



Virginia  
Regulatory  
Town Hall

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 15-20 and 22 VAC 15-21
<b>Regulation Title:</b>	General Procedures and Information for Licensure for Child Day Centers
<b>Action Title:</b>	Establish new regulation
<b>Date:</b>	June 13, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The Code of Virginia mandates the licensure of child day centers. Programmatic regulations are developed for these facilities and other programs licensed by the Department of Social Services. This regulation contains general licensing requirements that are applicable to all licensed programs but are not included in the programmatic regulations. Currently, the General Procedures regulation is promulgated jointly by the State Board of Social Services and the Child Day-Care Council for all the department's licensed programs. However, the Child Day-Care Council now desires to promulgate a separate regulation that applies only to child day centers. Therefore, the Council plans to repeal the existing regulation, 22 VAC 15-20-10, and promulgate a new regulation, 22 VAC 15-21-10. The new regulation will incorporate all changes that will become effective October 1, 2002 with the recodification of Title 63.1 of the Code of Virginia. It will also remove all methodology from the regulation.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

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Section 63.2-1735 of the Code of Virginia gives the Child Day-Care Council authority to adopt regulations for licensure and operation of child day centers in Virginia in accordance with the regulations referred to in 63.2-1734 which includes “the activities, services and facilities to be employed by persons and agencies to be licensed under this chapter, which shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of children under the custody or control of such persons or agencies.”

Section 63.2-1700 of the Code of Virginia gives the Child Day-Care Council responsibility to consult with the State Board of Social Services to “develop training programs for operators and staffs of licensed child day programs. Such programs shall include formal and informal training offered by institutions of higher education, state and national associations representing child care professionals, local and regional early childhood education organizations and licensed child care providers. All provider interests are to be ensured represented and no single approach to training is to be given preference.”

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

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Clarity changes will be made throughout this document to delete the terms State Board of Social Services and agencies when appropriate. In addition, the following are: (i) new requirements added to reflect the changes made in the recodification of Title 63.1 which becomes effective October 1, 2002; (ii) changes made to reflect items in the current Code which were previously not addressed; and (iii) definitions and requirements of other agencies not carried over to the new document. It is also recommended that where necessary standards or portions of standards be moved within the document for continuity and clarity.

### **22 VAC 15-21-20. Definitions.**

Delete “adult care facility.” This regulation refers only to child day centers.

Amend the definition of “allowable variance” to conform with Code and to more clearly define the purpose.

Delete the definition of “child welfare agency.” This definition includes agencies other than child day centers.

Add a definition of “days” to clarify that the intent is calendar days not work days.

Delete the definition of “good character and reputation” because that definition is in the Minimum Standards.

Add a definition of “person” to clarify that this may refer to entities other than an individual.

Delete the definition of “revocation” because it is not referred to in the proposed document.

**22 VAC 15-21-20. Preplanning.**

This standard is being revised to inform the applicants of the following Code requirements: asbestos inspections on all buildings prior to 1978; compliance with the Virginia Uniform Statewide Building Code(USBC); proper way to make and submit applications; investigation of the applicant’s activities, services and financial records; and background checks required. Applicants should be informed prior to extensive planning or expenditures of the requirements that must be met. This will allow applicant time to prepare necessary documents and prevent delays in the licensing process.

**22 VAC 15-21-30. Responsibility of the department.**

Add a standard that describes the support services that the department will furnish to the council.

Add a standard to clarify that the department has the responsibility to explain the licensing process and that the council has the responsibility to interpret minimum standards. This will reduce misinterpretation of standards.

Delete the section of this standard that refers to the Board of Social services and the agencies for which it has responsibility because this regulation deals only with child day centers.

**22 VAC 15-21-70. Non transferability of license.**

Delete the Exception which refers to child placing agencies.

**22 VAC 15-21-80. Conditional license.**

Add a standard to reflect Recodification of Title 63.1 which newly requires that applicants who have a conditional license wait six months before reapplying if a regular license is denied.

**22 VAC 15-21-100. Duration of licensure.**

Delete all references to a varying time frame for license or renewal. Rewrite to be consistent with HB 513 (2002), which states that all licenses and renewals will be for two years.

**22 VAC 15-21-110. Provisional license.**

Add a standard to reflect Recodification of Title 63.1 which newly requires that applicants who have provisional license and are denied a regular license wait six before reapplying for licensure.

Delete the Exception which refers to adult facilities.

**22 VAC 15-21-120. Terms of the license.**

Add a requirement that requests for license modification must be made in writing. This will ensure a safeguard for applicants and the department.

**22 VAC 15-21-130. Preapplication consultation.**

Rewrite to inform that applicants will receive consultation upon request. This will clarify that the applicant can obtain assistance if required.

**22 VAC 15-21-140. The initial application.**

Delete the reference to an attachment. There will be no attachments to this document.

**22 VAC 15-21-150. Application fees.**

Add a new standard that clarifies (i) the Board determines the application fees; (ii) how the fees are to be used; and (iii) a time frame for fee expenditures. This clarification will help the applicant understand the purpose of the annual application fee.

**22 VAC 15-21-160. Approval of functional design features.**

Rewrite this standard to give prerequisites for licensure. Recodification of Title 63.1 newly requires all facilities to meet classification and proper use group required by the Virginia USBC.

