



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-80-10 et seq.
Regulation Title:	General Procedures and Information for Licensure
Action Title:	Amend as a result of the Periodic Review and changes made to the Code of Virginia
Date:	August 14, 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 purpose of the proposed regulatory action is to amend the regulation to clarify and simplify some standards and to incorporate changes that have been made to the Code of Virginia since the last revision of this regulation. Many changes are the result of the recodification of Title 63.1 of the Code of Virginia that will become effective October 1, 2002. The Code of Virginia mandates that the Department of Social Services (Department) license certain facilities that provide care to children and adults. Programmatic regulations are developed for these facilities. The current regulation contains general licensing requirements that are applicable to all licensed programs but are not included in the programmatic regulations. Previously, this regulation was promulgated jointly by the State Board of Social Services (Board) and the Child Day-Care Council for all the Department's licensed programs. However, the Child Day-Care Council desires to promulgate a separate regulation that applies only to child day centers (the only program for which they have regulatory responsibility). This regulation will continue to contain references to child day centers, however, because of the Board's sole authority to regulate some procedures and activities that are applicable to child day centers.

The goal of the amended regulation is to provide clear and concise information and requirements for applicants, licensees, and licensing staff regarding the licensing process.

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.

Sections 63.1-25, 63.1-174, 63.1-194.2, and 63.1-202 of the Code of Virginia give the State Board of Social Services authority to promulgate regulations to protect the health, safety and welfare of children and adults in licensed facilities.

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.

PART I. INTRODUCTION

22 VAC 40-80-10. Definitions

1. Amend the definition of “allowable variance” to reflect the wording in the Code of Virginia and more clearly define the allowable variance process.
2. Add a definition of “day” to mean a calendar day unless otherwise specified.
3. Amend the definition of “good character and reputation” to bring it up to date with current business practices.
4. Amend the definition of “applicant” to include limited liability companies.

Justification: Limited liability companies are now listed in the Code of Virginia along with associations, partnerships and corporations as applicants who must provide the names and addresses of officers and agents.

PART III. THE LICENSE

22 VAC 40-80-100. Duration of licensure

- Amend the standard to include the change in duration of licensure period for child day centers.

Justification: House Bill 513, as enacted by the 2002 General Assembly, amended § 63.1-196.1 of the Code of Virginia to provide that licenses issued to child day centers have a duration of two years from date of issuance. Licenses issued to other facilities will continue to be issued for up to three consecutive years.

- Add a new standard that requires pre-application orientation and training. Facilities other than assisted living facilities may decline this orientation and training.

Justification: The Code of Virginia requires that any person applying to operate an assisted living facility who has not previously owned or managed or does not currently own or manage such a facility shall be required to undergo training by the Commissioner or his designated agents. The Department will also make such training available for other programs, though it will not be mandated.

22 VAC 40-80-80. Conditional License and 22 VAC 40-80-110. Provisional License

- Delete the exceptions that provide for a second conditional or provisional license for an assisted living facility with the approval of the appropriate fire marshal.

Justification: These exceptions were added to the Code of Virginia in the early 1990s when assisted living facilities were having to make renovations required by the State Fire Marshal's Office. These exceptions were deleted from the Code of Virginia with the recodification of Title 63.1. The required work has been completed for many years and there is no need for the exceptions.

- Add a standard that explains that any person, officer, or member of a governing board of any association or corporation that operates an assisted living facility, adult day care center, or child welfare agency shall be guilty of a Class 1 misdemeanor if he:
 1. Interferes with any representative of the Commissioner in the discharge of his licensing duties;
 2. Makes to the Commissioner or any representative of the Commissioner any report or statement, with respect to any assisted living facility, adult day care center, or child welfare agency, that is known by such person to be false or untrue;
 3. Operates or engages in the conduct of these facilities without first obtaining a license as required or after such license has been revoked or has expired and not been renewed; or
 4. Operates or engages in the conduct of one of these facilities serving more persons than the maximum stipulated in the license.

Justification: These offenses and penalties previously applied only to assisted living facilities. The recodification of Title 63.1 of the Code of Virginia makes them applicable to assisted living facilities, adult day care centers, and child welfare agencies.

22 VAC 40-80-110. Terms of the license

- Amend standard G. to require documents to be posted in a conspicuous place on the licensed premises (rather than at each public entrance).

Justification: These documents should be located in the facility where consumers can most readily see them.

- Amend standard G.2. to delete the provision for posting a written notice of where the most recent compliance plan can be viewed instead of posting the actual compliance plan.

