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Virginia
Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-181 and 22 VAC 40-180
Regulation title	Voluntary Registration of Family Day Homes – Requirements for Providers
Action title	New Regulation As Result of Periodic Review
Document preparation date	August 20, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_ap.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The regulation, Voluntary Registration of Family Day Homes – Requirements for Providers, establishes general requirements and procedures that family day homes caring for fewer than six children must meet in order to obtain a certificate of registration from the Department of Social Services. The purpose of this regulatory action is to repeal the current Voluntary Registration of Family Day Homes – Requirements for Providers (22 VAC 40-180) and adopt a new regulation. The number of changes that have occurred since this regulation became effective in April 1993 including, but not limited to, additions to the definition of a family day home, changes in background clearance requirements, the addition of requirements for proof of a child's age and identity, all of which are statutory changes, makes replacement of the regulation necessary. Many of the requirements of the current regulation will be incorporated into the new regulation. Overall, the new regulation will be clear and easy to follow, will incorporate all applicable requirements from the *Code of Virginia*, and will provide reasonable health and safety guidelines for the protection of children cared for in these small homes.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 63.2-100, 63.2-217, 63.2-1704 and 63.2-1734 of the *Code of Virginia* provide the legal authority for the State Board of Social Services to adopt regulations and requirements for the voluntary registration of family day homes. The *Code of Virginia* mandates promulgation of regulations that identify homes that qualify for voluntary registration, standards for a self-administered health and safety guidelines checklist, and criteria and process for issuance and renewal of a certificate of registration, including charges for processing applications.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The majority of the provisions of the repealed regulation will be incorporated into the new regulation. The order of the requirements will mirror the steps in the registration process, from application to issuance, monitoring, renewal, denial, revocation and the appeals process. A new section will be added, entitled *Administration*, which will set out providers' responsibilities in the areas of recordkeeping and reporting. Requirements that support the items addressed in the Health and Safety Checklist will be included in the body of the regulation, in a section entitled *Health and Safety Requirements*.

The following changes that have occurred in the *Code of Virginia* will be incorporated:

- Proof of a child's age and identity and the names of previous child day care and schools attended, with guidelines on what documentation is acceptable and actions to take if the required proof is not provided;
- The requirement that providers notify parents of the percentage of time each week that persons other than the provider will care for the child;
- Background clearance requirements that are consistent with changes in the law and the regulation for background clearances.

The following are proposed additions:

- Increase fee for a follow up visit by the contracting organization to confirm corrective action from “up to \$10” to “up to \$20.” This addition would encourage compliance so as to avoid follow up visits and provide a small amount of additional income for contracting organizations.
- Add the requirement for 10 hours of on-going training during the two-year registration period. A training record that includes the name of the provider, the name of the training session, the date and total hours of the session and the name of the organization or person who sponsored the training will be maintained by the provider and submitted with the renewal packet.
- Detail the requirements for children’s immunizations, including timing and frequency. This addition would make immunization information readily available to providers in the body of the regulation. Monitoring of voluntarily registered providers has shown that violations are frequent and widespread in this area.
- Add the requirement that the certificate of registration, along with a copy of the Information to Parents Statement be posted in a place conspicuous to the public. Posting of the certificate will alert the public that the provider has voluntarily agreed to meet certain health and safety standards for the care of children. Posting of the Information to Parents Statement makes additional information available to parents and will result in a cost savings for both the department and the contracting organization, since it eliminates the requirement that sufficient copies be made available to the provider to distribute to the parents of each child enrolled.
- Providers will notify the contracting organization when a household member turns 18 or an adult becomes a member of the household. Background clearances can then be secured on these individuals, in order to assure that no barriers exist to continued registration of the home.
- An incomplete application that has been pending for more than 120 days from initial submission will be considered withdrawn.
- Providers must be able to read and write in English as necessary to met the requirements of this regulation.
- Definitions will be added for “review committee” and “surrender of a certificate of registration.”

Proposed changes include, but are not limited to, the following:

- In situations where a provider has not met the requirements for issuance of an initial certificate of registration, the contracting organization will notify the provider and deny the application. The provider may appeal the decision to the contracting organization’s review committee, but the decision of the review committee will be final.

- An exception will be made to review by the contracting organization when the reason for refusal to renew or revocation of a certificate of registration is a substantiated case of child abuse or neglect or a criminal conviction that is a barrier to registration. The findings and recommendation will be forwarded to the department for processing through the department's appeals process. This change will assure maintenance of confidentiality as required by background clearance and child protective services statutes and will eliminate unnecessary steps and time delays in the adverse action process.
- The staff-to-child ratio requirements that became effective for registered providers on November 1, 1993 will be incorporated into the regulation.
- The definition of "substitute provider" will be revised to mean a person at least 18 years of age who meets the requirements for providers and who is readily available to provide substitute child care in a registered provider's home or the substitute provider's home if the home is registered or licensed.
- In the event that a certificate is refused renewal or revoked, the provider will return the certificate to the department, along with evidence that the parents of all children enrolled were notified of such action within 10 calendar days after receipt of the final order.

The Health and Safety Checklist, while required by statute, will not be incorporated into the regulation, in order to allow for updates as needed without having to amend the entire regulation.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

Because this regulation is mandated by statute, no alternatives to promulgation were considered. Consideration was given to combining this regulation with Voluntary Registration of Family Day Homes – Requirements for Contracting Organizations, but it was concluded that this would be cost prohibitive, and could discourage providers from choosing to become voluntarily registered. Currently the department has contracted with 6 organizations to administer the program. These organizations routinely distribute copies of the regulation, which is supplied by the department, to prospective applicants. In addition to the printing costs to the department, the additional postage that would be required to mail the combined regulation to interested persons would be an added expense for contracting organizations.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have no adverse impact on the institution of the family and family stability. Simplification of the regulation has the potential to increase the availability of regulated child care by making voluntary registration more appealing to the family day care providers.

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all public comment received in response to the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Only one response was received to the Notice of Periodic Review.

Commenter	Comment	Agency response
Voluntarily Registered Provider	The regulations are essential to the protection of children in care and therefore should be continued.	The agency agrees with this assessment.

This regulation is necessary for the protection of the health, safety and welfare of children in out-of-home care situations. Proposed revisions are intended to make the regulation clear and easily understandable.