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Fast-Track Regulation
Agency Background Document

Agency name	State Board of Virginia
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC20-790
VAC Chapter title(s)	Child Care Program
Action title	Amend regulation to require each child day center that participates in the Child Care Program to implement policies for the possession and administration of epinephrine and each family day home provider or at least one other caregiver employed by such provider in the family day home to be trained in the administration of epinephrine and provide notification to parents.
Date this document prepared	July 25, 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Child Care Subsidy Program regulation (8VAC20-790) provides requirements for child day programs that receive funding from Child Care and Development Fund to provide access to childcare for working families and to be responsible for the safety and well-being of children during the absence of a parent or guardian. Pursuant to Chapter 122 and Chapter 123 of the 2023 Acts of Assembly and § 22.1-289.059 of the Code of Virginia, this action will amend the regulation to require each child day center that participates in the Child Care Subsidy Program to implement policies for the possession and administration of stock epinephrine; and each family day home provider or at least one other caregiver to be trained in the administration of epinephrine, and to notify the parents of each child who receives care whether the

provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates.

The amendments will add requirements for center-based programs that participate in the Child Care Subsidy Program to implement policies for the possession and administration of epinephrine to be administered by any nurse at the center, employee at the center, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine to any child believed to be having an anaphylactic reaction. Amendments require that at least one nurse at the center, employee at the center, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine has the means to access at all times during regular facility hours any such appropriate weight- based dosage of epinephrine that is stored in a locked or otherwise generally inaccessible container or area.

Amendments will also require each family day home provider or at least one other caregiver employed by such provider in the family day home to be trained in the administration of epinephrine and to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates.

An amendment to the Child Care Subsidy Program regulation (8VAC20-790) is needed to implement the provisions of Chapter 122 and Chapter 123 of the 2023 Acts of Assembly.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the Virginia Board of Education
"VAC" means Virginia Administrative Code
"The Department" means the Virginia Department of Education

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On July 27, 2023, the State Board of Education authorized the Department of Education to proceed with the fast-track revision to the Child Care Program.

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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Provisions in Chapter 122 and Chapter 123 of the 2023 Acts of Assembly impact § 22.1-289.059 of the Code of Virginia and directs the Department to amend regulations to require child day centers to implement policies for the possession and administration of epinephrine; and each family day home provider or at least one other caregiver to be trained in the administration of epinephrine, and to notify the parents of each child who receives care whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates. The Child Care Subsidy Program must be revised to reflect the new provisions that became effective July 1, 2023.

This rulemaking action is expected to be noncontroversial as it is required by § 22.1-289.059 of the Code of Virginia and therefore appropriate for the fast-track process. This action will mandate epinephrine to be in regulated child day centers and accessible to staff in the event of an anaphylactic emergency; and for providers or other caregivers in family day homes to be trained in the administration of epinephrine and notify parents of the availability of epinephrine.

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 Board's overall regulatory authority is found in § 22.1-16 of the Code of Virginia, which states that "[t]he Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." The Board's regulatory authority over child day programs is found in § 22.1-289.046 of the Code of Virginia, which states in part that "[t]he Board shall adopt regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed under [Chapter 14.1], which shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of the children under the control of such persons or agencies."

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The action is essential to enhancing the health, safety, and welfare of children in care. The purpose of the amendment is to protect children with undiagnosed allergies in cases when exposure to the allergen may result in anaphylaxis which could be deadly, and to comply with the provisions of Chapter 122 and Chapter 123 of the 2023 General Assembly.

An amendment to regulation was determined by the agency as the most efficient and effective way to implement the provisions of the Code of Virginia.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The amendment will add requirements for training and policies to address the possession and administration of epinephrine at subsidy vendor child day centers. Requirements are added for family day home providers to be trained in the administration of epinephrine and provide notification to parents. The amendments also include technical edits to the regulation.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantage of this action is that the requirement for stock epinephrine to be available in centers increases protections for children and could potentially save the life of a child who experiences anaphylactic shock as a result of an allergic reaction. This action aligns requirements for stock epinephrine in subsidy vendor child day programs with existing requirements for children who attend public schools in § 22.1-274.2 of the Code of Virginia.

