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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-61
VAC Chapter title(s)	Standards and Regulations for Licensed Adult Day Care Centers
Date this document prepared	March 6, 2024

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*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

ADCC – Adult Day Care Center
DSS - Department of Social Services

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 or 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 State Board of Social Services has the legal authority to adopt regulations and requirements for licensed adult day care centers in accordance with §§ 63.2-217 and 63.2-1733 of the Code of Virginia.

The Code of Virginia mandates promulgation of regulations for persons who wish to operate an adult day care center that is required to be licensed or wishes to operate a licensed center. The regulation is promulgated to protect the health, safety, welfare, and individual rights of participants of adult day care centers and to promote their highest level of functioning. Regulations shall include standards for care and services to be provided to participants; administration of medication; staffing; staff qualifications and training; and facility design, construction, and equipment. This periodic review was initiated to determine if the regulation should be retained, repealed, or amended.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no other alternatives to this regulation, as it is designed to protect the health, safety, welfare, and rights of participants of licensed adult day care centers.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Dana Parsons Vice-President and Legislative Counsel LeadingAge Virginia (on behalf of the Adult Day Centers Council)	Thank you for the opportunity to comment on the Periodic Review of 22VAC40-61, Standards and Regulations for Licensed Adult Day Centers. LeadingAge Virginia is conducting a comprehensive review of the regulation and believes it should be amended. Amendments are necessary throughout the regulation to 1) provide technical changes to ensure it is clearly written and easily understood and 2) reduce unnecessary burdens that do not impact the quality of care.	The agency plans to issue a Notice of Intended Regulatory Action (NOIRA) to amend the regulation, add technical edits necessary for clarification and ease of understanding, and comply with Executive Order 19 to reduce discretionary regulation requirements that are unnecessary or burdensome.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation is necessary to protect the health, safety, welfare, and individual rights of participants of ADCCs and to promote their highest level of functioning. In addition, the regulation sets forth minimum standards for care and services to be provided to participants; administration of medication; staffing; staff qualifications and training; and facility design, construction, and equipment. While DSS believes the regulation was clearly written and easily understandable, there are opportunities for clarification and to amend or remove specific requirements for clarification or regulatory reduction compliance.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

DSS plans to move forward with a Notice of Intended Regulatory Action (NOIRA) to amend the regulation, based on public comment and the need to reduce regulatory burdens.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The regulation continues to be necessary to protect the health, safety, welfare, and individual rights of participants of adult day care centers and to promote their highest level of functioning. In addition, the regulation sets forth minimum standards for care and services to be provided to participants; administration of medication; staffing; staff qualifications and training; and facility design, construction, and equipment. The comment received was in favor of amending the regulation. The regulation does not conflict with federal or state law or regulations; however, a comprehensive review will ensure that duplicates or unnecessary requirements are removed or reduced. The regulation was repealed and replaced four years ago and became effective in December 2019. Amending this regulation is the best alternative to minimize the economic impact on ADCCs, as small businesses, while ensuring the protection and well-being of adult participants.
