



Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-771
Regulation title	Adult Services Approved Providers
Action title	Establish New Regulation for Adult Services Providers
Date this document prepared	February 15, 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

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This action repeals 22 VAC 40-770, Standards and Regulations for Agency Approved Providers, and establishes a new regulation, 22 VAC 40-771, Adult Services Approved Providers. 22 VAC 40-770 includes dated, generic provisions which address approval and regulation of service providers including adult service providers, child care providers and adoptive and foster care providers. Because of the uniqueness of each type of provider, it is no longer appropriate to generically address them in a single regulation. New regulations are being promulgated to address each type of provider separately. 22 VAC 40-771 addresses standards and procedures for providers of services to adults contracted through local department of social services.

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 number(s), 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.

The legal basis for this regulation is §§ 63.2-217 and 63.2-1600 of the Code of Virginia. These sections provide general authority for the development of regulations for program operation and mandatory authority for the development of regulations for the delivery of home-based services and the determination of eligibility for such services.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The regulation is necessary to repeal outdated regulations and promulgate a new regulation to protect the health, safety, and welfare of citizens of the Commonwealth by setting a basis of quality in purchasing care and making placements for vulnerable adults age 60 and over and age 18 to 59 who have a disability. With these standards, assurances can be made that the care purchased or arranged meets health and safety standards and supports care that is conducive to the health, safety and well-being of elderly individuals and persons with disabilities. The goal of the new regulation is to maintain these assurances, while also ensuring conformity with all current federal and state laws and regulations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed regulation focuses on adult services providers that are approved by local departments of social services, including out-of-home providers of adult day services and adult foster care; and in-home providers of chore, companion and homemaker services. Substantive provisions include:

1. Clear definitions of approved provider services.
2. Standards and requirements for adult services providers, assistants, the provider's spouse and other persons.
3. Standards and requirements for care given by adult services providers, including requirements for the handling of medications.
4. Standards and requirements for the home of the adult foster care or adult day services provider, including physical accommodations, safety, sanitation, and capacity.
5. Record-keeping requirements for adult foster care and adult day services providers.
6. A section on rights and responsibilities of adults in care.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The public is expected to benefit from this new regulation, as it strengthens the safety requirements for the providers who care for the vulnerable adults placed into the Commonwealth's adult care system. It also strengthens the authority of the local departments of social services to hear all applicant grievances and make the final decision as to who will be approved as a provider. Finally, these new regulations will benefit local departments of social services and individuals providing care for adults by ensuring that the regulations are consistent with state and federal law and other related social services regulations.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	The proposed regulation will require no more state staff or staff time than the current regulation that is being repealed.
Projected cost of the regulation on localities	The proposed regulations are not expected to create any significant economic effect and will incorporate statutory requirements in effect since these regulations were last revised.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Applicants for local department approval to provide in-home care or out-of-home care for up to three adults. These providers are relatively small in number compared to similar providers approved by the Department's Division of Licensing Programs.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	In FY 2005, there were 2,120 local department approved home-based care providers and approximately 63 adult foster care homes, according to the Department's annual Adult Services survey.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There should be no significant change in compliance costs for affected entities.

Alternatives

Please describe any viable 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The proposed regulation represents an alternative developed following extensive public comment indicating that adult services warranted separate approved provider regulations rather than attempting to maintain the existing generic regulation covering three program areas.

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.

This proposed regulation is clearer and easier to use than the existing generic regulation that covers three separate program areas, which is to the advantage of providers, including small businesses. It specifically addresses standards and requirements for the provision of care to adults age 60 and over and age 18 to 59 with disabilities. It also delineates the responsibilities of adults in care. It is consistent with the health, safety, environmental and economic welfare of adults in care in the Commonwealth.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

No comment was received.

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 proposed regulation has a positive impact on family stability, responsibility, and safety. The proposed regulation, which replaces 22 VAC 40-770, clearly states the responsibilities of providers and of adults in care while enhancing the safety of adults in care. It also enumerates the rights and responsibilities of adults in care and addresses standards and requirements that families can expect from providers of services to adult loved ones who are in care.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	22 VAC 40-771-10		Definitions: Defines terms used in the regulation including: activities of daily living, adult, adult abuse, adult day services provider, adult exploitation, adult foster care, adult foster care provider, adult neglect, adult services, assistant, chore provider, client, companion provider, department, home-based services,

			homemaker services, in-home provider, instrumental activities of daily living, local board, local department, local department approved provider, out-of-home provider, personal care services and responsible person.
	22 VAC 40-771-20		Adult Services approved providers: Lists providers to whom this regulation applies, including out-of-home providers (adult day services and adult foster care) and in-home providers (chore, companion and homemaker). Addresses changes in jurisdiction.
	22 VAC 40-211-30		Standards for providers and other persons: Lists requirements addressing the provider's minimum age; interviews, reference checks, and employment history; assessment of provider knowledge, skills, abilities and capabilities; home interviews for adult foster care and day services provider applicants; financial resources and physical accommodations of adult foster care provider applicants; training; and medical requirements.
	22 VAC 40-771-40		Standards for care for adult services providers: Lists standards for care provided to adults, including: nondiscrimination; supervision; food provided; transportation of adults in care; medical care; recreational and other activities; and clothing requirements. Describes provider responsibility for immediate reporting of suspected adult abuse, neglect or exploitation to the local department or APS hotline.
	22 VAC 40-771-50		Standards for the home of the adult foster care or adult day services provider: Lists standards for physical accommodations; home safety; sanitation; maximum capacity. The maximum capacity for unlicensed adult day services and adult foster care homes is three adults.
	22 VAC 40-771-60		Record requirements for adult foster care and adult day services providers: Providers are required to maintain legible written information on each adult in care, including identifying information; responsible person information; persons authorized to pick up, call, or visit the adult in care; admission and discharge dates, daily attendance; medical information; correspondence; and the placement agreement. Records are confidential. The local department and Department shall have

