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Emergency Regulation Agency Background Document

Agency name	Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services
Virginia Administrative Code (VAC) citation	22 VAC42-10
Regulation title	Standards for Interdepartmental Regulation of Children's Residential Facilities
Action title	Emergency regulation to address community concerns regarding children's residential facilities
Date this document prepared	June 14, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an "emergency situation" as described above.*
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.*

This emergency regulation is necessitated by Chapters 168 and 781 of the 2006 Acts of Assembly, requiring that regulations to implement provisions of the chapters be effective within 280 days of enactment.

Substantive changes to the regulation include provisions to issue an order of summary suspension when conditions or practices exist in a children's residential facility that pose an immediate and substantial threat to the health, safety and welfare of the residents of a children's residential facility (CRF); a requirement that each facility name a community liaison; the addition of requirements regarding curfews and study; requirements that the applicant for licensure to operate a children's residential facility be

personally interviewed by licensing/certification staff to determine the applicant’s qualifications, provide evidence that operators have prior relevant experience and education, that staff have participated in training on appropriate siting of the residential facility, good neighbor policies and community relations, and that residents are screened prior to admission to exclude individuals with behavioral issues that cannot be managed in the residential facility. In addition, requirements were added that the regulatory authority for a CRF must notify relevant local governments including the Office of Comprehensive Services of multiple health and safety or human rights violations when the violations result in a provisional license for the facility; the regulatory authority must post on the Department’s web site information regarding licensure of children’s residential facilities; and that the children’s residential facility must show proof of staff expertise and to self-report all lawsuits against or settlements with residential facility operators relating to the health and safety or human rights of residents and any criminal charges that may have been made relating to the health and safety or human rights of residents. The regulation will now allow the license or certificate of a children’s residential facility to be changed during the term of the license or certificate based on compliance. Changes were also made to ensure that services are provided in children’s residential facilities to ensure the health, education and safety of children.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) the promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

§§ 22.1-321, 22.1-323, 22.1-323.2, 16.1-309.9, 66-10, 66-24, 37.1-182, 37.1-183.1, 37.1-189.1, 63.2-217, 63.2-1701, 63.2-1703, 63.2-1737 and 63.2-203 of the Code of Virginia.

The Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Juvenile Justice; and Social Services are the promulgating entities. Regulation of children’s residential facilities is mandatory.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	NA	Definitions	Adds a definition of behavior support assessment as a requirement for a behavior support assessment is being added to the application section as a protection to children and to ensure facility staff can manage the children they accept.

NA	15	NA	Adds a requirement that DOE, DJJ, DMHMRSAS and DSS assist and cooperate with each other in the licensing and certification of children’s residential facilities. Consistent regulation of children’s residential facilities will promote the health, safety and welfare of the residents.
30	NA	Visitation of facilities	Adds a requirement that the regulatory authority shall notify relevant local governments and placing and funding agencies including CSA of multiple health and safety or human rights violations in children’s residential facilities when the violations result in a provisional license. This requirement will give placing agencies information to make appropriate placement decisions.
NA	32	NA	Adds requirements for posting information on a web site regarding children’s residential facilities. This will give the public, as well as placing agencies, information about facilities and facilities in application.
35	NA	General requirements	Adds a requirement that facilities self-report within 72 hours lawsuits or settlements with residential facility operators relating to health and safety or human rights of residents and any criminal charges against staff that may have been made relating to the health and safety or human rights of residents. This requirement will allow others to have this information when making decisions.
40	NA	Licenses/certificates	Allows the facility’s license or certificate to be modified during the licensure or certification period if there is a change in compliance. This will allow the licensure period to be reduced if a facility is not in compliance with standards.
NA	85	NA	Adds the procedures for summary suspension. In egregious situations this will allow the lead regulatory agency to remove the residents during the pendency of the revocation, denial, or other action.
180	NA	Health information	Updates the procedures for tuberculosis evaluations for staff as advised by the Department of Health. Allows for risk assessments. Protects children from TB and protects staff from unnecessary medical procedures.
200	NA	Qualifications	Updates the name of the Virginia Department of Personnel and Training to Human Resource Management.
210	NA	Job descriptions	Adds the requirements that education and experience be added to job descriptions. This requirement will help to ensure that staff are qualified to work with residents.

