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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-61
VAC Chapter title(s)	Standards and Regulations for Licensed Adult Day Care Centers
Action title	Amendments Resulting from Periodic Review 2024
Date this document prepared	June 12, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

Standards and Regulations for Licensed Adult Day Care Centers, 22VAC40-61, provide criteria for the public and the Virginia Department of Social Services to evaluate the care, general supervision and oversight of adults in licensed adult day centers. These regulations provide rules for current practices in adult day centers that ensure the well-being of aged, infirm, or individuals with disabilities.

Proposed amendments in this action are to reduce burdensome requirements, simplify and clarify language, improve definitions, make technical edits for ease of understanding, and make any other changes deemed necessary after public comment and review.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

VDSS Virginia Department of Social Services

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this regulatory change is to fulfill the decision of the Board to amend these regulations, as a result of the periodic review, for clarification and ease of understanding by the public, adult day centers and licensing inspectors.

Legal Basis

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

The State Board of Social Services has the legal authority to adopt regulations and requirements for licensed adult day centers in accordance with §§ 63.2-217 and 63.2-1733 of the *Code of Virginia*. The *Code of Virginia* mandates promulgation of regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed which shall be designed to ensure that such activities, services, and facilities are conducive to the well-being of aged, infirm, or individuals with disabilities receiving services in an adult day center. This regulatory action will provide direction regarding the provision of these services.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

This regulatory action is essential to protect the health, safety, and well-being of aged, infirm, or individuals with disabilities receiving services in an adult day center by aligning regulation requirements with Virginia Code and applicable practices.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory action will incorporate technical information, language, and processes necessary to ensure consistency since the introduction of the current *Standards and Regulations for Licensed Adult Day Care Centers* in December 2019. Proposed changes include:

- Reduce unnecessary and burdensome requirements congruent with regulation reduction per Executive Order 19;
- Clarification of definition of licensed health care professional and any other definitions as needed;
- Update direct care staff qualifications;
- Clarify and update requirements for infection control program and medication management;
- Amend requirements for the designated activities person;
- Update physical examinations and report;
- Update staff records and health requirements;
- Amend administrative and reporting processes;
- Add language and technical edits necessary for clarification of existing requirements;
- Remove outdated references;
- Any other items received during public comment; and
- Any additional amendments deemed necessary.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no other alternatives to the proposed regulatory action, as the action is necessary to make the regulation consistent with state and federal law and to protect the health and safety of vulnerable adults receiving services in adult day centers.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Virginia Department of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation. VDSS also seeks comments regarding regulatory reduction, pursuant to Executive Order 19.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at <https://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Samantha Fogt, 5600 Cox Rd, Glen Allen, Virginia 23060, 804-726-7132, and email samantha.fogt@dss.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A regulatory advisory panel will be appointed and if you are interested in serving on this panel, please contact Samantha Fogt at the above contact information.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.