board now proposes to allow children defined by the regulation as homeless who do not have documentation of immunization and/or physical examination to attend licensed facilities for 90 days before such documentation must be produced. The Board also proposes to allow any unimmunized children to attend a licensed for 90 days while they get their immunizations up-to-date so long as they have one dose of each required immunization before attendance. This time period can be extended to 180 days if an affected child would require more than two doses of hepatitis B vaccine in order to be up-to-date⁵. These proposed changes may slightly increase the chances that populations of children in care being exposed to diseases that vaccines are meant to protect against but they also will benefit children who would otherwise be barred from immediate attendance, and their families. For instance, foster children⁶ will be able to attend day care while local Departments of Social Services (LDSS) gathers their records, or gets them their required immunizations, so that their foster parents can continue working.

Current regulation requires that new staff hired by licensees receive orientation training specified in the regulation by the end of their first working day⁷ but does not specify that training take any specific number of hours. Current regulation also requires licensee direct care staff to complete 16 hours of continuing education each year that can include a number of specified topics.

⁵ The Department of Health and Human Services recommends that the hepatitis B vaccine be given in three or four doses over a six-month period. https://www.vaccines.gov/diseases/hepatitis_b/index.html

⁶ Foster children are defined as homeless in the proposed regulation.

⁷ Board staff estimates that orientation training that is facility specific would take approximately six hours to complete.

In order to make this regulation consistent with the Board's proposed requirements for licensees who voluntarily participate in the CCDBG subsidy program,⁸ the Board now proposes to specify that:

"A. Staff shall complete a minimum of 16 hours of orientation training appropriate to the age of the children in care." and

"B. The Virginia Department of Social Services-sponsored orientation course shall be completed within 90 calendar days of employment."

These proposed changes would expand required orientation to 16 hours of training⁹ and require that all new staff complete an orientation course (currently 10 hours in length) sponsored by VDSS within 90 days of employment¹⁰. These two requirements are written, however, so it is not clear whether the VDSS orientation course is part of the 16 hours of orientation or whether it is separate from that requirement. Board staff reports that it is the Board's intent that the VDSS training would be part of the 16 hours. Under this intended interpretation, regulated entities would likely incur costs for ten additional hours of orientation training for each new employee. If the 16 hours of orientation training is read to be separate and exclusive of the required VDSS course, regulated entities would likely incur costs for 20 additional hours of orientation training for each new employee. DPB has suggested that the Board rewrite the proposed orientation training requirements to remove any possible ambiguity.

Board staff reports that the increased required orientation training will not require fees to be paid but will require staff time. Board staff further reports that the mean wage for child care workers in Virginia is \$10.79 per hour. Given that average pay rate, licensees will likely incur additional orientation training costs of approximately \$107.90 per new employee (if 10 additional hours of training are required) and costs of approximately \$215.80 per new employee

⁸ Board staff reports that about 55% of licensed child day center providers participate in this program which provides child care subsidies for families through the Temporary Assistance for Needy Families (TANF) child care and at-risk child care programs.

⁹ Orientation training in facilities will be required to be completed within seven days of the date of employment and prior to staff members working alone with children.

¹⁰ Existing staff will have one year after the effective date of this regulation to complete VDSS's orientation training. Since this training can count toward annual training requirements, licensees will likely not accrue additional costs for existing employees to complete this training.

(if 20 additional hours of training are required). Given the average turnover rate of child care workers,¹¹ licensees will likely incur these additional orientation training costs for approximately 30% of their workforce each year. Although Board staff does not have estimates of how many people are employed at licensed facilities, or how many people are newly employed by licensees each year, they do report that, as of June 30, 2017, 24,381 individuals have completed VDSS's orientation training and another 3,160 are in the process of completing that training.¹² Assuming a turnover rate of about 30% leads to approximately 8,000¹³ new child care workers per year, licensees will likely cumulatively incur costs of either slightly less than \$900,000 or slightly more than \$1.7 million¹⁴ for orientation training for new employees each year. Board staff reports that approximately 55% of licensees receive federal subsidies so approximately 45% of these increased orientation training costs will likely be incurred by licensees who did not voluntarily agree to meet new requirements in order to receive federal subsidy monies.

