



Virginia Department of Planning and Budget **Economic Impact Analysis**

8 VAC 20-820 General Procedures and Information for Licensure
Department of Education
Town Hall Action/Stage: 5880 / 9793
May 13, 2024

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

The State Board of Education (Board) proposes to repeal 8 VAC 20-820 and establish 8 VAC 20-821. Both regulations are titled *General Procedures and Information for Licensure* and concern the licensure of child day programs.²

Background

Among the differences between 8 VAC 20-821 and 8 VAC 20-820 are changes pertaining to early compliance, enforcement processes, license length, and background checks.

Early Compliance

In addition to a regular license, the Department of Education (DOE) may also issue conditional and provisional licenses. Under both the current and proposed regulations DOE may issue a conditional license to a new facility or agency in order to permit the applicant to

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² “Child day program” is defined as “a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.”

demonstrate compliance with specified standards. A conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months. When the conditional period is over, the facility or agency must substantially meet the standards or be denied a license.

Under both the current and proposed regulations, when an applicant applies to renew a regular license but the applicant is temporarily unable to comply with the requirements of the regulation, DOE may issue a provisional license for any period not to exceed six months. A provisional license cannot be issued to a facility or agency immediately following a conditional license. At the conclusion of the provisional licensure period, the facility or agency must be in substantial compliance with licensing standards or be denied a license to continue operation.

Under the current regulation, a conditional or provisional license may be voided and a regular license issued prior to the expiration date when:

- 1) The facility or agency complies with all standards listed on the face of the provisional or conditional license prior to the mid-point of the licensure period or within 90 days of the expiration date of the provisional or conditional license, whichever comes first, and the facility or agency is in substantial compliance with all other standards.
- 2) Compliance has been verified by an on-site observation by the department's licensing representative or, when applicable, by written evidence provided by the licensee.
- 3) The licensee makes a formal written request to the licensing representative for replacement of a provisional or conditional license with a regular license.

Under the proposed regulation, the conditional or provisional license may be voided and a regular license issued prior to the expiration date any time compliance is verified. Additionally, a formal written request is not required.

Enforcement Processes

When a violation has been found and the applicant or licensee disputes the violation, the applicant or licensee or licensing staff may request a problem-solving conference. Under the current regulation, there are two steps to the process. The first-step review is with the licensing administrator of the local office that oversaw the inspection. According to DOE, often times this administrator was closely involved in the decision to find the violation in dispute, which

arguably undermines the value of this first step. The agency indicates that progress is rarely made at this first step. If after the first step review, the applicant or licensee still believes that “the laws, regulations, or departmental policies have been applied or interpreted in a manner that was unreasonable, arbitrary or capricious,” he or she may request a second step review by program supervisory personnel as assigned by DOE. Under the proposed regulation, there would be a single review that occurs in coordination with the central office. The central office would receive a request for a violation review and have a licensing administrator in a different jurisdiction review the case file before communicating results with the central office.

A "consent agreement" is an agreement between the licensee and DOE that the licensee will perform specific actions for the purpose of correcting violations to come into compliance with standards or statutes. Under the current regulation, consent agreements can only occur after the applicant or licensee has received a letter of denial or revocation. Under the proposed regulation, consent agreements can occur earlier such as when a violation is first found.

Under the current regulation, all applicants or licensees who are aggrieved by an agency decision, such as license denial or revocation, are granted a formal administrative hearing if requested. Specifically, 8 VAC 20-820-420 states that “Upon receipt of the written request from the aggrieved party for [a formal] administrative hearing . . . , a hearing will be scheduled in the locality where the aggrieved party operates” This statement is not retained in the proposed regulation. Instead, 8 VAC 20-821-330 (B) just states that:

Whenever the superintendent refuses to issue a license or to renew a license or revokes a license for any child day program or family day system other than a child day program or family day system operated by an agency of the Commonwealth, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply.

According to DOE, under the proposed regulation not all who are aggrieved by an agency decision, such as license denial or revocation, would be guaranteed a formal administrative hearing if requested.

License Length

The current regulation has tiered licensing terms based on whether a licensee “substantially exceeds” (three-year license term), “routinely meet[s] and maintain[s] compliance with minimum standards” (two-year license term), or has an “inconsistent level of compliance”

(one-year license term). The proposed regulation has a standard two-year license term for all regular licensees. On a per annum basis, there is no change in fees.

