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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Board of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-781 [new chapter] 8VAC20-780 [repeal]
VAC Chapter title(s)	Standards for Licensed Child Day Centers [new chapter] Standards for Licensed Child Day Centers [repeal]
Action title	Action to adopt new Standards for Licensed Child Day Centers
Date this document prepared	June 15, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

This regulatory action will repeal 8VAC20-780, *Standards for Licensed Child Day Centers*, and establish a comprehensive new chapter, 8VAC20-781. These *Standards* provide criteria for licensing or evaluating the health and safety of care that children receive in licensed child day centers.

In response to early childhood legislation passed by the General Assembly in 2020, the Virginia Department of Education (VDOE) engaged in a comprehensive, yearlong review of the Standards through a workgroup with key stakeholders, including multiple child day center leaders and practitioners. Upon completion of this workgroup effort, the VDOE sought and received a full endorsement of the initial draft of revised Standards from the Board of Education's Early Childhood Advisory Committee (ECAC). This revision reflects the input of key child care stakeholders and practitioners from across the Commonwealth.

It is the intent of this revision to address the regulation's structure and format and provide clarification where burdensome and confusing language makes it difficult for the public to interpret the regulation in the way intended. Repeal of the existing regulation and adoption of a new regulation will allow greater flexibility to adjust the structure, format, and language of the current regulation; remove duplicative requirements found in the Code of Virginia; incorporate updates to address everchanging national health and safety guidelines and practices; and incorporate updates to the regulation pursuant to [the Executive Order 19](#) while preserving protection of the health, safety, and welfare of children in care in programs regulated by the VDOE.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

"Board" means the Virginia Board of Education.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The Board has determined that significant changes to the chapter are necessary to clarify and update the regulatory requirements in response to requests from stakeholder, changes in federal or state law and the need to integrate new evidence-based best practices. The Board will repeal the current chapter and promulgate a new chapter in its place.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Board's overall regulatory authority is found in § [22.1-16](#) of the *Code of Virginia*, which states that "[t]he Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title."

The Board's regulatory authority over child day programs is found in § [22.1-289.046](#) of the *Code of Virginia*, which states in part that "[t]he Board shall adopt regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed under this chapter, which shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of the children under the control of such persons or agencies."

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Board must repeal the *Standards for Licensed Child Day Centers (8VAC20-780)* and promulgate a new chapter in its place to clarify and update the regulatory requirements.

The action is essential to enhancing the health, safety, and welfare of children in care. The purpose of the adoption of a new regulation is to support the agency's effort to streamline regulatory requirements; to improve understanding and interpretation leading to enhanced compliance and enforcement by adjusted structure, format, and simplified language; and to incorporate updates to address ever-changing national health and safety guidelines and practices. In addition, it is the goal of the agency to ensure that parents have sufficient information to make informed decisions about placing their children in licensed child day centers while ensuring the safety of children receiving care in licensed child day centers.

Repeal of the existing regulation and adoption of a new regulation was determined by the agency as the most efficient and effective way to make the necessary changes to achieve clarity, consistency, and to protect children.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

Since the proposed regulatory action involves a comprehensive review of the chapter, revisions to all areas of the chapter will be considered.

Areas to be addressed in the new regulation include but are not limited to:

- Restructuring and reformatting of content by subject matter;
- Reducing and simplifying definitions;
- Removing duplicative requirements;
- Condensing sections to incorporate more clear and concise language;
- Alignment with national health and safety standards and the Federal Child Care and Development Fund;
- Incorporating requirements based on consultation with and recommendations provided by state partners and agencies;
- Addressing current and relevant child care challenges by increasing options for program director and lead teacher qualifications;
- Clarifying and streamlining staff training requirements;
- Aligning requirements and incorporating technical amendments to ensure consistency with the Code of Virginia; and
- Updating requirements to address ever-changing national health and safety guidelines and practices.

This proposal for regulatory action is accompanied by a draft regulation that was prepared in consultation with a stakeholder taskforce and was endorsed by the Board's Early Childhood Advisory Committee (ECAC).

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no alternatives to regulatory action. The Board considered amending the *Standards for Licensed Child Day Centers (8VAC20-780)* in its current structure and format.

The Board has determined that it would be in the best interest of the health, safety, and welfare of children in care to repeal the existing regulation and conduct a comprehensive review of all child care licensing regulations in partnership with key stakeholders and the ECAC to identify and recommend substantive policy changes to the Board.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by email to Tatanishia Armstrong, Legislative Consultant, Virginia Department of Education, 101 N. 14th St., Richmond, VA 23219, 804-382-5047, tatanishia.armstrong@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.