



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department of Social Services
VAC Chapter Number:	22 VAC 40-80
Regulation Title:	General Procedures and Information for Licensure
Action Title:	Revision following periodic review
Date:	June 18, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This proposed amendment to an existing regulation incorporates changes that have been made to the Code of Virginia since the last revision of the regulation. This regulation contains general requirements that are applicable to all the department's licensed programs but that are not included in the programmatic regulations. The regulation explains the application and licensing processes and the responsibilities of both the department and the applicant or licensee in those processes. These amendments reflect the current practices of the Department as they relate to subject facilities. The most substantive changes were made to PART VIII. regarding sanctions because amendments have been made to the Code of Virginia regarding negative actions since the regulation was last revised. Also, upon the advice of the Office of the Attorney General, a new section related to hearings has been added. These procedures affect licensed facilities when

they are involved in negative actions and the department was advised that they should be promulgated and that this regulation was the appropriate place for them.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Code of Virginia gives the State Board of Social Services authority to adopt regulations for its licensed programs. Section 63.2-217 gives broad authority for the Board to adopt regulations as are necessary or desirable to carry out the purpose of Title 63.2. Sections 63.2-1732, 63.2-1733 and 63.2-1734 give the Board authority to adopt and enforce regulations to carry out the provisions of Title 63.2 regarding assisted living facilities, adult day care centers, and child welfare agencies, respectively.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This regulation contains the general requirements that are applicable to all the department’s licensed programs. The Code of Virginia requires that application fees be charged; that applications be filed and certain types of licenses issued; that investigations be conducted; that records be maintained by licensed facilities; that variances can be granted; and that regulations be adopted for the Commissioner to use in determining when to impose sanctions. This regulation contains the department’s rules to carry out these provisions.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action’s changes.

PART I. INTRODUCTION

Definitions are added, amended or deleted as necessary to best explain the standards.

PART II. LICENSING STANDARDS

The name of “adult care residence” is changed to “assisted living facility.” Reference to “child day center system” is deleted because this program no longer exists.

PART III. THE LICENSE

“Limited liability company” is added to the list of organizations that may apply for a license to operate a facility or agency.

A list of “offenses” that may cause a licensee to be guilty of a Class 1 misdemeanor is added.

Exceptions that allowed an existing assisted living facility to receive a second conditional or provisional license with the approval of the State Fire Marshal were deleted.

An exception is added that specifies that child day centers will receive a license for two years.

A standard now requires that the most recent violation notice be posted in the facility or agency rather than allowing the licensee to post a notice indicating where it may be viewed in the facility.

PART IV. THE LICENSING PROCESS

A new standard now requires that all applicants for licensure attend pre-application orientation. Options are provided for how the training may be obtained.

A new standard amends the requirements regarding frequency of inspections in licensed facilities.

Amendments were made to the standard regarding early compliance to require that a facility must request early compliance after a conditional or provisional license prior to the mid-point of the licensure period or within 90 days of the expiration of the conditional or provisional license, whichever comes first.

Amendments specify that in order for a renewal application to be considered complete, the licensee must have paid any outstanding civil penalty assessed after a final order.

Amendments specify that the department will not process a renewal application when the current license is being denied or revoked in accordance with the Administrative Process Act.

PART V. ALLOWABLE VARIANCES

In PART I. the definition of “allowable variance” was amended to reflect the intent of the Code of Virginia, thus duplicative information was deleted.

The requirements were amended to allow applicants or licensees to submit new material within 30 days if a request for an allowable variance is denied, but makes it clear that the decision regarding the second request will be considered final and cannot be appealed.

PART VII. COMPLAINT INVESTIGATION

The standard providing for a parental hotline was expanded to establish a toll-free telephone number to receive complaints on all licensed facilities.

PART VIII. SANCTIONS

This part was amended to incorporate provisions in the Code of Virginia for special orders and other changes that are related to the imposition of administrative sanctions against licensed facilities.

22 VAC 40-80-370. Appeal process.

A chart was added to explain the appeal process steps when administrative sanctions are imposed.

22 VAC 40-80-375. Failure to pay civil penalty.

This new standard was added to provide information about steps that can be taken to collect unpaid civil penalty payments.

PART IX. APPEALS AND HEARINGS

This is an entirely new section of the regulation added upon the advice of the Office of the Attorney General to incorporate the department’s procedures for hearings related to adverse actions. A dated version of the procedures exists but it has never been promulgated. It has now been updated and the Office of the Attorney General recommends that it be incorporated into this regulation.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 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, please include a sentence to that effect.

