



***COMMONWEALTH of VIRGINIA***  
***Office of the Attorney General***  
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**TO: KARIN CLARK**  
Virginia Department of Social Services

**FROM: MICHELLE A. L'HOMMEDIEU**  
Assistant Attorney General

**DATE: April 16, 2013**

**SUBJECT: Exempt Regulations for Submission of Financial Information for Licensure;  
22VAC40-60 (3949/6546)**

I am in receipt of the attached regulations reflecting the changes in Virginia statutory law made by Chapters 182 and 545 of the *2013 Acts of the Assembly* regarding the submission of financial information for licensure. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. *2013 Acts of the Assembly*, Chapters 182 and 545, change Virginia Code § 63.2-1702 and 63.2-1707 regarding the submission of financial information for licensure, which statutory went into force upon passage. It is my opinion that the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority. To date, the Board has not yet acted on these regulations; and the Agency Background Document available on Town Hall reflects the as yet unknown date of Board action.

Based on the foregoing, it is my view that these regulations are exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a) provided the regulations are filed with the Registrar within 90 days of the law's effective date and the

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requirements of Virginia Code § 2.2-4006(B) and (C) are met. If you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esquire

Attachment

**Project 3659 - Final**

**DEPARTMENT OF SOCIAL SERVICES**

**Information for Licensure-Adult Day Centers**

**22VAC40-60-90. Requirements for licensee.**

A. The licensee shall ensure compliance with all regulations for licensed adult day care centers and terms of the license issued by the department; with other relevant federal, state or local laws and regulations; and with the center's own policies.

B. The licensee shall meet the following requirements:

~~1. The licensee shall give evidence of financial responsibility.~~

~~2.~~ 1. The licensee shall be of good character and reputation.

~~3.~~ 2. The licensee shall protect the physical and mental well-being of the participants.

~~4.~~ 3. The licensee shall keep such records and make such reports as required by this chapter for licensed adult day care centers. Such records and reports may be inspected at any reasonable time in order to determine compliance with this chapter.

~~5.~~ 4. The licensee shall meet the qualifications of the administrator if he assumes those duties.

**22VAC40-60-120. Operational responsibilities.**

The licensee shall be responsible for the overall planning of the program and services to be provided by the center. The operational responsibilities of the licensee shall include, but not be limited to, the following:

1. To develop a written statement of the purpose and scope of the services to be provided by the center, a description of adults who may be accepted into the program as

well as those whom the program cannot serve, and written policies under which the center will operate;

NOTE: This requirement applies only to initial application for licensure unless there is a significant change.

2. To ensure that the center's activities, services, and facilities are maintained in compliance with this chapter, with the terms of the current license issued by the department and with other relevant federal, state, or local laws and regulations;

3. To appoint and identify in writing a director to be responsible for the day-to-day operation and management of the center, except when the sponsor is an individual who serves as the director or a partnership in which a partner serves as the director;

4. To provide for an adequate number of qualified staff capable of carrying out the operation of the program;

5. To develop a written organizational chart indicating lines of authority and a staffing plan which includes a staffing schedule; and

6. To establish sound policies under which the center shall operate; and

~~7. To ensure sound financial management of the center.~~

**22VAC40-60-130. Financial responsibilities. (Repealed.)**

~~With an initial application for licensure, the applicant shall provide the department with the following evidence of financial responsibility:~~

~~1. A projected budget detailing income and expenses of the proposed center for the first year of operation;~~

~~2. A complete balance sheet showing separately the current assets committed to and current liabilities charged against the proposed center; and~~

~~3. Documentation of funds or credit available for the first 90 days of operation.~~

~~NOTE: Financial records may be requested pursuant to § 63.2-1706 of the Code of Virginia.~~