The Board also proposes to increase required annual training from 16 to 20 hours. This change will increase annual training for direct care employees by four hours each year. Licensees will incur additional wage costs of approximately \$43.16 per direct care employee annually for the additional four hours of required annual training and may also incur fees for outside training or trainers to come into their facility. Board staff does not know how many individuals are employed as direct care staff for licensed child day centers. Given the number of individuals who have completed VDSS's orientation training, and the number of children reported to be in care, it is likely safe to assume that licensees will cumulatively incur costs that total hundreds of thousands of additional dollars each year, and may total over a million dollars per year, for additional required annual training. Board staff reports that additional orientation training and

¹¹ Cassidy, D. J., Lower, J. K., Kintner-Duffy, V. L., Hegde, A. V., & Shim, J. (2011). The day-to-day reality of teacher turnover in preschool classrooms: An analysis of classroom context and teacher, director, and parent perspectives. *Journal of Research in Childhood Education*, 25(1), 1-23. doi:10.1080/02568543.2011.533118

¹²This information was reported for DSS's Child Care Program regulation.
<http://townhall.virginia.gov/l/viewstage.cfm?stageid=7736>

¹³This number is based the number of individuals that have completed or are completing VDSS's orientation training *.3. This number is roughly the same as the number arrived at by taking the rated capacity of 264,754 children (reported by DSS) divided by a likely conservative average child to staff ratio of 10:1 and then multiplying that dividend by .3 (264,754/10*.3).

¹⁴ \$107.9*8,000=\$863,200 and \$215.80*8,000=\$1,726,400.

additional annual training is proposed to make the training for all licensees conform to proposed or currently required training for licensees who receive subsidies. Given that these proposed changes are not driven by identified deficiencies that might affect the health or safety of children in care, the costs of these changes likely far outweigh the convenience of having one standard for all licensees.

Current regulation requires that at least one staff member with CPR, first aid and rescue breathing¹⁵ be on premises at all times during hours of operation and allows two hours per year of such training to be counted toward required annual training. The Board now proposes to require all direct care staff to be CPR and first aid certified and to allow all CPR and first aid training to count toward required annual training. Board staff reports that licensees may incur fee costs of \$90-\$100 for initial training of individuals not already trained¹⁶ and may incur fee costs every two years for recertification. The Red Cross web site estimates that CPR and first aid training classes can be two to five hours long, depending on whether it is initial training or a refresher course. Licensees, or their staff, will likely incur costs for the time that these courses take. These time/salary costs for CPR training that exceed the two hours (that staff is already allowed to count toward annual training) may be offset by the Board's proposal to allow all CPR and first aid training to count toward annual training requirements.

At a minimum, licensees will incur costs equal to the fees incurred for additional staff to receive CPR and first aid training multiplied by the number of affected employees. These additional costs are likely to equal hundreds of thousands of dollars, and may stretch to several million dollars, initially and then will be a like amount every two years. These costs will also be increased because the turnover rate for child care workers would indicate that approximately 30% of trained staff will likely leave their employment each year and new staff will have to be trained in CPR and first aid. Board staff reports that this change is being proposed to make the training for all licensees conform to proposed or currently required training for licensees who receive subsidies. Given that these proposed changes are not driven by identified deficiencies that might affect the health or safety of children in care, the costs of these changes likely far outweigh the convenience of having one standard for all licensees.

¹⁵ Web research seems to indicate that rescue breathing training would be part of CPR training.

¹⁶ Assuming that licensees are meeting but not exceeding current requirements, most direct care staff would need initial training.

Current regulation includes required staff to child ratios but is silent on how many children may be in the same room or space so long as staffing ratios are met. The Board now proposes to impose group size limits for all pre-school age children. According to the proposed standard, babies and toddlers up to 16 months in age will be limited to groups of 12 or fewer in any one room or space. Toddlers 16 months up to 24 months old will be limited to groups of 15 or fewer in any one space. Two year olds will be limited to groups of 24 or fewer and three year olds will be limited to groups of 30 or fewer. These group limitations will not apply during rest periods, outdoor activities, transportation and field trips, meal and snack times or during special group activities. These limitations also will not apply during the first and last hour or operation for programs operating more than six hours per day.

Board staff reports that they do not have information on the number of licensees that currently group children in groups larger than would be allowed under the proposed regulation and, therefore, would be adversely impacted by these new group restrictions but does report that the requirement is written broadly with the intent to not adversely impact providers. Nonetheless some licensees, particularly licensees who habitually have different age groups in the same space because of their child care philosophy¹⁷, may be adversely affected by the proposed group restrictions. Board staff reports that these group restrictions are being implemented to conform rules for all licensees to proposed or currently required rules for licensees who receive subsidies and because research indicates that there are benefits to consistent care and small group size. There is insufficient information to ascertain whether any benefits that might accrue would outweigh the costs that would accrue for an unknown number of licensees.

