Virginia Regulatory Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	State Board of Social Services
VAC Chapter Number:	22 VAC 40-111 and 22 VAC 40-110
Regulation Title:	Standards for Licensed Family Day Homes
Action Title:	New Regulation
Date:	December 18, 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 this regulatory action is to repeal the current Minimum Standards for Licensed Family Day Homes (22 VAC 40-110) and adopt a new regulation. The new regulation, Standards for Licensed Family Day Homes (22 VAC 40-111), will incorporate: 1) findings from the periodic review completed in 1999; 2) recommendations from ad hoc committee meetings held in 1999; 3) changes in the *Code of Virginia* from 1993 to the recodification of the licensing statute, effective October 1, 2002; and 4) comments received in response to the changes proposed in the Notice of Regulatory Action published on April 22, 2002. The new regulation will cover the following topics: personnel; household members; orientation and training; physical environment; equipment; care of children; emergency preparedness and procedures; water safety; and record keeping. These are the same topics covered in the current regulation. The goal of the regulation is ensure that the activities, services and facilities of family day homes are conducive to the health, safety and well-being of children.

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 63.2-217, 62.2-1701, 63.2-1734, of the *Code of Virginia* provide legal authority for the State Board of Social Services to promulgate this regulation. The State Board of Social Services is mandated to promulgate regulations for the activities, services, and facilities used by a person required to be licensed as a family day home by the Department of Social Services. The *Code of Virginia* mandates the licensure of family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home. Every person who maintains such a family day home, except family day homes that are members of a licensed family day system, is required to obtain a license from the Commissioner of Social Services.

The above-referenced sections of the *Code of Virginia* may be found at http://leg1.state.va.us.

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.

This regulation will incorporate the necessary provisions of the repealed Minimum Standards for Licensed Family Day Homes (22 VAC 40-110) into a new regulation titled Standards for Licensed Family Day Homes (22 VAC 40-111). This regulation will establish requirements that must be met in order to protect the health, safety and well-being of children being cared for in family day homes.

The regulation will be renumbered in accordance with the requirements established by the Virginia Registrar.

The "**Definitions**" section will include, but will not be limited to, the following new terms:

- "Overnight care" means care provided after 7 p.m. and through the night.
- "Toddler" means a child from 16 months to 24 months.

- "Preschool" means children from two years up to the age of eligibility to attend public school, five years by September 30.

Justification: These terms and definitions are used consistently across all regulated child day care programs.

Issue: An issue that may need to be addressed during the regulatory process will be how "infant' and "toddler" are defined. A recommendation has been made to change the definition of infant from "birth to 16 months" to "birth through 12 months". A toddler would be a child from 12 months to two years. The ages included in the current definitions of infant and toddler correspond to the developmental stages of children in these age groups and their needs for care and supervision. One of the key milestones in the growth and development of infants and toddlers is the ability to walk. Child development literature states that while children's physical abilities vary, children who have not started walking before their first birthday will generally do so within the next six months. Once started, and until age two, perfecting this skill is a major physical accomplishment. The established ages and corresponding staffing levels assure the supervision and protection needed during this time period.

- "Programmatic experience" means time spent working directly with non-related children in a group. Work time shall be computed on the basis of full-time work experience during the period prescribed or equivalent work time over a longer period. Experience settings include but are not limited to: a child day program; family day home; child day center; boys and girls club; field placement elementary school; or a faith-based organization.

Justification: Supports effort to improve quality of child care by establishing entry level criteria. Clarifies what experience counts and how work experience is counted.

- "Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or a detergent solution and rinsing with water.

- "Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a disinfectant solution (i.e., bleach solution or commercial disinfectant) or physical agent (e.g., heat). The surface of item is sprayed or dipped into the disinfectant solution and allowed to air dry between uses.

Justification: Added for clarity. Combined processes protect the health of children and providers by establishing good sanitary practices that reduce the spread of infectious diseases.

- "Serious injury" means a wound or other specific damage to the body such as but not limited to: unconsciousness; broken bones; dislocation; deep cup requiring stitches; concussion; or foreign object lodged in eye, nose, ear, or other body orifice.

Justification: Ensures consistency across licensing standards; matches definitions used in Minimum Standards for Licensed Child Day Centers.

- "Use zone" means the surface under and around a piece of equipment onto which a child falling from or exiting from the equipment would be expected to land.