There are no disadvantages to this regulatory action.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are currently no applicable federal requirements to address stock epinephrine in child day programs.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

Virginia Department of Health

Localities Particularly Affected

Local health departments

Other Entities Particularly Affected

Chid day centers and family day homes participating in the Child Care Program

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	VDOE does not require any additional staff to implement this change.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	Resources required from the Virginia Department of Health, Division of Pharmacy services to assist in the procurement of epinephrine for child day programs. VDOE regulates about 531 child day programs subject to these requirements.
For all agencies: Benefits the regulatory change is designed to produce.	This regulatory change will bring VDOE into compliance with the Code of Virginia and add protections for children who may experience anaphylaxis.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no direct or indirect costs and benefits to local partners.
Benefits the regulatory change is designed to produce.	There are no direct or indirect costs and benefits to local partners.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be	All regulated child day programs who participate in the Child Care Program would be affected by this change.

affected, include a specific statement to that effect.	
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	Approximately 531 child day programs who participate in the Child Care Program that will be impacted, most of which are small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Based on the Department of Planning and Budget 2023 Fiscal Impact Statement, epinephrine is estimated to cost each provider between $30-$750 in initial costs with comparable ongoing costs which depends on the use and expiration dates of the epinephrine if a provider chooses to keep undesignated epinephrine on site. Training and administration costs are likely but cannot be determined at this time.
Benefits the regulatory change is designed to produce.	This regulatory change will add protections for children who may experience anaphylaxis. The amendments to the regulations are designed to ensure all child day programs who participate in the Child Care Program are aware of and in compliance with the Code of Virginia.

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 alternatives to regulatory action since this regulatory action is required by § 22.1- 289.059 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the

proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternatives to regulatory action since this regulatory action is required by § 22.1- 289.059 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The State Board of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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://townhall.virginia.gov. Comments may also be submitted by mail, email or fax to Tatanishia Armstrong, Legislative Consultant, Virginia Department of Education, PO Box 2120, Richmond, VA 23218, (804) 382-5047, Tatanishia.Armstrong@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
790-250	NA	Training requirements for caregivers at family day home subsidy vendors.	Adds requirements for: caregivers to obtain training in recognizing and responding to anaphylaxis; the components that the training must include; and the frequency of training. The intent is for compliance with § 22.1-289.059 of the Code of Virginia.
790-350	NA	Parental notifications and involvement for family day home subsidy vendors.	Adds a requirement for the provider to share in writing with the parents whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates as required by § 22.1- 289.059 of the Code of Virginia. The intent is to inform families and enable them to make informed child care choices.
790-400	NA	Requirements for the administration of medication for home vendors. Requirements for the storage of medications. Requirements for medication documentation.	Adds a requirement that allows individuals trained in the administration of epinephrine to administer emergency epinephrine pursuant to § 22.1-289.059. Technical edits added to correct cross reference.
790-520	NA	Requirements for child day center subsidy vendors to comply with vendor agreement and federal state, and local laws and regulations. Requirements for background checks pursuant to § 22.1- 289.040. Requirements for capacity and supervision of children. Requirements to inform staff of and maintain a list of caregivers of children's allergies, sensitivities, and dietary restrictions. Requirements for religiously exempt child day centers.	Adds a requirement for the center to implement policies for the possession and administration of epinephrine that meet the requirements of § 22.1-289.059 of the Code of Virginia. Adds requirement for safe storage of and access to undesignated stock epinephrine. The intent is for compliance with the Code of Virginia. The impact is added protections for children with severe allergies.

790-600	NA	Training requirements for caregivers at center based subsidy vendors.	Adds requirement related to which individuals may administer undesignated stock epinephrine. Technical edits added to correct cross reference.
790-770	NA	Requirements for the administration of prescription and nonprescription medication for home vendors. Requirements for the storage of medications. Requirements for the storage of medications.	Adds a requirement that allows individuals trained in the administration of epinephrine to administer emergency epinephrine pursuant to § 22.1-289.059. Technical edits added to correct cross reference.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements	Other regulations and law that apply	Intent and likely impact of new requirements

*If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.*

*If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.*

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current emergency requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage