



Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-80
Regulation title	General Procedures and Information for Licensure
Action title	Amend certain sections to adopt a permanent regulation to replace emergency regulation
Date this document prepared	November 1, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The amendments to this regulation add a requirement regarding notification to the department when a licensee plans to close or sell a facility; add additional items to the list of documents that must be posted in a facility; add additional administrative sanctions that the commissioner may impose upon licensed facilities when they fail to maintain compliance with regulations or laws; add a new section that provides procedures for summary orders of suspension; and makes minor changes to procedures for the appeal process and consent agreements for clarification and to remove unnecessary detail. One change was made from proposed to final, in order to update a *Code of Virginia* citation.

Statement of final agency action

Please 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.

The State Board of Social Services approved the final regulation, 22 VAC 40-80, *General Procedures and Information for Licensure* on November 1, 2006.

Legal basis

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

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 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 explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulatory action is to replace the emergency regulation (effective from December 28, 2005 through December 27, 2006) with a permanent regulation. Legislation passed by the 2005 General Assembly required that the State Board of Social Services promulgate regulations to implement certain provisions of the legislation to be effective within 280 days of enactment. The Administrative Process Act requires that a replacement be promulgated within 12 months.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

This regulatory action is being taken to replace the emergency regulation with a permanent regulation. Some of the amendments affect only assisted living facilities; others affect all licensed programs. The affected standards are:

22 VAC 40-80-60. General.

Adds requirement that licensees notify the appropriate licensing office at least 60 days prior to an anticipated closure or sale date; requires that the license be returned to the appropriate licensing office when the sale or closure is complete.

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

Adds additional documents that must be posted in the facility.

22 VAC 40-80-340. Administrative sanctions.

Adds additional administrative sanctions that the commissioner may impose upon licensed facilities when they fail to maintain compliance with regulations or laws.

22 VAC 40-80-345. Summary suspension procedures.
 Adds a new section of procedures for summary orders of suspension.

22 VAC 40-80-370. Appeal process.
 Clarifies language regarding notice to the applicant or licensee related to the appeal process.

22 VAC 40-80-430. Consent agreements.
 Deletes unnecessary language related to required contents of a consent agreement.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

Most of the amendments to this regulation will make consumers more aware of violations of standards and laws that threaten the health, safety and welfare of children and adults in licensed facilities. The amendments also establish additional administrative sanctions that the department can use if facilities fail to maintain compliance with standards and laws. Minor amendments were made to the appeal process and to consent agreements procedures for clarification and to remove unnecessary detail. There are no disadvantages to the public or to the Commonwealth because of this regulation.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
22 VAC 40-80-340	6. Imposing administrative sanctions through the issuance of a special order as provided in § 63.2-1709 D of the Code of Virginia.	Code section is now § 63.2-1709.2 (was previously § 63.2-1709 D)	Code number changed

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Licensing staff	Commenter stated that standard 22 VAC 40-80-120.E.2 can be confusing.	Responded directly to licensing staff to explain meaning of the standard.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-80-60	22 VAC 40-80-60 C.	This standard contains general information about the licensing process. A new subsection is being added.	A new subsection C. is being added to require that when a licensee plans to close or sell a facility, the licensee shall notify the appropriate licensing office at least 60 days prior to the anticipated closure or sale date. When the facility closes or the sale is finalized, the license shall be returned to the appropriate licensing office. This standard is being added so that the department is assured of knowing when a facility is closed and children or adults are not longer in care.
22 VAC 40-80-120		This standard contains the list of documents that must be posted in a licensed facility.	The amendments include (1) a new requirement for posting the provisional license and, beside it, a notice that states that a description of specific violations of licensing standards to be corrected and the deadline for completion of these violations is available for inspection at the facility or on the facility's website; (2) new requirement that the notice of the commissioner's intent to revoke or deny renewal of the license of an assisted living facility be posted in a prominent place at each public entrance of the facility; (3) new requirement that any final order of summary suspension of all or part of an assisted living facility's license be posted at each public entrance of the facility or a written statement of where in the facility it can be reviewed; (4) new requirement that notice of the commissioner's intent to take