- "Resilient surfacing" means, for *outdoor use*, (1) impact absorbing surfacing material, including loose-fill materials such as wood chips; double shredded bark mulch; engineered wood fibers; fine sand; coarse sand; fine gravel; medium gravel; shredded tires; and unitary materials such as rubber mats or unitary materials such as poured in place ones that meet the most recent edition of the Consumer Product Safety Commission's (CPSC) guidelines for safety and/or minimum safety standards when tested in accordance with the procedures described in the most recent edition of the American Society for Testing and Materials (ASTM) standard F 1292; (2) maintained at sufficient depths as described in the CPSC Critical Height Table to reduce the impact of a child's fall and; therefore, lessen the potential for a serious life-threatening head injury; and (3) maintained in the use zone, or area under and around playground equipment where protective surfacing is required, that is also free of obstacles that children could run into or fall on top of and thus be injured. For *indoor use*, means: (1) impact absorbing surfacing material specifically designed and tested as playground surfacing such as rubber mats, rubber tiles, or poured-in-place rubber compositions that meet minimum safety standards when tested in accordance with the procedures described in the most recent edition of the American Society for Testing and Materials (ASTM) standard F 1292; and (2) has a critical height value equal to or greater than the highest designated play surface on the equipment.

Justification: A study report released by the Consumer Product Safety Commission in July 2001 on Home Playground Equipment-Related Deaths and Injuries found that many injuries and deaths occur on home playgrounds. The proportion of pre-school children injured on playground equipment was higher on home playgrounds. Over 80 percent of the injuries on home equipment were associated with falls. The activity most associated with falls on home equipment was intentional jumping or dismounting from equipment, primarily swings. The study reported that very few home playgrounds had proper protective surfacing. Dirt and grass were, by far, the most prevalent surfaces present under the equipment. These surfaces do not adequately protect children from serious head injury when they fall. The Consumer Product Safety Commission also issued an alert warning that children's plastic climbing equipment should not be used indoors on wood or cement floors, even if covered with carpet. Carpet does not provide adequate protection to prevent injuries. Proper surfacing helps protect children from serious injuries.

- "Residence" means principal, legal dwelling or abode; a dwelling that is occupied for living purposes by the provider and contains the facilities necessary for sleeping, eating, cooking and family living.

Justification: Clarifies what is meant by "residence" in the statutory definition of a family day home; clarifies that care in a home that is not the residence of the provider may be subject to licensure as a child day center.

- "Medical emergency" means an unforeseen event that results in the caregiver, a child in care, or a household member needing immediate medical care.

Justification: Added for clarity.

Changes in the **"Personnel"** section will include the following:

- The provider shall be responsible for the home's day-to-day operation and for meeting licensing requirements.

- The provider shall be responsible for the health, safety, and welfare of children in care.

- The family day home provider shall provide direct care to children during the majority of the time the family day home is in operation.

Justification: These standards clarify the duties and responsibilities of the licensee, the family day home provider, including providing care to children during the majority of the time that the family day home is in operation. The Joint Legislative Audit and Review Commission (JLARC) made the recommendation to the General Assembly, in its Follow-up Review of Child Day Care in Virginia (House Document No.5, 1998), that the statutory definition of a family day home be revised to incorporate the requirement that the person licensed as the family day home provider actually provide care to the children during the majority of the time that the family day home was in operation. The definition of a family day home changed, effective July 1, 1998, to require that the provider notify parents of the percentage of time per week that someone other than the provider will be caring for the children.

- Family day home providers licensed after the effective date of these standards and substitute providers shall have a high school diploma, G.E.D. or verification of completion of a home school program approved by the state and three months of programmatic experience.

  Exception: The programmatic experience may be waived by completion of a curriculum approved by the Department of Social Services.

Justification: These standards establish minimal educational and experience requirements for family day home providers licensed after the effective date of these standards. Nationally recognized studies have identified qualified providers as one of the keys to quality early childhood experiences for children.

- Each caregiver and any other adult household member who comes in contact with children or handle food served to children shall, no earlier than six months prior to licensure or employment or contact with children, undergo an assessment for risk of tuberculosis (TB) infection and disease.

Justification: TB screening requirements will be updated to reflect the latest Virginia Department of Heath guidance that allows acceptance of an assessment for risk of tuberculosis

infection and disease as acceptable evidence of freedom from tuberculosis in a communicable form, **or** an actual skin test (PPD). The assessment is required no earlier than six months (versus 90 days in the current regulation) prior to licensure, employment or contact with children.

