



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-120
Regulation title	Minimum Standards for Licensed Family Day-Care Systems
Action title	Licensed Family Day Systems Regulation Comprehensive Revision
Date this document prepared	December 15, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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.

This planned regulatory action is a joint action to repeal the existing regulation, 22VAC40-120, Minimum Standards for Licensed Family Day-Care Systems and establish a new regulation, 22VAC40-121, Standards for Licensed Family Day Systems. The intention of the proposed action to adopt a new regulation is to improve clarity and consistency, relieve intrusive and burdensome language, and provide greater protection for children in care. The determination to adopt a new regulation is based on the periodic review of the regulation completed in 1999 and on regular communication about changes needed to the regulation with licensing staff and the one family day system governed by the regulation.

Notices of Intended Regulatory Action to repeal the current regulation and adopt a new regulation were published in the *Virginia Register of Regulations* in 2002 and 2003 and a proposed regulation was published in 2004. The intention was for the requirements of system-approved homes to be consistent with those for licensed family day homes. The process to promulgate a new regulation for family day homes began in 2001. That new regulation was finalized in 2009, with an effective date of July 1, 2010. Due to the extreme lapse in time, the State Board of Social Services withdrew the previous actions for 22VAC40-120, in order to begin the process with this new Notice of Intended Regulatory Action.

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.

Sections 63.2-217, 63.2-1701 and 63.2-1734 of the Code of Virginia (Code) provide the legal authority for the Board to promulgate regulations for licensed family day systems and their member homes to ensure that their activities, services, and facilities are conducive to the welfare of children in care.

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 Code gives individuals or agencies licensed to operate a family day system the authority to approve family day homes that, without system approval, would be subject to licensure. The Code also grants authority for licensed family day systems to refer children to its approved family day homes. This regulation sets out the requirements for the activities, services and facilities of systems and system-approved family day homes. While the regulation for licensed family day homes has been revised several times since 1981 (with the most recent revision effective July 1, 2010), the last major revision to this regulation was in 1981. This new regulation adds requirements that are based on changes in law since that time, findings of research and changes in practice that promote the safety and well-being of children in care. These added requirements will ensure that children in the care of system-approved family day homes are afforded the same protections as those in the care of licensed family day homes.

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.

The new regulation will incorporate requirements from the current regulation 22 VAC 40-120 and will:

- Add and change definitions for clarity and for compliance with the Code
- Add requirements of the Code that have been enacted since 1984
- Add requirements for emergency information to be maintained in the system's records on children
- Clarify the requirements, duties, and responsibilities of the licensee that are in the current regulation
- Add a requirement for the system to have a written program description that is made available to prospective member homes, parents and the general public
- Add requirements for the system to develop operational procedures for complaint investigations and for notifying parents when a member home has been terminated
- Add language to clarify that the licensee is responsible for ensuring the system and member homes to maintain compliance with the standards, other relevant laws and regulations, and the system's own policies and procedures
- Add requirements for reports to the department that are consistent with requirements for other licensed programs

- Add requirements that certain records be available for public review such as confirmation that a family day home is a member of the system, evaluation and monitoring reports, enforcement letters, and completed complaint investigation reports, except reports of child abuse or neglect investigations
- Add requirements for confidential treatment of certain information
- Add requirement that the director of the system assign sufficient staff to operate the system and that the director designate a staff member to serve in the director's absence
- Raise the number of member homes for which a full-time home visitation staff member may be responsible from the current requirement of no more than 25 to no more than 30. Two years after the effective date of the regulation, the number will increase to 35. Four years after the effective date of the regulation, the number will increase to 40.
- Add a requirement the orientation for newly employed system staff include training in recognizing and reporting child abuse and neglect
- Add a requirement that system staff obtain a minimum of 8 clock hours of training annually
- Add a requirement for the development of approval criteria and requirements for system-approved homes that match or exceed the requirements for licensed family day homes.
- Add a requirement that prior to approval of a member home, the system provide orientation in system standards, the Standards for Licensed Family Day Homes, confidentiality requirements, and child abuse and neglect reporting requirements
- Add a requirement that within the first three months after approval of a member home, the provider must receive training on specific issues related to child care
- Add a requirement that the system provide all annual training required for providers
- Add requirements for the qualifications of trainers
- Add requirements for corrective action plans when violations of standards are found

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 Board is mandated by the Code to promulgate regulations to ensure that the activities, services, and facilities of family day systems and their member homes are conducive to the welfare of children in care.

This new regulation is a comprehensive revision of the current regulation. Because of extensive changes and reorganization, the current regulation is being repealed and a new regulation is being promulgated. In developing this proposal, consideration was given to the necessity, the enforceability, reasonableness, and the cost impact of the regulation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including 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 of the Code of Virginia. 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 via the Regulatory Town Hall website, www.townhall.virginia.gov, or by mail, email, or fax to Karen Cullen, Virginia Department of Social Services, Division of Licensing Programs, 801 East Main Street, Richmond, VA 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 not be held.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, regulatory advisory panels) 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 proposal by consulting with the one family day system governed by this regulation and the licensing staff who monitor the system's compliance with law and regulations.

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.

This regulation has no adverse impact on the family. The regulation recognizes and supports the family by establishing requirements intended to ensure that families in need of child day care receive services in a setting that is safe and healthy for children.

Family day systems provide yet another option for parents needing day care. In choosing to use the services of a system, parents are assured that member homes are monitored at least quarterly for compliance with criteria that meet and may exceed standards for licensed family day homes. Family day home providers who become members of the system do so by choice. Member homes benefit from opportunities for interaction, referrals, networking, training, backup care and other services the system offers.

The cost of the services of a family day system varies depending on a number of factors especially the economic conditions in the areas where the services are provided. Disposable income may or may not be affected. A reduction in disposable income may not be viewed as an adverse impact when parents receive, in exchange, safe, dependable child care.