<p>22 VAC 40-80- 340</p>		<p>This standard contains the list of administrative sanctions that the commissioner may impose upon licensed facilities.</p>	<p>any of the actions enumerated in subdivisions B 1 through B 6 of § 63.2-1709.2 (special orders) of the Code of Virginia be posted in a prominent place at each public entrance of the facility; (5) new requirement that a copy of any special order issued by the department be posted in a prominent place at each public entrance of the facility; (6) revised requirement for posting of the most recent violation notice to require posting of the findings of the most recent inspection of the facility.</p> <p>These amendments are intended to ensure that consumers are informed of conditions in licensed facilities, especially in assisted living facilities, that threaten the health, safety and welfare of persons in care.</p> <p>The amendments are to: (1) require an assisted living facility to contract with an individual licensed by the Board of Long-Term Care Administrators to administer, manage or operate the facility on an interim basis if the commissioner receives information from any source indicating imminent and substantial risk of harm to residents. This action will be an attempt to bring the facility into compliance with all relevant requirements of law, regulation, or any plan of correction approved by the commissioner; (2) issue a summary order of suspension of the license to operate an assisted living facility pursuant to proceedings set forth in § 63.2-1709 C of the Code of Virginia in conjunction with any proceedings for revocation, denial or other action when conditions or practices exist that pose an imminent and substantial threat to the health, safety and welfare of residents; (3) assess a civil penalty for each day an assisted living facility is or was out of compliance with the terms of its license and the health, safety and welfare of residents are at risk. The aggregate amount of such civil penalty shall not exceed \$10,000 in any 24-month period.</p> <p>In subsection 6 of section 22 VAC 40-80-340, the Code of Virginia citation is changed from § 63.2-1709 D to § 63.2-1709.2. A new section is being added to provide procedures for summary order of suspension.</p>
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<p>22 VAC 40-80-370</p> <p>22 VAC 40-80-430</p>	<p>22 VAC 40-80-345</p>	<p>This standard contains the steps in the appeal process.</p> <p>This standard contains the process for consent agreements.</p>	<p>The amended 22 VAC 40-80-340 and the new 22 VAC 40-80-345 provide additional sanctions the department can use if facilities fail to maintain compliance with regulations or laws.</p> <p>A new section is being added to provide procedures for summary order of suspension.</p> <p>Standard A is being amended to state that the notice of the department’s intent to impose an administrative sanction will be achieved by certified mail. The amendments also clarify that the applicant or licensee will have 15 days after <u>receipt</u> of the notice to note his appeal.</p> <p>Standard C is amended to clarify when the final order will be entered by deleting “notice will constitute the department’s final decision” and replacing it with “final order will be entered.”</p> <p>The last sentence of standard A is being deleted because it is unnecessary. Standards B 4 and 5 are deleted because they are unnecessary. A new standard B 6 is added to the list of elements to be included in a consent agreement. Standard C is deleted because it is unnecessary.</p>
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Regulatory flexibility analysis

Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no alternatives to the proposed regulatory action. An amended regulation is needed in order to comply with changes to the Code of Virginia.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and

one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The amended regulation will have a positive impact on the family. Licensing standards ensure the health, safety and welfare of adults and children who attend or reside in licensed facilities, thereby strengthening the authority and rights of parents and family members in the nurturing and supervision of their children and/or elderly relatives in care. The placement of adults and children in licensed facilities provides an opportunity for parents or family members to concentrate on resolving issues that would lead to self pride, responsibility for oneself, and economic self-sufficiency thereby increasing disposable family income. The amendments to this regulation also ensure that parents and family members have more information about the operation of licensed facilities in order to make better decisions about the care of their loved ones.