The following changes will be incorporated into a section headed "**Orientation and Training**":

- Providers and substitute providers shall obtain certification in first aid and CPR as appropriate for the ages of children in care prior to licensure or employment and shall maintain a current first aid and CPR certificate endorsed by or from:
  1. The American Red Cross;
  2. The American Heart Association;
  3. The National Safety Council;
  4. A community college;
  5. A hospital;
  6. A volunteer rescue squad;
  7. A fire department; or
  8. Other similarly approved program

Justification: The requirement for CPR is added. Allows for training that is appropriate to the ages of children in care. Expands the number of acceptable sources for obtaining first aid and CPR training. Requires training prior to licensure. Changes incorporate recommendations from both providers and licensing staff.

- Prior to the granting of an initial license, applicants shall satisfactorily complete a department-sponsored or approved training program on these standards and pertinent licensure requirements unless the department determines the training is not needed or practical.

Justification: Assists prospective licensees in making an informed decision about becoming licensed providers by assuring familiarity with licensure procedures and standards prior to issuance of a license. Assists in understanding why standards exist, thus promoting ongoing compliance, which ensures the health, safety and well-being of children in care.

- Prior to the substitute provider's or assistant's service in the home, the licensee shall provide orientation for the substitute provider and assistant. Documentation of orientation shall be signed and dated by the provider and the substitute provider or by the provider and assistant. The orientation shall cover the following topics:

  1. Job responsibilities;
  2. Parental protections and notifications;
  3. The minimum standards that related to the substitute provider's or assistant's responsibilities;
  4. Policy for administration of medication;
  5. Emergency evacuation procedures;
  6. Confidential treatment of information about children and their families;
  7. Location of emergency numbers and first aid supplies; and

8. Child abuse and neglect reporting requirements.

Justification: Ensures substitute providers and assistants have basic information necessary to carry out their duties in the family day home and to protect the health and safety of children in care.

- In addition to first aid and CPR training, caregivers shall obtain a minimum of twelve (instead of the current six) hours of training annually.

Justification: Research indicates there is a direct relationship between provider training and positive outcomes for children. Training enables providers to provide a variety of learning and social experiences appropriate to the ages of the children in care. It ensures the health, safety, and welfare of children in care (§ 63.2-1734 of the *Code of Virginia*).

The following changes will be incorporated into a section headed "**Physical Environment**":

- Hanging items, including but not limited to: window blind cords; appliance cords; and tablecloths, shall be out of the reach of children under five years of age.

Justification: The Consumer Product Safety Commission, in a national study to identify safety hazards in child care settings conducted in October and November 1998, found that about one child a month strangles on window covering cords. At least two children since 1990 have died in child care settings after standing up in their cribs and becoming entangled in a window blind cord.

- Bathtubs, buckets, and other containers of water or liquids that are accessible to children shall be emptied immediately after use.

Justification: The American Academy of Pediatrics reports that drowning is the number one cause of death in children under age five. Any amount of water, even a few inches in a bathtub, can be dangerous to a child. Since the head is the heaviest part of a small child's body, he or she can easily fall into bathtubs, buckets or pails of water. Also, when large containers are filled with liquid, they weigh more than the child and will not tip over to allow the child to get out.

- A barrier at least four feet high, such as but not limited to a fence or hedge, shall surround outdoor play areas located within 30 feet of hazards, such as but not limited to traffic, open bodies of water, or railroad tracks. Facilities licensed prior to the effective date of these standards must comply fully within one year.

Justification: This requirement prevents access to streets and other hazards. It ensures the health, safety and welfare of children in care (§63.2-1734 of the *Code of Virginia).*

- Firearms of every type and purpose shall be stored unloaded in a locked container, compartment or cabinet, and apart from ammunition, which shall also be stored in a locked container, during the family day home's hours of operation. All other

sporting equipment and potentially hazardous devices shall be stored in locked areas with keys out of reach of children.

Justification: The National Safe Kids Campaign reports that in 1999, an estimated 60 children ages 14 and under died from unintentional shootings in the home. Of these children, more than 80 percent were ages five to 14. This requirement ensures the health, safety, and welfare of children in care (§ 63.2-1734 of the *Code of Virginia*).

- Small electrical appliances, such as but not limited to curling irons; toasters; blenders; can openers; and irons, shall be unplugged when not in use. When not in use, sharp objects shall be placed in an area inaccessible to children or in a cabinet or drawer with child-resistant latches.