Justification: Consumers should be able to view and read the compliance plan without having to ask for it.

PART IV. THE LICENSING PROCESS

22 VAC 40-80-140. The initial application

- Delete the reference to the attachment that contains the list of licensing offices and their locations.

Justification: An updated list of licensing offices and their locations and telephone numbers is made available to all casual inquirers, applicants, licensees, or anyone who asks. As an attachment to this regulation, this list is out of date if an office moves or a telephone number changes before the regulation is amended. It is more appropriate to maintain it as a separate document, readily available with current information for anyone who needs it.

22 VAC 40-80-150. Approval of building and functional design features

- Amend the standard to more clearly explain the steps for approval of buildings and functional design features.

Justification: Some steps of the process need to be updated and made clearer.

22 VAC 40-80-180. Determination of continued compliance

- Amend the standard to reflect the frequency of inspections that will be made to licensed facilities and to specify that some inspections will be unannounced.

Justification: The Code of Virginia specifies the frequency of inspections for licensed facilities and the minimum number of unannounced inspections that will be made.

22 VAC 40-80-210. Renewal process

- Amend standard A. to add a statement that no application will be accepted from or processed for a facility when there is an outstanding complaint or when the license is being denied or revoked in accordance with the provisions of the Administrative Process Act.

Justification: It is inappropriate to accept a renewal application from a facility that may eventually have its license denied or revoked. This is the Department's current practice. The practice will now be promulgated as a standard. There are provisions in the Code of Virginia for re-application following denial or revocation.

PART V. USE OF ALLOWABLE VARIANCE

22 VAC 40-80-220. Use of allowable variance; 22 VAC 40-80-230. Conditions for initiating a request; and, 22 VAC 40-80-240. Process

- Amend standards regarding allowable variances to clarify and simplify. The Code of Virginia specifies the reasons for which an allowable variance can be granted.

Justification: The explanation of the process for requesting and being granted an allowable variance is cumbersome in the current regulation. It will be described more clearly in the amended regulation.

PART VI. PROBLEM SOLVING CONFERENCES

- Amend this part to simplify the procedures for resolution of concerns about licensing procedures, interpretations of standards, or actions of licensing personnel. The amended standards will assure that providers have the right to pursue resolution of their concerns without having to go through a complicated review process.

Justification: Because of changes in the Administrative Process Act that provide for an informal conference process, the problem solving procedures should be streamlined and simplified.

PART VII. COMPLAINT INVESTIGATION

- Amend to provide for a toll-free telephone line to receive complaints on all licensed facilities, rather than just child care operations.

Justification: Previously, a toll-free hotline was available for receiving complaints regarding child care operations. Recodification of Title 63.1 of the Code of Virginia provides for a toll-free line to receive complaints on all regulated facilities.

PART VIII. SANCTIONS AND APPEALS

- Amend this part to include provisions for "special orders" for assisted living facilities, adult day care centers, and child welfare agencies. Appeal procedures will be added.

Justification: Previous legislative actions, as well as the recodification of Title 63.1 of the Code of Virginia, have mandated changes related to sanctions. While these changes have been implemented procedurally, the regulation has not been amended to incorporate them.

The proposed amendments to this regulation will help to protect the health and safety of citizens by informing applicants and licensees of the general requirements applicable to them during the licensing process. Standards such as the one informing citizens of the toll-free telephone line for reporting complaints and the standard requiring certain documents to be posted in the facility will provide information to consumers that will help to protect the children or adults in care. No potential issues have been identified that may need to be addressed as the regulation is developed.

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.

The amended regulation contains requirements that child welfare agencies, assisted living facilities, and adult day care centers must meet that are not part of their programmatic regulations. It also includes information regarding the Department's responsibility in the licensing process. One alternative would be to include these requirements in the programmatic regulations. However, amendments to the Code of Virginia sometimes require general licensing standards to be amended and programmatic requirements are not affected. If these general licensing standards were part of the programmatic regulations, each set of programmatic regulations would have to be revised rather than the one regulation.

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.

The amended regulation will have a positive impact on the family. Licensing standards ensure the health, safety, and well being of adults and children who attend or reside in these licensed facilities thereby strengthening the authority and rights of parents and family members in the nurturing and supervision of their elderly parents and/or children in care. Placing adults and children in these types of licensed facilities provides an opportunity for parents and/or family members to concentrate on resolving issues that would lead to self pride, responsibility for oneself, and economic self-sufficiency thereby increasing disposable family income and, if the parents or family members are married, provides them an opportunity to strengthen their marital commitment.