The advantage of this regulation to applicants and licensees is that they are made aware of the general licensing standards they will be required to meet. This is also advantageous for licensing

staff because implementation is consistent for all licensed programs. There are no disadvantages to the public or the Commonwealth because of this regulation.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There will be no significant fiscal impact as a result of amendments to this regulation. There will be some cost to the department for printing and distribution of the regulation to all licensees; however, these costs are included in the department's current budget. There will be no fiscal impact on localities. All applicants and licensees are affected by the regulation because it contains information and procedures about the licensing process. Most of the requirements in the regulation are not new, but are the result of mandates in the Code of Virginia that directly affect licensed facilities. There are approximately 5000 licensed facilities in the Commonwealth.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

PART I. INTRODUCTION

22 VAC 40-80-10 Definitions

Deleted the definition of "allegation" and combined it with the definition of "complaint."

Amended the definition of "allowable variance" to more closely reflect the definition in the Code of Virginia.

Added the definition of "day" to mean calendar day for clarification.

Amended the definition of "early compliance" to make it clear that the licensee must demonstrate full compliance with licensing requirements in order to qualify for early compliance.

Amended the definition of "licensee" to include limited liability company.

Added several new definitions related to hearings procedures because a new section regarding hearings has been added to the regulation.

PART II. LICENSING STANDARDS

22 VAC 40-80-30. Responsibility of the department.

Changed “adult care residences” to “assisted living facilities.”

Deleted “child day center systems” because the program no longer exists.

PART III. THE LICENSE

22 VAC 40-80-60. General.

Added information from the Code of Virginia about certain acts that might make a licensee subject to a Class 1 misdemeanor. Prior to recodification of Title 63.1, this information applied only to assisted living facilities, but it is now applicable to all licensed facilities.

22 VAC 40-80-80. Conditional license.

Deleted the exception allowing a second conditional license to be issued with approval of the State Fire Marshal when a licensee purchased an existing assisted living facility. The need for this exception has not existed since the early 1990s when existing assisted living facilities were required to install fire alarm systems and AC or battery powered smoke detectors to meet current building code requirements.

22 VAC 40-80-100. Duration of licensure.

Added an exception that reflects a Code change that states that the licensure period for child day centers will be for a period of two years, except for conditional and provisional licenses. All other licensed facilities may continue to receive licenses for one, two or three years, based on activities, services, management and compliance history.

22 VAC 40-80-110. Provisional license.

Deleted the exception allowing a second provisional license to be issued with approval of the State Fire Marshal when a licensee purchased an existing assisted living facility. The need for this exception has not existed since the early 1900’s when existing assisted living facilities were required to install fire alarm systems and AC or battery powered smoke detectors to meet current building code requirements.

22 VAC 40-80-120. Terms of the license.

Amended G. to require that the documents that must be posted in a facility be posted in a conspicuous place on the licensed premises so that they are visible to the public. Previously these documents were to be posted “at each public entrance.”

Amended G.1. to require that the most recent violation notice be posted in a conspicuous place on the premises, rather than allowing the facility to post a written notice of where the violation notice could be reviewed in the facility. Violation notices should be located in the facility where consumers can most readily see them.

PART IV. THE LICENSING PROCESS

22 VAC 40-80-130. Provider support services.

This standard previously informed licensees of the availability of pre-application consultation. The department now offers many additional services including ongoing technical assistance and formal training sessions. The standard is being expanded to include information about the availability of these additional services.

A new requirement was added for pre-application orientation for all applicants for licensure. The Code of Virginia mandates this for assisted living facilities and the department currently makes such training available for applicants of all licensed programs. The new standards include provisions for applicants to receive orientation from a source other than the department. There is also a provision that applicants for adult day care centers and child welfare agencies may be exempt from the pre-application orientation if notified by the department that such training is unavailable. There is no charge for the orientation.

This is a substantial change. Pre-application orientation that is focused on health and safety issues and residents’ rights is mandated for applicants for licensure of assisted living facilities. Pre-application orientation has been made available since approximately January 2001 for applicants for all the department’s licensed programs; however, this orientation has been optional for child welfare agency and adult day care center applicants. Pre-licensure orientation has been well-received by both voluntary and mandatory trainees. Voluntary attendance by child care and adult day care applicants has been quite good; however, despite encouragement, those who need the orientation most may choose not to attend. Licensing inspectors have noted that licensees’ attendance at pre-application orientation has improved compliance in their facilities.

22 VAC 40-80-140. The initial application.

Deleted the information that a list of licensing offices and their locations and telephone numbers is included as an attachment to the regulation. This information changes frequently and should not be promulgated. This information is available to the public in a separate document.

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

Amended A.3. to state that the department will issue a Preliminary Approval Statement within 20 days of receipt of a complete floor plan. Previously there was no time limit.

22 VAC 40-80-160. The investigation.

Amended B. by adding a note that references the department's background check regulations.