Justification: Necessary for clarity and readability.

- Usable floor space of 25 square feet per child (a total of 300 square feet for a home caring for the maximum of 12 children) shall be available for children's activities, exclusive of halls, bathrooms, office space, or storage areas. Providers licensed prior to the effective dated of these standards will comply within one year of expiration of the current license.

- There shall be a hazard-free outdoor play space of 75 square feet per child (a total of 900 square feet for a home caring for the maximum of 12 children) available for children's outdoor activities either on the premises or within walking distance, no more than two blocks, of the home. Play times may be staggered and space based on the number of children using the area at one time.

Justification: Research has established an association between crowding and the development of upper respiratory infections. The availability of sufficient space reduces the risk of injury. The addition of specific space requirements eliminates the need to judge what constitutes adequate space.

The section titled "**Equipment**" will include the following:

- Toys and toy parts accessible to children under age three must be large enough that they cannot be swallowed.

- Infants, toddlers, and preschool children must not have access to uninflated or under inflated balloons.

Justification: Elimination of small parts reduces the risk of choking hazards. Injury and fatality from aspiration of small parts is well documented. Objects should not be small enough to fit entirely into a child's mouth. Balloons are an aspiration hazard. The Consumer Product Safety Commission reported at least four deaths from balloon aspiration with choking in 1998. When children bite inflated latex balloons or gloves, these objects may break suddenly and blow an

obstruction piece of latex into the child's airway. Under inflated or uninflated balloons of all types could be chewed or sucked and pieces potentially aspirated.

- Toys or mobiles strung across a crib or playpen shall be removed when a child begins to push up on hands or knees or is five months old, whichever comes first.

Justification: Toys or mobiles strung across a crib or playpen present a potential strangulation hazard for infants who are able to push up on hands or knees and lift their heads above the crib surface. These children can fall across the mobiles and not be able to remove themselves from that position.

- The highest climbing rung or platform on climbing equipment or top of a slide shall not exceed six feet for school age children and four feet for preschool children.

Justification: Research conducted by the Consumer Product Safety Commission, the Consumer Federation of America and the National Program for Playground Safety, among others, all finds that limiting the height of play equipment is an essential means of preventing severe fall-related injuries.

The following requirements will apply to *playground equipment*:

- Openings above the ground that are closed on all sides shall be smaller than 3 ½ inches or larger than 9 inches to prevent head entrapment hazards.

- Sharp points, corners and edges shall be eliminated to prevent puncture wounds and serious lacerations.

- Catch points, shearing points, crush points, and protrusions shall be eliminated to prevent entrapment, entanglement, or strangulation hazards that could injure children or catch their clothing.

- "S" hooks shall be tightly closed.

- Swings shall have lightweight seats of rubber, plastic, canvas, or nylon.

- Ropes, loops or any hanging apparatus that might entrap, close or tighten around a child shall not be used.

- Resilient surfacing shall be under equipment with moving parts and climbing apparatus over 15 ½ inches high.

- A use zone shall encompass a sufficient area to include the child's trajectory in the event of a fall while the equipment is in use.

- Ground supports to play equipment must be covered to protect children from injury.

Justification: These requirements ensure the health, safety, and welfare of children in care (§ 63.2-1734 of the *Code of Virginia*). They meet current United States Consumer Product Safety Commission guidelines on home playground safety.

- Sandboxes shall be constructed to permit drainage and covered with a lid or other covering when not in use.

Justification: Uncovered sandboxes can accumulate contaminants from cats, birds, dogs or other objects such as twigs and debris that could be hazardous to the health and safety of children in care.

- Trampolines may not be used.

Justification: The Consumer Product Safety Commission (CPSC) estimates that in 1997 there were 83,000 hospital emergency room treated injuries associated with trampolines. About 75 percent of the victims were under 15 years of age, and 10 percent were under five years of ages. Since 1990, CPSC has received reports of six deaths involving trampolines. The hazards that result in injuries and death are: (1) colliding with another person on the trampoline; (2) landing improperly while jumping or doing stunts; (3) falling or jumping off the trampoline; and (4) falling on the trampoline springs or frame. Almost all of the trampolines associated with injuries were at private homes, usually in backyards.

- Cribs, cots, rest mats and beds used by children shall have clean linens that are suitable to the season and assigned for individual use.

- Linens shall be washed at least weekly and more often if needed.