Add a standard that newly requires a new floor plan to be submitted if there is a change in functional design. This clarifies the requirement regarding functional design features of the building that must be met prior to licensure.

Delete the portion of this standard that has to do with methodology.

**22 VAC 15-21-170. The investigation.**

Clarify that allowable variance will only be granted for financial or programmatic hardship as required by Code.

Delete the portion of this standard that has to do with methodology which has changed.

Delete the Exception which does not refer to child day centers.

**22 VAC 15-21-180. Issuance or denial of a license.**

Add a standard to reflect Recodification of Title 63.1 which newly requires applicants to have a six-month waiting period before reapplying after a license or renewal has been denied. The commissioner may waive this period if he believes there is sufficient change to warrant justification.

Add a standard to reflect Recodification of Title 63.1 which newly requires appeals to be made in writing within 15 days if a license is denied.

Add a standard to inform licensee that they shall follow sanction regulations that the board promulgates. This clarifies that the board has sole authority for promulgating regulations regarding sanctions.

Add a standard which informs applicants that if the department fails to act within 60 days, the applicant may engage in operation of a facility until the department takes action and notifies the applicant. This is information given in the Code of Virginia

**22 VAC 15-21-190. Determination of continued compliance (licensing inspections).**

Replace monitoring visit with licensing inspection which is current terminology.

Add a standard that requires licensee to permit the department to inspect the facility and to interview employees and children at the center. This will prohibit private interviews with any child without prior notice to parents. Add a NOTE that an investigation of child abuse, neglect, or exploitation shall be conducted jointly with the local department whenever possible.

Delete the section of this standard that does not refer to child day centers.

**22 VAC 15-21-200. Modification.**

Delete the information concerning methodology and examples. This is subject to change.

**22 VAC 15-21-210. Early Compliance.**

Delete the reference to a renewal. It is unnecessary because conditional licenses are only for new applicants and are not subject to renewal application.

**22 VAC 15-21-220. Renewal Process.**

Add specific time periods for the department to mail application for renewal and for the licensee to submit a completed application. The applicant should know in advance required time frames.

Delete the requirement that department shall follow procedures “previously outlined” as this portion is duplicative and unnecessary.

**22 VAC 15-21-230. Use of allowable variance.**

Rewrite to standard to conform to the Code of Virginia which allows variances for financial or programmatic hardship when the safety of children will not be adversely affected. This change will clarify to the applicant the only conditions under which a variance may be granted.

**22 VAC 15-21-240. Conditions for initiating a request.**

Rewrite this standard for clarity.

**22 VAC 15-21-250. Review.**

Rewrite this standard for clarity. Delete methodology which is subject to change.

Add a Code requirement that the department will review allowable variances annually.

Delete the Exception which does not refer to child day centers.

**22 VAC 15-20-250 – 22 VAC 15-20 280 (old VAC numbers) PART VI. PROBLEM SOLVING CONFERENCES**

Delete this entire part which is methodology and subject to change.

**22 VAC 15-21-260. Receipt of complaints.**

Add a standard to reflect Recodification of Title 63.1 which newly requires the commissioner to maintain a toll-free telephone line for complaints regarding child day facilities as funds allow.

**22 VAC 15-21-270. Investigation of complaints.**

Add a standard to reflect Recodification of Title 63.1 which requires the commissioner, for good cause shown, to investigate complaints against the facility. This may include on-site visits of activities, services, records and facilities.

**22 VAC 15-21-280. Notification of findings.**

Add a standard to reflect Recodification of Title 63.1 which newly allows the department to disclose the nature of the complaint and the identity of the child involved in the complaint to the licensee. The licensee newly has the right to know the identity of the complainant in advance of an administrative hearing.

**22 VAC 15-21-290. Licensee's responsibility.**

Add a standard to reflect Recodification of Title 63.1 which newly prohibits the licensee from retaliating or discriminating against someone who in good faith makes a complaint or child abuse or neglect.

**PART VII. SANCTIONS.**

Add a NOTE that sanctions are under the jurisdiction of the Board and that standards in this Part are added for information only.

**22 VAC 15-21-310. Sanctions.**

Add a standard to reflect Recodification of Title 63.1 which permits civil penalties of not more than \$500 per inspection to be assessed when the licensee is substantially out of compliance and the health and safety of children are at risk.

**22 VAC 15-20-370 (old) Process.**

Delete entire standard. This has to do with methodology and is subject to change.

**22 VAC 15-21-330. Appeals.**

Delete the information which has to do with methodology. Replace with the procedure for filing an appeal as outlined in the Code of Virginia.

**22 VAC 15-20-350. (old VAC) Civil penalties or appointment of receivership.**

Delete this section which refers to civil penalties against adult care facilities.

**22 VAC 15-20-370. (old VAC) Process**

Delete this standard which refers to methodology and to adult care facilities.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

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This regulation contains requirements that child day centers licensees must meet that are not part of their programmatic regulations. It also includes information regarding the Department of Social Services' responsibility in the licensing process. One alternative would be to leave the regulation as is currently is written. However, the Code of Virginia is being recodified with numerous changes specific to child day centers and others changes specific to different agencies. To continue having one document for all agencies will create a document that would be very difficult to understand. Another alternative would be to include these requirements in the programmatic regulations. However, amendments to the Code of Virginia sometimes require generic requirements to be amended and programmatic requirements are not affected.

## Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed 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.*

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This regulation will have no impact on the institution of the family or on family stability.