			access to all records.
	22 VAC 40-771-70		Approval period: The approval period for a provider is up to 24 months when the provider meets the standards.
	22 VAC 40-771-80		Allowable variance: The provider may request an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the adult or violate federal, state, or local law and the local department approves the request. The local department shall consult with the Adult Services regional consultant prior to granting an allowable variance. The allowable variance shall be in writing, and the provider and local department will develop a plan to meet the applicable standard. The allowable variance must be requested and granted prior to the approval of the provider or at the time of the provider's renewal.
	22 VAC 40-771-90		Emergency approval: Establishes conditions for emergency approval of a provider, including a court order; or the request of an adult or adult's responsible person, in which case the local department must visit the provider's home and interview the provider. Emergency approval shall not exceed 30 days. The provider must meet all applicable standards if services will be provided beyond the 30-day emergency period.
	22 VAC 40-771-100		Provider monitoring: The local department representative must visit the adult day services or adult foster care provider's home and interview the provider at least semi-annually. The local department representative will interview home-based providers face-to-face at least semi-annually. Provider monitoring shall include interviews with adults in care. The adult in care or his responsible person shall have access to all provider monitoring reports upon request.
	22 VAC 40-771-110		Renewal process: The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet standards. The homes of adult day services and adult foster care providers must continue to meet standards.
	22 VAC 40-771-120		Inability to meet standards: If the provider cannot meet the standards for adult services approved providers, the local department shall grant provisional approval, suspend approval, or revoke approval, depending on the duration and nature of

			<p>noncompliance. A provisional approval of up to three months may be granted if noncompliance does not jeopardize the safety or proper care of adults in care. Approval may be suspended for up to three months if noncompliance may jeopardize the safety and proper care of the adults in care. If the provider is out of compliance for three months and a variance is not granted, the approval shall be revoked. The local department shall revoke approval immediately if noncompliance jeopardizes the health, safety and proper care to the adults in care. Adults in day services or foster care shall be removed within five calendar days from the date of the decision.</p>
	22 VAC 40-771-130		<p>Relocation of out-of-home provider: If the out-of-home provider moves, the local department shall determine continued compliance with standards related to the home within 30 days. If an out-of-home provider moves outside of the locality that approved it, the local department in the new locality may accept the approval of the initial local department or initiate the approval process itself.</p>
	22 VAC 40-771-140		<p>Right to review: The provider shall have the right to request that the local director review the actions of the local department. Review must be requested within 10 calendar days of the local department's action.</p>
	22 VAC 40-771-150		<p>Rights of adults in care: This section sets forth the rights of adults in care, including the right to be fully informed of his rights and of all rules and expectations, and of services available and any related charges; freedom to manage personal finances and funds and have access to personal accounts; a quarterly accounting for adults in foster care, unless a conservator has been appointed; to confidentiality regarding his personal affairs and records; and to the opportunity to participate in planning of his care and medical treatment, and the right to refuse treatment. This section also lists the rights of adults in foster care or adult day services involving transfer or discharge, including 30 days notice, and standards for emergency discharge; and the right the right not to be required to perform services for the home except as voluntarily contracted in writing. An adult in care has the right to be free to select health care services from reasonably available resources; to be free from mental, emotional, physical, sexual,</p>

			<p>and financial abuse or exploitation, and from forced isolation, threats or other degrading or demeaning acts; and when in adult foster care or adult day services, to not have his needs neglected or ignored by the provider. Adults in care have the right to be treated with courtesy, respect and consideration; and to be free to voice grievances and recommend changes in policies and services. Adults in out-of-home care from a local department approved provider have the right to retain and use personal clothing and possessions. An adult in care also has the right to be encouraged to function at his highest potential; to receive and send uncensored mail; to refuse medication unless there has been a court finding of incapacity; to choose services to be provided; to receive all physician-prescribed treatments; to refuse services; to be free of restraint except in specified situations and with appropriate safeguards; to be free of prescription drugs except where medically necessary; to be accorded privacy in every aspect of daily living; to meet with and participate in social, faith-based and community group activities. A responsible person must be made aware of the adult's rights if the adult is unable to fully understand and exercise them as determined by a physician. Out-of-home providers shall post a copy of these rights and responsibilities including the name and number of the Adult Protective Services Hotline and Long-term Care Ombudsman toll-free telephone numbers; make their implementation policies and procedures available to adults, relatives, agencies and the general public; and provide staff training to implement these rights. Adults in care have the right to advance information about recommended care and treatment; and freedom from searches of personal belongings without their permission. An adult in out-of-home care has the right to be notified before his room or roommate is changed; and to private and unrestricted communication with any other adult who does not object to the communications.</p>
	<p>22 VAC 40-771-160</p>		<p>Responsibilities of adults in foster care or adult day services: An adult in care must follow the rules of the provider unless these rules violate his rights; must give two-week written notice of intent to leave the placement; and must notify providers of changes in the his health status.</p>