- Rest mats that are used shall have at least an inch of cushioning and be sanitized at least weekly and as needed.

- Mattresses, when used, shall be covered with a waterproof material that can be cleaned and sanitized.

- When an infant is able to pull to a standing position, the mattress must be placed in its lowest position and bumper pads, large toys, and other objects that could serve as steps for climbing out of the crib must be removed from the crib.

Justification: These requirements ensure the health, safety, and welfare of children in care (§ 63.2-1734 of the *Code of Virginia*). For ease of administration, these requirements make the standard more consistent with the Minimum Standards for Licensed Child Day Centers.

- Play yards or playpens, where used: (a) must meet ASTM F406-99 standards; (b) must not contain any pillows or filled comforters; (c) must not be used for sleeping or napping areas; (d) must not be used by children who are able to climb out; (e) must not be used by children over 35 inches tall; (f) must not be used by children weighing more than 30

pounds; (g) must not be occupied by more than one child; and (h) must be cleaned and sanitized each day of use or more often as needed.

Justification: Play yards, playpens and portable cribs, according to information published by the Consumer Product Safety Commission (CPSC) , have evolved into identical products. Over 200 babies have died in playpens since 1988, according to CPSC. These requirements are intended to protect children from death or injury when play yards or playpens are used.

Issue: Play yards/playpens must not be used for sleeping. Current standards for family day homes require use of only cribs that meet federal standards for full-sized and non-full-sized cribs for sleeping. The federal standards do not apply to mesh or non-rigid sided cribs/play yards/playpens. Arguments presented against use of cribs that meet federal standards include size and cost.

The following will be added to the section titled "**Care of Children**"

- Infants shall be placed on their backs when sleeping or napping unless contraindicated by the child's physician. A written statement signed by the child's physician shall be provided to the caregiver.

- Infants shall be placed to sleep on a firm, tight fitting mattress in a crib that meets current safety standards. To reduce the risk of suffocation, soft bedding of any kind shall not be used under or on top of the baby including but not limited to pillows, quilts, comforters, sheepskins, or stuffed toys.

Justification: These requirements ensure the health safety, and welfare of children in care (§ 63.2.1734 of *the Code of Virginia*). They meet the current recommendations from the U.S. Consumer Product Safety Commission, the American Academy of Pediatrics, the National Institute of Child Health and Human Development, and the Sudden Infant Death Syndrome Alliance. They were included as Recommendation (4) in JLARC's Follow-Up Review of Child Day Care in Virginia (House Document No. 5, 1998).

- Infants and toddlers must spend no more than ½ hour of consecutive time during waking hours confined in a crib, play yard, high chair or other confining structure or piece of equipment. The intervening time periods between periods of confinement in a crib, play yard, high chair or other confining structure or piece of equipment must be at least 1 hour.

Justification: The requirement for limitation of time in a confining device is added to ensure adequate stimulation of infants and toddlers. The intent is to assure that children have the opportunity to experience a diversity of play spaces and the opportunity to creep, crawl, toddle and walk.

Infants and toddlers shall be:

- Given opportunities to interact with caregivers and other children in the home in order to stimulate language development;

- Encouraged to play with a wide variety of safe toys and objects;

- Provided with individual attention from caregivers including holding, cuddling, talking, and singing;

- Provided opportunities for reaching, grasping, pulling up, creeping, crawling and walking to develop motor skills; and

- Provided opportunities each day for freedom of movement, such as creeping, crawling, or walking in a safe, clean, open, uncluttered area.

Justification: These requirements ensure the health, safety, and welfare of children in care (§ 63.2-1734 of *the Code of Virginia*). Supervision of infants and toddlers added as a result of Recommendation (2) of JLARC's Follow-Up Review of Child Day Care in Virginia (House Document No. 5, 1998). The providers and regional licensing staff requested these changes be made for clarity.

- High chairs, infant carrier seats, or feeding tables shall be used for children under 12 months of age who are not held while being fed. Safety straps shall be used.

- No milk except breast milk or iron-fortified formula shall be given to infants, unless otherwise instructed by a child's physician in writing.

- To avoid burns, heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children. Bottles shall not be heated in a microwave oven.

- Formula, bottled breast milk, and prepared baby food not consumed by an infant may be used by that same infant later in the same day, if dated and stored in the refrigerator; otherwise it shall be discarded or returned to the parent at the end of the day.