220	NA	Written personnel policies and procedures	Requires policies and procedures to make sure that staff are qualified. Adds requirements to assess education and experience for potential employees. Deletes requirements regarding child abuse and neglect, because they are in section 960 of the current regulation.
230	NA	Personnel records	Adds two additional items to keep in a personnel record – documentation of educational degrees and professional certification/licensure and documentation of all training. This will help determine staff qualifications.
NA	255	NA	Adds requirements for the applicant. The applicant must be trained on the siting of a facility, the applicant must be interviewed in person by the regulatory authority to determine qualifications and the applicant must hire someone with the required qualifications to be chief administrative officer if the applicant is not qualified. This will better ensure that the person making administrative decisions at the facility is qualified.
260	NA	Qualifications of the chief administrative officer	<ul style="list-style-type: none"> • Adds duties of the chief administrative officer, as these duties are critical to the successful operation of the facility and involve decisions that need to be made by qualified staff. • Updates the qualification requirements of the CAO to include a Master’s degree in social work, psychology, or counseling, and 3 years experience of full time work experience in a children’s residential facility and 2 years experience in an administrative or supervisory capacity for a total of 5 years experience; <u>or</u> a baccalaureate degree in social work, psychology, and 5 years full time work experience with children at least 3 of which were in a children’s residential facility and an additional 2 years of administrative or supervisory experience for a total of 7 years experience; <u>or</u> a degree in education may be accepted for a chief administrative officer of a program whose lead regulatory agency is the Department of Education; <u>or</u> a degree and experience in human services as approved by the lead regulatory authority.

			<ul style="list-style-type: none"> • Adds that the chief administrative officer must provide transcripts within 30 days of hire certified by the college or university of attendance and documentation of prior relevant experience to ensure the program director is qualified to work with the residents.
270	NA	Program direction	<ul style="list-style-type: none"> • Changes the title of the section to Program Director. • Adds the duties of overseeing assessments, service planning, staff scheduling and supervision to clarify who should be performing these critical functions. • Updates the requirements to a master’s degree in social work, psychology, or counseling and 3 years of full time paid work experience as an employee working with children one of which needs to be in a children’s residential program; <u>or</u> a baccalaureate degree in social work or psychology and 5 years full time paid experience as an employee working with children, 2 of which must be in a children’s residential facility; <u>or</u> a degree and experience in human services as approved by the lead regulatory authority. • Adds that the program director must provide transcripts within 30 days of hire certified by the college or university of attendance and documentation of prior relevant experience to ensure the program director is qualified to work with the residents.
330	NA	Buildings, inspections and building plans	<ul style="list-style-type: none"> • Adds to the requirement that buildings provide adequate space and be of a design suitable to house the programs and services provided, that physical environment also shall provide adequate space and design. Also adds the requirement that buildings and physical environment meet the specialized needs of the residents. This will ensure that the residential environment will be suitable for the population served.

530	NA	Admission procedures	<ul style="list-style-type: none"> • Adds exclusion criteria and a description of how educational services will be provided to the population served to the admission criteria requirements to better determine that the facility is serving a population they can manage. • Adds a requirement that each facility shall provide documentation showing proof of contractual agreements or staff expertise to provide educational services, counseling services, psychological services, medical services or any other services needed to serve the resident. This requirement better ensures that staff are qualified to work with the residents.
570	NA	Emergency and self admissions	<ul style="list-style-type: none"> • Deletes item 3, as this requirement is a repeat of the first requirement. • Adds a requirement to justify why a child was admitted on an emergency basis to ensure that admissions are assessed appropriately. • Adds a requirement that there must be documentation that an emergency admission meets the facility's admission criteria to ensure that the facility is only accepting residents they can manage.
580	NA	Applications for admissions	<ul style="list-style-type: none"> • Adds to the requirement that facilities gather health information during the admission process that immunization requirements also be obtained to better ensure that health needs are met for each resident. • Adds a requirement that each facility develop and implement policies and procedures to assess each application for admission to ensure that each resident is suitable for the program.
600	NA	Written placement agreement	<p>Adds a requirement that the placement agreement address the education plan of the resident to ensure that the resident's educational needs are addressed in a timely manner.</p>
690	NA	Structured program of care	<p>Adds a requirement that the daily routine complies with any facility or locally imposed curfews.</p>

700	NA	Health care procedures	Clarifies what health information is needed for emergencies by asking for all information regarding allergies - not just medication allergies, information about substance abuse and use and significant past and present medical problems.
710	NA	Medical examinations and treatment	<ul style="list-style-type: none"> • Clarifies that the health report form should include immunizations given at the time of the exam. • Requires that all staff be trained within 30 days of employment and annually thereafter regarding universal precautions.
720	NA	Medication	<ul style="list-style-type: none"> • Clarifies that over-the counter drugs can only be initiated by a person authorized by law to prescribe medication. This is currently a standard. • Specifies what elements should be included in a medication log. • Specifies how medication refusals are to be handled. • Requires policies and procedures for documenting medication errors, preventing further errors, disposing of medication, storing of controlled substances and the distributing medication off campus. The policy must be approved by a health care professional and documentation of this approval must be kept by the facility. • The requirements for syrup of ipecac and activated charcoal were deleted as new information has been received that these substances may not be the best substances to use in a medical emergency.
740	NA	Staff supervision of residents	Amends the requirements for supervision policies to include contingency plans for resident illnesses, emergencies, off campus activities, and resident preferences. This requirement will better ensure that residents are appropriately supervised in all situations.
750	NA	Emergency telephone numbers	<ul style="list-style-type: none"> • Requires that the facility have an emergency telephone number where a staff person can be reached 24 hours a day. • The emergency number shall be made available to residents who are away from the facility and to the adults responsible for their care.

