



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-160
Regulation title	Fee Requirements for Processing Applications
Action title	Revise Application Fee Schedule for Licensed Programs
Date this document prepared	August 19, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

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 purpose of the proposed action is to revise the schedule for fees charged to process the licensing applications of assisted living facilities, adult day care centers, and child welfare agencies. Fees for processing licensing applications have not increased since 1991. The Code of Virginia (Code) requires the fees to be used for the development and delivery of training for operators and staff of assisted living facilities, adult day care centers, and child welfare agencies. Currently, the cost of developing and delivering training far exceeds the amount collected for fees. The majority of the cost of provider training is covered by the use of state and federal funds.

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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 63.2-217 of the Code of Virginia (Code) provides the State Board of Social Services (Board) the general authority for the development of regulations to carry out the purposes of Title 63.2. Section 63.2-1700 authorizes the Board to adopt regulations and schedules for fees to be charged for processing

applications for licenses to operate assisted living facilities, adult day care centers, and child welfare agencies.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The provision of adequate care to children and vulnerable adults in licensed programs is contingent upon having appropriately trained operators and staff. To facilitate understanding and compliance with licensing standards, the agency offers training to providers each time there are changes to applicable licensing regulations. Pre-licensure training is mandated by the Code for assisted living facility applicants for licensure. General Procedures and Information for Licensure (22 VAC-40-80) also requires pre-licensure training for adult day care center and child welfare agency applicants for licensure. Pre-application training, pre-licensure training, and other provider training sessions are regularly offered free of charge by each of the eight regional licensing offices. Provider training is also offered on line in the Virginia Department of Social Services' (DSS) Knowledge Center and instructor-led training sessions are offered each year at numerous locations in the state through contracts with the Community College Workforce Alliance, Virginia Center on Aging, and the Greater Richmond Chapter of the Alzheimer's Association.

The amount of provider training offered and the costs of developing and presenting the training have steadily increased over the years, but the amount of the licensing fees collected to cover the costs has remained unchanged.

Providing care to children and vulnerable adults is an important business, but under the current fee schedule, an individual can engage in that business for an annual fee of only \$14 (to care for up to 12 individuals), \$35 (to care for 13-25 individuals), or \$70 (to care for 26-50 individuals). The agency believes that having such minimal fees gives the impression that provision of care is not considered by the state to be a serious business.

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.

Proposed changes will include: increasing the fees for processing applications for licensure; increasing the charge for checks returned due to insufficient funds; adding requirements for a fee to be charged for the issuance of a provisional license; establishing the amount of fees for licensure of children's residential facilities; and specifying when fees are due and the actions to be taken for failure to pay fees timely.

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. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The agency considered not changing the fee schedule, but to do so would result in either decreasing the amount of provider training offered or continuing to supplement the training budget with state and federal funds. The agency is unable to decrease the amount of pre-licensure training offered since the training is mandated by Code and regulation as a requirement for licensure. Decreasing or eliminating training on regulatory changes could result in a decrease in compliance with licensing standards and an increase in the number of citations issued for non-compliance that would negatively impact both providers and the individuals they serve. Charging providers for training that is now offered free of charge would result in increased administrative costs and would not off-set the current expenditures for training.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to: 1) ideas to assist in the development of a proposal; 2) the costs and benefits of the alternatives stated in this background document or other alternatives; and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1. Information may include: 1) projected reporting, recordkeeping and other administrative costs; 2) probable effect of the regulation on affected small businesses; and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so at the public hearing or via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to Karen H. Cullen, Virginia Department of Social Services, Division of Licensing Programs, 7 N. Eighth Street, Richmond, Virginia 23219, Telephone: (804) 726-7152, Fax: (804) 726-7132, Email: karen.cullen@dss.virginia.gov Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is using the participatory approach in the development of the proposed regulation by complying with the requirements of the Public Participation Guidelines (22 VAC 40-12). A regulatory advisory panel will be utilized. The agency will also consult other state agencies, including the Department of Health and the Department of Behavioral Health and Developmental Services, to ensure that the agency’s proposed licensing fees are consistent with the fees those agencies charge for similar types of licensure.

Family impact

Assess the potential 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 regulation should have a positive impact on families of children and adults receiving care in licensed facilities since the collection of fees results in training for staff which should enhance the quality of care provided. The regulation could have a negative impact on families if providers increase their fees due to having to pay higher licensure fees.