Amended C. by adding an exception referencing a Code exception for inspection of financial records of child welfare agencies.

Amended D. to add the licensee's "designee" to those persons with whom the licensing representative may discuss investigation findings.

22 VAC 40-80-170. Notice to the applicant of issuance or denial of a license.

Deleted B. that specified that a letter would accompany a conditional or provisional license but not a regular license. It is not necessary to promulgate this information.

22 VAC 40-80-180. Determination of continued compliance (renewal and monitoring inspections).

Amended C. to reflect changes to the Code of Virginia regarding frequency of inspections for various licensed facilities and whether the inspections are to be announced or unannounced.

Moved the requirement that states that the department may conduct other announced and unannounced inspections as are considered appropriate. (Not a change.)

Amended B. to state that the department will issue a modified license without sending a letter. This reflects current practice.

22 VAC 40-80-210. Renewal process.

Amended A. to require that in order for a renewal application to be considered complete, the licensee must have included all required information and paid any outstanding civil penalty assessed after a final order. (The material to be included with the renewal application is listed on the application.)

Amended B. to state that the department will not process a renewal application that is not complete and that a renewal application will not be processed when the current license is being denied or revoked in accordance with the provisions of the Administrative Process Act.

Amended C. to clarify that when a license expires before a new license is issued, the current license will remain in effect provided that the completed application was filed prior to the expiration of the current license and a decision for licensure is pending.

PART V. ALLOWABLE VARIANCES

40-80-220. Use of allowable variances.

Repealed the standard to eliminate duplication because the definition of allowable variance is in 22 VAC 40-80-10.

40-80-240. Process.

Amended B. to state that the department’s licensing representative will notify the petitioner when a decision is made about the request for an allowable variance and deleted the statement that the department would notify the petitioner when his request has been received.

Amended D. to delete the language about a desk review after the department has denied a request for an allowable variance and added language that allows the petitioner to make a second request if additional information can be provided. Moved the statement that the decision after the second review will be considered final and cannot be appealed. This was previously a separate standard. Added a NOTE to D. that provides for the applicant or licensee to submit a new allowable variance request after a 30-day period describes changed conditions.

PART VI. PROBLEM SOLVING CONFERENCES

22 VAC 40-80-270. Second step review.

Amended C. and E. to provide for a desk review at the second step review, but added a statement that the department will respond to the applicant or licensee in writing with the results of either the desk review or conference. The standard now allows the licensee to make a request for second step review in writing and to specify whether he wants a conference or a desk review.

PART VII. COMPLAINT INVESTIGATION

22 VAC 40-80-290. Receipt of complaints.

The standard was amended to provide information that the department operates a toll-free telephone line to receive complaints on all licensed facilities. Previously this was available only for child care operations.

PART VIII. SANCTIONS

22 VAC 40-80-340. Administrative sanctions.

Standard was amended to provide information about the imposition of administrative sanctions and the reasons that the department may consider the imposition of administrative sanctions. Prior to the recodification of Title 63.1 (now Title 63.2), some administrative sanctions were different for assisted living facilities, adult day care centers, and child welfare agencies. Recodification made them the same except for petitioning the court for appointment of a receiver for assisted living facilities and adult day care centers, which does not apply to child welfare agencies.

22 VAC 40-80-370. Appeal process.

This standard was amended to more clearly explain the appeal process when the department imposes an administrative sanction. A chart was added to explain the appeal steps.

22 VAC 40-80-380. Appeals.

This standard is being repealed and the information is included in standard 22 VAC 40-80-380 and the new section that follows (IX. HEARINGS PROCEDURES)

PART IX. HEARINGS PROCEDURES

The information in this new part relates to the department’s procedures for appeals and hearings. The department has had procedures for these processes, but they were never promulgated and had not been updated. The procedures have been revised and input has been provided by the Office of the Attorney General. Counsel has advised the department that these procedures must be promulgated and recommends placement in this regulation.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Many of the requirements in this regulation are based on Code of Virginia mandates. These requirements could be part of each of the department’s programmatic regulations; however, this would involve amending many regulations when Code changes are made that affect all licensed programs.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The department has made an effort to ensure that the regulation is clearly written and understandable for both licensees and licensing staff.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulation will be reviewed again in four years to determine if it should be continued, amended or terminated.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

This regulation will have little impact on the institution of the family and on family stability. It will not strengthen or erode the authority or rights of parents in the education, nurturing and supervision of their children; it will not encourage or discourage economic self-sufficiency, self-pride, or the assumption of responsibility; it will not strengthen or erode the marital commitment; and it will not increase or decrease disposable family income. It will, however, ensure that there are procedures in place to allow for sanctioning and termination of adult and children's facilities when health and safety requirements are not being met. This, in essence, strengthens the family institution indirectly.