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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | State Board of Social Services |
| Virginia Administrative Code (VAC) Chapter citation(s) | 22VAC40-80 |
| VAC Chapter title(s) | <i>General Procedures and Information for Licensure</i> |
| Action title | <i>Amend General Procedures and Information for Licensure</i> |
| Date this document prepared | October 16, 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*.

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).

General Procedures and Information for Licensure, 22VAC40-80, provides licensure information and procedures that apply to all adult care facilities and child welfare agencies. Applicants, licensees and the public can locate information and requirements regarding the licensing process, allowable variances, problem solving conferences, complaint investigations, sanctions, and hearing procedures for adult care facilities and child welfare agencies.

Proposed amendments in this action are to clarify language and existing requirements, improve definitions, make technical edits for ease of understanding, reduce burdensome requirements, and any other changes deemed necessary after public comment and review.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

VDSS Virginia Department of Social Services

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."

Pursuant to § 2.2-4007.1 of the Code of Virginia, all regulations are required to be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law. Following a periodic review of the *General Procedures and Information for Licensure*, the Department determined this regulation should be amended for technical changes, clarification and ease of understanding, and the need to reduce regulatory burdens.

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 State Board of Social Services has the legal authority to adopt regulations and requirements for licensed programs in accordance with §§ 63.2-217, 63.2-1709, 63.2-1709.2, 63.2-1732, 63.2-1733, and 63.2-1734 of the *Code of Virginia*. The *Code of Virginia* mandates promulgation of regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed which shall be designed to ensure that such activities, services, and facilities are conducive to the well-being of adults and children served by licensed programs.

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.

This regulatory action is essential to protect the health, safety, and well-being of adults and children receiving services from adult care facilities and child welfare agencies by providing

clear and understandable requirements on the licensing process and the responsibilities of the department and the applicants or licensee.

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.

This regulatory action will incorporate technical information, language, and processes necessary to ensure consistency since the last significant revision of the current *General Procedures and Information for Licensure* in December 2006. Proposed changes include:

- Add new and clarify existing definitions including new definitions for “change of ownership,” “management company,” and “chapter”;
- Clarify and expand the requirements for plans of corrective action and add a description of intensive plan of correction;
- Describe how DSS investigates financial responsibility of applicants for licensure;
- Add requirements for licensure when there is a change in ownership;
- Add requirements for information and notification when a licensee has a management company;
- Add timeframes for DSS to issue a license once a complete application has been submitted;
- Add language to notify licensees that inspection findings are posted on the DSS public website;
- Add a requirement that DSS shall determine whether a complaint is valid or not valid;
- Clarify the requirements for a first step and second step reviews;
- Add the requirement that substantial compliance with all applicable laws and regulations is a term of the license;
- Add language to clarify that provisional licenses are not subject to appeal;
- Add children’s residential facilities to the list of facilities and agencies that are regulated by the department to clarify the regulation applies to children’s residential facilities;
- Add language allowing DSS to suspend mandated inspections if a facility is undergoing extensive renovations and no individuals are receiving care;
- Add details regarding the administrative sanction process, including a scale for assessing civil penalties;
- Add language and technical edits necessary for clarification of existing requirements;
- Reduce unnecessary and burdensome requirements congruent with regulation reduction per Executive Order 19;
- Any other items received during public comment;
- Any additional amendments deemed necessary.

Requirements for licensees related to change in ownership, utilization of a management company, and substantial compliance as a term of the license are being added to provide clarification in the regulation but are already procedurally in place. Requirements for the agency regarding timeframes to issue a license when a complete application has been submitted and determining the status of a complaint are being added to the regulation to provide clarification to licensees regarding current practices.

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 other alternatives to the proposed regulatory action, as this regulation contains general requirements that are applicable to all the department's licensed programs but are not included in the programmatic regulations.

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 Virginia Department of Social Services 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. VDSS also seeks comments regarding regulatory reduction, pursuant to Executive Order 19.

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://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to Samantha Fogt, 5600 Cox Rd, Glen Allen, Virginia 23060, (fax) 804-726-7132, and email samantha.fogt@dss.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 regulatory advisory panel will be appointed and if you are interested in serving on this panel, please contact Samantha Fogt at the above contact information.

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