Background Checks

Currently background check requirements are in a separate regulation, 8 VAC 20-770 *Background Checks for Child Day Programs and Family Day Systems*. The Board proposes to include background check requirements in 8 VAC 20-821, and in a separate action proposes to repeal 8 VAC 20-770 in its entirety.

Under 8 VAC 20-770, persons 14 years of age and older who reside in a home where child day programs occur must have a Department of Social Services (DSS) Central Registry³ check within 30 days of moving into the home or within 30 days of having become 14. The Board proposes to maintain this requirement in 8 VAC 20-821, except with shortening the time within which Central Registry check must occur to seven days.

The proposed 8 VAC 20-821 also proposes to add that “The child day program or family day system, the department, or the registering or approving authority may require a new background check if there is reason to suspect that a person required to have a background check has a disqualifying background.”

Estimated Benefits and Costs

Early Compliance

As described above, under the current regulation a conditional or provisional license can be voided and a regular license issued if the licensee demonstrates compliance only at specified times. Also, the licensee must produce a formal written request. Under the proposed regulation a conditional or provisional license can be voided and a regular license issued any time compliance can be verified. This may result in some conditional and provisional licenses becoming regular licenses sooner. Since some potential clients may be wary of placing their children in child day programs that are only conditionally or provisional licensed, such businesses may benefit by obtaining regular licensure sooner.

Enforcement Processes

³ The “Central Registry” is the record of founded complaints of child abuse and neglect maintained by DSS.

DOE believes that converting the problem-solving conference from a two-step process to a single-step process would save approximately ten to 15 hours of staff time each occurrence. Removing the first step would also save the applicant's or licensee's time on an endeavor (the first step) that has historically been unproductive.

Allowing consent agreements to be made earlier can be beneficial in that it may result in earlier remedy/correction of violations that put children at risk. Similarly, according to DOE, no longer guaranteeing formal administrative hearings may enable the agency to take action as much as six to eight months sooner in cases where children can be endangered. However, it may also reduce the ability of some aggrieved parties to obtain a formal hearing.

License Length

According to DOE, the primary rationale for eliminating the tiered licensing system and moving to a standard two-year license term is that the agency prefers to enact minimum standards for licensure and the care and safety of children rather than make potentially subjective determinations about a licensee "substantially exceeding" the minimum standards. Also, the agency believes it can better account for the issuance of a one-year license to those with "inconsistent levels of compliance" through a provisional license or consent agreement.

Background Checks

As the Central Registry is the record of founded complaints of child abuse and neglect maintained by DSS, shortening from one month to one week the time within which checks of the Registry must occur for residents of a home where child day programs occur may help reduce the likelihood and/or time length with which child day programs are allowed to operate with a resident with a history of child abuse. Similarly, allowing new background checks if there is reason to suspect that a person required to have a background check has a disqualifying background may also help prevent or limit children's exposure to people with a history child abuse or other serious crimes at child day programs or family day systems. According to DOE, background checks are paid for with federal funds through DSS.

Businesses and Other Entities Affected

The proposed amendments potentially affect the 1,418 licensed child day centers; 1,356 licensed family day homes; and one licensed family day system in the Commonwealth.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁴ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁵ As noted above, under the proposed regulation applicants or licensees who are aggrieved by an agency decision, such as license denial or revocation, would no longer be guaranteed a formal administrative hearing if requested. As is also noted above, this could be substantively beneficial as it may enable the agency to take action as much as six to eight months sooner in cases where children can be endangered. From the point of view of the aggrieved applicants and licensees though, losing the guarantee of an administrative hearing can be viewed as reduced benefit. Thus, an adverse impact is indicated.

Small Businesses⁶ Affected:⁷

Types and Estimated Number of Small Businesses Affected

DOE does not have data concerning how many of the 1,418 licensed child day centers, 1,356 licensed family day homes, and one licensed family day system qualify as small businesses, but expects most would qualify.⁸

Costs and Other Effects

The costs and other effects for small child day programs would be the same as described for all such firms above.

⁴ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

⁵ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁶ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

⁷ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

⁸ Data source: Virginia Employment Commission

Alternative Method that Minimizes Adverse Impact

There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities⁹ Affected¹⁰

The proposed amendments neither disproportionately affect any particular locality, nor introduce costs for local governments.

Projected Impact on Employment

The proposed amendments do not appear to substantively affect total employment.

Effects on the Use and Value of Private Property

The proposed changes to early compliance may enable some firms to gain regular licensure sooner, which may help in attracting clients sooner. This may increase the value of such affected firms. The proposed amendments do not affect real estate development costs.

⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.