



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-121 and 22 VAC 40-120
Regulation Title:	Standards for Licensed Family Day Systems
Action Title:	New Regulation
Date:	December 18, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to repeal the current Minimum Standards for Licensed Family Day-Care Systems (22 VAC 40-120) and adopt a new regulation. The new regulation is titled Standards for Licensed Family Day Systems (22 VAC 40-121). Family Day Systems approve family day homes as members of the system, and refer children to available members homes. There have been no major revisions to this regulation since it was originally adopted in 1981. The goal is to ensure that the activities, services and facilities of the system and its' member homes operate in a manner that is conducive to the health, safety and welfare of children received for care.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

Sections 63.2-217, 63.2-1701 and 63.2-1734 of the *Code of Virginia* provide the legal authority for the Department of Social Services to promulgate this regulation. The *Code of Virginia* mandates the licensure of family day systems by the Commissioner of Social Services. The State Board of Social Services is mandated to promulgate regulations for the activities, services, and facilities of family day systems and their member homes to ensure that they are conducive to the welfare of children in care.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

The regulation will incorporate the repealed Minimum Standards for Licensed Family Day-Care Systems. The numbering system will be updated to that currently required by the Virginia Registrar. The text will be reorganized and reworded for clarity. Information on licensing procedures, that are now included in another regulation, will be eliminated.

Definitions and names will be updated to reflect current statutory language. Requirements based on changes in the *Code of Virginia* will be incorporated, including, but not limited to proof of a child's age and identity, the penalty for false or misleading advertising, and requirements for background checks.

Several terms will be added and defined, including, but not limited to adult; assistant; caregiver; good character and reputation; substitute provider; regional licensing office; and serious injury. These additions will make the language in this regulation consistent with that used in other regulated programs and in the law.

A requirement will be added for each sponsorship type (individual proprietorship, partnership, unincorporated association, and corporation) that at least one individual must have knowledge of and experience in the program and services the system offers. Systems sponsored by a corporation, partnership, or unincorporated association must maintain documentation of the names and addresses of the officers of the governing board and of individuals who hold primary financial control of the sponsorship.

A requirement for maintenance of a minimum of \$500,000 in liability insurance coverage will be added.

Systems will be required to provide parents and member homes with a copy of the system's written program description. Written policies and procedures will be required for complaint investigations and corrective action plans.

Requirements will be added for public access to system records as well as for maintenance of confidentiality.

A section will be added that will include requirements and time frames for reporting to the Department of Social Services (department) when there is a hazard or imminent danger that threatens the health and safety of children in member homes, or when a child is lost, missing, sustains a serious injury or dies. Systems will also report damage to the system's office that affects the operation of the system; any charges against staff and the disposition of any charge of child abuse or crime that is a barrier to the provision of child care; and any changes in office location, the director, or any change that would affect the terms of the license issued by the department.

The ratio of member homes to home visitation staff will be increased from 25 to a maximum of 40.

Annual training requirements will be established for systems staff. Orientation will be required for all system employees prior to assuming job responsibilities. Requirements will also be added for trainers, including those under contract.

Prior to approval as a member home, the system will require training in the following areas for each provider: department-approved orientation on applicable sections of the current Minimum Standards for Licensed Family Day Homes; orientation to the system; confidentiality; and child abuse and neglect reporting. In addition, within the first three months after approval as a member home, training will be provided in the areas specified in the current regulation, unless the system certifies equivalent competency. System-developed methods of competency certification will be subject to review and approval by the department.

The system may develop criteria and requirements for member homes that include, at minimum, the requirement that providers approved after the effective date of the regulation have at least a high school diploma or G.E.D. and three months of programmatic experience; have background checks in accordance with applicable standards; document absence of tuberculosis in a communicable form; be trained in both first aid and CPR; and obtain a minimum of 12 hours of on-going training annually.

Requirements will be added for suspension and termination of approval of member homes, including, but not limited to, failure to comply with the standards or the systems policies and procedures; and use of fraud or misrepresentation in obtaining approval or in the subsequent operation of member homes.

The regulation will require that documentation of up-to-date immunizations be on file by the first day of a child's attendance in a member home. Documentary evidence of a child's age and identity, and prior schools attended will also be required.

Overall, the proposed regulation will establish a baseline of health and safety requirements that must be met by persons wishing to provide day care for children in homes that are members of a family day system. The regulation will incorporate the findings of the latest research in child growth and development, early childhood education, and child safety. The goal of the regulation is to ensure that children receive care in a hazard-free environment that is conducive to their health, safety and well-being.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The following methods were used to identify less burdensome and less intrusive alternatives for achieving the essential purpose of the regulation:

1. Notice of the 20-day public comment period for the periodic review published in The Virginia Register on February 15, 1999;
2. Notice of the 20-day public comment period for the periodic review mailed to licensed family day systems, regional licensing offices, and individuals on the interested parties list for the regulation;
3. Interviews with regional licensing administrators and regional children's programs licensing inspectors;
4. Interviews with child care advocates and licensed family day systems' staff;
5. Review of comments received during the 20-day public comment period for the periodic review;
6. Review of written suggestions received from licensed family day systems;
7. Review of technical assistance questions that have been received on the current standards; and
8. Review of all other Virginia Department of Social Services' licensing standards for children's and adult's programs.

It was concluded, based on all of the above, that adopting a new regulation was the most efficient means of achieving the necessary protections for children in out-of-home care.