Current regulation requires child care aides to be at least 16 years old and also requires that “(i)n each grouping of children at least one staff member who meets the qualifications of a program leader¹⁸ or program director shall be regularly present. Such a program leader shall supervise no more than two aides.” The Board now proposes to mandate that “aides under 18 years of age... shall not be left alone with children”. Board staff reports that this change is being proposed to conform rules for all licensees with rules for licensees who receive subsidies. To the extent that current rules allow aides who are 16 and 17 years old to work without direct and

¹⁷ Montessori preschools, for instance, group children as young as two into age bands and may habitually exceed these limits.

¹⁸ Program leaders must be 18 years old or older.

continual supervision, this new rule may cause licensees to incur additional costs to ensure that these teenagers are not left alone with children in care. This proposed change will likely limit the usefulness of 16 and 17 year olds as child care workers and, therefore, will make it less likely that they will be hired by licensees. Given that it is unlikely that 16 and 17 year olds are any less safe or competent as childcare workers than 18 year olds with comparable training, the costs of this proposed requirement likely outweigh any benefit that might arise from requiring regulatory consistency between licensees who voluntarily agree to additional rules in order to qualify for subsidies and licensees who do not.

Lastly, the Board newly proposes to require that licensees formulate and implement a plan to ensure the children receive care from consistent staff. Licensees are able to ensure that the same staff members care for the same children daily while they are employed. While this consistency of care undoubtedly benefits children in care, who are then able to form stable bonds with their caregivers, staff turnover rates of about 30% for childcare workers would severely impede licensee's ability to meet this proposed new requirement. The costs that may be incurred by licensees will depend on whether the Board just expects them to ensure that staff is consistently assigned while they are employed or whether the Board has the expectation that licensees must take steps, like raising wages, to limit turnover.

In general, the changes proposed in this action that will increase costs for licensees will likely cause licensees to either raise their child care rates to cover increased costs or, for marginally profitable businesses, leave the licensed child care field altogether. If licensees choose to close their licensed child care businesses because their time and resources could be used more profitably elsewhere, the supply of licensed child care slots would shrink which would also tend to increase child care rates. Either of these effects will raise the costs of licensed day care for parents. This may either leave those parents with fewer resources to meet other needs for themselves and their children, or may cause them to seek out cheaper, unlicensed care givers. Requiring licensees to meet more costly licensure requirements also leaves them with fewer resources to spend in alternate ways¹⁹ that might benefit their employees or children in their care.

¹⁹ Resources that, for instance, might be spent on raising the wages of their employees.

Businesses and Entities Affected

These proposed regulatory changes will affect all licensed child day centers as well as all of their staff and all children enrolled in those centers as well as their families. Board staff reports that there are currently 2,589 such centers in the Commonwealth which have the rated capacity to serve 264,754 children. Board staff reports that all centers likely qualify as small businesses.

Localities Particularly Affected

No localities are likely to be particularly affected by these proposed regulatory changes.

Projected Impact on Employment

Increased training requirements in this proposed regulation may marginally increase employment for trainers. Increasing training requirements, and instituting maximum group sizes, increases the cost of continuing to provide child care services which may cause marginally profitable businesses in this field to close. To the extent that this happens, fewer individuals will likely be employed in licensed facilities. The new proposed prohibition on employees under 18 years old being left alone with children will likely lead to fewer 16 and 17 year olds being employed by licensees.

Effects on the Use and Value of Private Property

Increasing training costs and costs associated with limiting group size will likely decrease the profitability, and thus the value, of affected businesses.

Real Estate Development Costs

These proposed regulatory changes are unlikely to affect real estate development costs in the Commonwealth.

Small Businesses:

Definition

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

Costs and Other Effects

Small business licensees will incur costs for additional required training and may also incur costs associated with newly proposed group size restrictions and the proposed prohibition on 16 and 17-year-old employees being alone with children in care.

Alternative Method that Minimizes Adverse Impact

Costs for licensees would likely be minimized by only increasing training requirements, further restricting employment of teenagers and setting group restrictions for licensees who do not receive federal subsidies if current rules prove deficient to protect the health and safety of children in care.

Adverse Impacts:

Businesses:

Small business licensees will incur costs for additional required training and may also incur costs associated with newly proposed group size restrictions and the proposed prohibition on 16 and 17-year-old employees being alone with children in care.

Localities:

Localities in the Commonwealth are unlikely to see any adverse impacts on account of these proposed regulatory changes.

Other Entities:

Teens 16 and 17 years old will likely be adversely affected by this proposed regulation that reduces the chances that they will be hired by licensees.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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