- A one-day's emergency supply of disposable bottles, nipples, and commercial formulas appropriate for the children in care shall be maintained in the family day home.

- A child's mother shall be granted access to a private area of the family day home to facilitate breastfeeding.

- Caregivers shall feed semisolid food with a spoon unless written instructions from a physician state differently.

- Infants and toddlers who show evidence of wanting to feed themselves shall be allowed to do so.

Justification: For ease of administration, these requirements make the standard more consistent with Minimum Standards for Licensed Child Day Centers. The changes were requested by providers.

The following requirements will be added related to *children with disabilities*:

- The caregiver shall provide a child with disabilities the care and activities recommended in writing by a physician, psychologist, or other professional who has evaluated or treated the child.

- The written recommendation shall include instructions for any special treatment, diet, or restrictions in activities that are necessary for the health of the child.

- The recommendation shall be maintained in the child's record.

- The provider shall ensure the environment is appropriate for the child based on the plan of care and shall instruct other caregivers in the proper techniques of care.

- The home shall perform only those procedures and treatments for which caregivers have the necessary training, experience, credentials or license to perform.

- Staffing shall be appropriate and adequate to meet the specific physical and/or developmental needs of a child with disabilities in care.

Justification: These requirements ensure the health, safety, and welfare of children in care (§ 63.2-1734 of the *Code of Virginia*). The changes were requested by child care advocates.

The following requirements will apply to *overnight care*:

- When overnight care is provided, caregivers must remain awake until all children are asleep and shall sleep on the same floor level as the children in care.

- For overnight care and evening care during which a child sleeps more than two hours, the following is required: (a) an individual crib for an infant; (b) an individual bed with a mattress or a cot with at least 2 inches of dense padding for an child not required to sleep in a crib; and (c) linen.

- For overnight care, caregivers must establish a bedtime schedule for a child in consultation with the child's parent.

- For overnight care, separate sleeping and dressing areas must be provided for children of the opposite sex over age six.

- For overnight care, adequate drinking water must be made available to children during the night.

- For overnight care, each child must have comfortable sleepwear, a toothbrush, and a comb and brush assigned for individual use.

- For overnight care, bath towels and washcloths, when used, must be assigned for individual use and laundered as needed but at least weekly.

- For overnight care, a child must have a routine that encourages good personal hygiene practices including bathing (if needed and with parent's written permission) and tooth brushing.

- Age-appropriate evening activities must be provided for children in overnight care as time allows.

- For overnight care, quiet activities and experiences must be available immediately before bedtime.

Justification: Specific requirements added for the health and safety of children in overnight care.

- When family day homes provide meals or snacks, the most recent nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture (USDA) shall be met.

- Family day homes offering both meals and snacks shall serve a variety of nutritious foods.

- When food is brought from home, the food container shall be clearly labeled in a way that identifies the owner; the family day home shall have extra food or shall have provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and unused portions of food shall be discarded by the end of the day or returned to the parent.

Justification: The Child and Adult Care Food Program (CACFP) has established meal pattern requirements that specify the kinds of food and amounts to be served to children. The kinds of food, or components, meet children's daily nutritional needs. However, The CACFP does not regulate nutrient content (Vitamin A, C, iron, etc.). Children need many different nutrients to grow and be healthy. Research conducted by CACFP finds that the nutrients missing most often in children's diets are Vitamins A and C. The diet quality of most children ages two to nine is less than optimal, according to USDA Center for Nutrition Policy and Promotion. Poor eating habits in young children impair their growth and development and serve as foundations for poor eating behaviors as adults. These requirements ensure the health of children in care (§ 63.2-1734 of the *Code of Virginia*).

The following requirements will be added related to *medication administration:*

- Long-term prescription drug use may be allowed with written authorization from the child's parent. The written authorization must be reviewed and updated annually.

- The parent's written authorization for the following nonprescription medications shall include a start date and ending date, not to exceed one month: (a) antihistimines; (b) non-aspirin fever reducers/pain relievers; (c) non-narcotic cough suppressants; (d) anti-itching ointments or lotions, intended specifically to relieve itching; (e) diaper ointments and powders, intended specifically for use the diaper area of the child; and (f) sunscreen.

- The nonprescription medications listed above may be given only at the dose, duration and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

- The provider may permit self-administration of a medication by a child in care if:

    1. The child is physically and mentally capable of properly taking medication without assistance;

    2. The provider includes in the child's file a parental or physicians written statement of the child's capacity to take medication without assistance; and

    3. The provider assures that the child's medications and other medical supplies are inaccessible to another child in care.