780	NA	Management of resident behavior	<ul style="list-style-type: none"> • Clarifies that the facility shall develop and implement written policies and procedures for behavior management that shall define and list techniques that are used and are available for use in the order of their relative degree of restrictiveness. • Must specify staff members who may authorize the use of each technique. • Must specify the processes for implementation of policies and procedures. • These requirements are to insure that inappropriate and possibly harmful behavior management techniques are not applied to residents. • Adds the requirement that all direct care staff receive annual retraining on the facility's behavior management policies and procedures.
790	NA	Confinement	<p>Reduces the time between staff checks on residents in confinement from 30 to 15 minutes to ensure better supervision of the resident.</p>
800	NA	Prohibitions	<ul style="list-style-type: none"> • Revises the prohibition on limitation on contacts and visits to include regulators. This will allow residents to have contact with regulators. • Corrects the title of the Department for Rights of Virginians with Disabilities to the Virginia Office of Protection and Advocacy.
820	NA	Physical restraints	<ul style="list-style-type: none"> • Revises the requirement regarding physical restraint to include the staff person who will write the report and timeframes, the staff person who will review the report and timeframe and the methods to be followed should physical restraint, less intrusive interventions or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior. • Adds a requirement that all incidents of physical restraint be reviewed and evaluated to plan for continued staff development for performance improvement. • Revises the elements that should be documented after a physical restraint to include justification for the restraint, the signature of the

			<p>person completing the report and date and the reviewer's signature and date.</p> <ul style="list-style-type: none"> Revises requirements of what staff can implement, monitor or discontinue physical restraint to only staff who have been trained in the proper and safe use of restraint, including hands on techniques. Training must be provided by an individual experienced in training staff in the management of behavior for the population served.
850	NA	Education	<ul style="list-style-type: none"> Adds a requirement that documentation of the enrollment process be kept in the resident's record. Adds a requirement that documentation of contact with the resident's home school locality shall be kept in the resident's record.
870	NA	Recreation	<ul style="list-style-type: none"> To ensure that extended trips are properly planned and that appropriate decisions are made, adds requirements that for all extended recreational trips away from the facility, the provider will document trip planning to include: <ul style="list-style-type: none"> A supervision plan for the entire duration of the activity including awake and sleeping hours; Plan for safekeeping and distribution of medication; Overall emergency, safety, and communication plan for the activity including emergency numbers of facility administration; Staff training and experience requirements for each activity; Resident preparation for each activity; Plan to ensure that all necessary equipment for the activity is in good repair and appropriate for the activity; Trip schedule giving addresses and phone numbers of locations to be visited and how the location was chosen/evaluated; Plan to evaluate residents' physical health throughout the activity and to ensure that the activity is conducted within the

			<p>boundaries of the resident’s capabilities, dignity and respect for self-determination;</p> <ul style="list-style-type: none"> ○ Plan to ensure that if residents are to participate in an aquatic activity, a certified lifeguard will supervise the activity; and ○ Plan to ensure that any variation from the trip plans and the reason for the variation are documented. <p>“Extended trips” means all-day or overnight trips – not short trips to the mall or to the movies. The expectations of trip planning will change depending on the facility size, the population served, the number of residents, and the type of trip.</p>
880	NA	Community relationships	<ul style="list-style-type: none"> • Adds a requirement that each facility shall have a community liaison that will be responsible for facilitating cooperative relationships with neighbors, the school system, local law enforcement, local government officials, and the community at large • Adds a requirement that each facility shall develop and implement policies and procedures for promoting positive relationships with the neighbors that shall be approved by the regulatory authority. • Adds a requirement that each facility shall show evidence that staff have been trained on good neighbor policies and community relations.
970	NA	Emergency and evacuation procedures	<ul style="list-style-type: none"> • Adds a requirement to develop an emergency preparedness and response plan for all locations with consultation of the local emergency coordinator. • Adds a requirement that the provider develop and implement emergency preparedness and response training for all employees, contractors, students, and volunteers within 14 days of begin date or before an individual is alone supervising residents and annually thereafter. • Evacuation drills still required.
980,990, and 1000			<ul style="list-style-type: none"> • Sections were deleted as requirements were moved to 970.

Initial Application			Added to the certifications that the applicant has received and read information regarding the siting of a children's residential facility.
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Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been considered to meet the essential purpose of the action.

No other action was considered, as it is required by the 2006 Acts of Assembly.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The changes to the regulation will better assure families that must place their children in a residential facility that safeguards exist to protect their child and that adequate care and education are provided by qualified staff.