- Caregivers are not required to record the amount of diaper ointment or sunscreen applied.

- The medication administration record maintained by the provider must contain adverse reactions and medication errors.

Justification: Requirements are established for nonprescription drugs such as sunscreen and diaper rash ointment. A major issue surrounding the use of sunscreen was whether it is a drug or a cosmetic. The Food and Drug Administration has not issued a final rule, but the research to this point indicates the rule will be that sunscreen is a nonprescription over-the-counter drug. Written authorization for administration of sunscreen and diaper rash ointment is required. However, the duration of the authorization is more than 10 work days. The matter of self-administration of medications by children is addressed by allowing providers to act only with written permission from parents, which is to be maintained in the child's file.

The following requirements are added related to *transportation*:

- General written permission must be obtained from the parent of each child for the provider to take the child off the premises of the family day home, on a form that lists regularly scheduled trips (e.g., library, store, playground, swimming), and the driver, if the child is to be transported.

- Special written permission must be obtained from the parent of each child for special field trips to include destination, duration of trip, and driver, if the child is to be transported.

- Whenever a caregiver leaves the home with the children, the caregiver must have a mechanism for making telephone calls to emergency personnel and parents (e.g., a supply of coins, calling card, cellular phone).

- The provider must ensure that during transportation of children the driver has a valid driver's license.

- The provider must ensure that the vehicle used for transportation was manufactured for the purpose of transporting people seated in an enclosed area and has seats that are attached to the floor.

- The provider must ensure that during transportation of children, (a) the children remain seated and each child's arms legs, and head remain inside the vehicle; (b) doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle; (c) at least one caregiver always remains in the vehicle when children are present; (d) no child occupies the front seat if the vehicle has an operational passenger side airbag; and (e) each child boards and leaves the vehicle from the curb side of the street.

Justification: Requirements added to protect the safety of children during transportation.

The following requirements are being added in the section titled "**Emergency Preparedness and Procedures**":

- The provider must have a written plan to provide a competent adult to be available to provide temporary child care in case of a medical emergency. The plan must include the name, address, and telephone number of the emergency caregiver.

- The emergency caregiver's name, address and telephone number must be posted in a visible area close to the telephone.

The following requirements will be added to the section titled "**Water Safety**":

- If a pool, lake, or other swimming area has a water depth of more than 2 feet, a lifeguard holding a current certificate must be on duty supervising children at all times when one or more children are in the water.

Justification: The Consumer Product Safety Commission conducted a study, which was published in 1994, on drowning and submersion incidents involving children under five years old in Arizona, California, and Florida. The report states that each year, nationwide, about 300 children under five years old drown in swimming pools. The findings of a study entitled "Child and Adolescent Drownings in Virginia: A Population-Based Study," were reported in

the Virginia Epidemiology Bulletin, April 1996, published by the Virginia Department of Health. The study reported that 163 children and adolescents, aged 0 to 19, drowned in Virginia between January 1, 1989, and December 31, 1994. The figures were obtained from a review of all medical examiner records of children and adolescents drowned during that period. In Central Virginia, according to the study, the most frequently reported body of water in which a drowning occurred was a pool. In the Tidewater region, drowning in a river and drowning in a pool were reported equally. The most frequent cause of drowning was accidental drowning or submersion while engaged in a sport or recreational activity (20%), accidental drowning in pools (25%), and accidental fall into water or drowning not otherwise specified (22%). Children under five and adolescents age 15 to 19 had the highest drowning rates. Forty-four percent of children under age five drowned in swimming pools or hot tubs and all of the pools were residential.

- Written permission is required for each child who participates in swimming or wading activities. The written permission must include a statement advising of the child's swimming skills before the child is allowed in water above the child's shoulder height.

- When permanent swimming or wading pools are located on the premises of the family day home, pools constructed, renovated or remodeled after April 1, 1986, shall have a written statement of their inspection and approval from the local building official when such approval is required.

- Outdoor swimming pools must be enclosed by safety fences and gates that are in compliance with Virginia USBC for private swimming pools. Gates must be kept locked when the pool is not in use.

- Entrances to indoor swimming pools must be locked when the pool is not in use.

- Use of portable wading pools will be prohibited.

Justification: In response to a proposal to use of portable wading pools by children who are not potty-trained, comments were received that recommended prohibiting wading pools and allowing sprinklers only. Comments were received that in this age of technology, products are available to protect all swimmers. Others commented that pool upkeep and use of chemicals were not addressed. Small portable wading pools do not permit adequate control of sanitation and safety, and they promote transmission of infectious disease. Sprinklers offer a safe alternative as a cooling or water play activity, and allows for inclusion of children who are not potty-trained.

- Use of hot tubs, spas and whirlpools will be prohibited.

- All hot tubs must have bolted and securely locked covers.

Justification: The Consumer Product Safety Commission has issued reports on incidents and deaths in which people's hair was sucked into the suction drain of hot tubs, spas or whirlpools, causing the victims head to be held under water. The suction is strong enough to cause

entrapment of hair or body parts, and drowning. Since 1980, CPSC has reported more than 700 deaths in spas and hot tubs. About one-third of those were drownings to children under age five.

The following requirements will be added to the section titled "**Recordkeeping**":

- A record retention requirement of two years after termination of care or employment for records and reports required by the standards on children and caregivers.

- Each child's record will include information on (a) allergies and intolerances to food, medication, or any other substances; (b) written instructions signed and dated by a physician on actions to take in an emergency related to the allergy or intolerance; (c) information on chronic physical problems and pertinent developmental information; (d) any special accommodations needed; and (e) proof of the child's age and identity and names and addresses of the previous child day care and schools.

- Every six months, the provider shall review emergency contact information with the parent to ensure the information is correct.

Justification: This addition assures information needed in an emergency is available and current.

- Written procedures shall include the provider's disciplinary policy, including acceptable and unacceptable discipline methods; policies and procedures for termination of care; policies on provision of meals and snacks; and policies on medication, including medication or procedures that will be administered or given.

Justification: The establishment of written policies and procedures assures that expectations are clearly defined and understood.

Additional parental notifications include the following:

- A parent will be notified immediately when the child has an adverse reaction to medication administered; has been administered medication incorrectly; is lost or missing; or dies.

- The parent will be notified the same day whenever first aid is administered to the child

- Except in emergency evacuation situations, the provider will inform the parent whenever the child is taken off the premises.

- The requirement that paid caregivers must report suspected child abuse or neglect.

- Local law enforcement must be notified immediately of a lost or missing child.

- The provider shall immediately notify the local department of social services or call the toll free number for the Child Abuse and Neglect Hotline whenever there is reason to

suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person.

Children's health records will include:

- Documentation of up-to-date immunizations by a child's first day of attendance.

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 last major revision to the Minimum Standards for Licensed Family Day Homes occurred in the early 1990s. Changes in a number of areas, including the *Code of Virginia*, necessitate a revision at this time. The revision process began in 1998, with efforts to identify less burdensome and less intrusive alternatives for achieving the essential purpose of the regulation as indicated below:

1. Notice of the 20-day public comment period for the periodic review published in The Virginia Register on February 15, 1999;
2. Notice of 20-day public comment period for the periodic review mailed to all licensed family day home providers, all voluntarily registered family day home providers, licensed family day systems, contracting organizations for voluntary registration, regional licensing offices, and individuals on the interested parties list for the regulation;
3. Interviews with all regional licensing administrators and several regional children's program licensing specialists;
4. Interviews with child care/development experts and licensed family day home providers including representatives of the Virginia Alliance of Family Child Care Associations;
5. Review of all other states' family day home regulations;
6. Review of current recommendations from the United States Consumer Product Safety Commission, the American Society for Testing Materials, and the American Academy of Pediatrics;
7. Review of report of the Joint Legislative Audit and Review Commission, Follow-up Review of Child Day Care in Virginia (House Document No. 5, 1998);
8. Review of all technical assistance questions that have been received from licensing staff since last revision of regulation (1993);
9. Review of all other Virginia Department of Social Services licensing standards for children and adult programs; and
10. Meetings with representatives of the State Fire Marshal's Office, the Department of Housing and Community Development, and the Virginia Department of Health.

A Notice of Intended Regulatory Action (Notice) was published, based on all of the above actions, on April 22, 2002. Additional changes since the development of the initial Notice, however, make it necessary to withdraw the original Notice and to submit this proposal to adopt a new regulation. The *Code of Virginia* mandates development of standards that protect the

health, safety and welfare of children in out-of-home care. No other alternatives for meeting this purpose were considered or are available.