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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-170
Regulation title	Voluntary Registration of Family Day Homes – Requirements for Contracting Organizations
Action title	Amend Regulation As Result of Periodic Review
Document preparation date	August 20, 2003

This information is required for executive review (www.townhall.state.va.us/dbppages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dbppages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also 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 amend the current Voluntary Registration of Family Day Homes – Requirements for Contracting Organizations (22 VAC 40-170-10 et seq.) This regulation establishes qualifications that contracting organizations must meet in order to certify family day homes as eligible for registration. Family day homes eligible for registration are those in which care is provided to fewer than 6 children. This regulation establishes requirements for issuance of contracts to qualified organizations; establishes administrative responsibilities of contracting organizations and provides information and procedures necessary for contracting organizations to administer the voluntary registration program. The goal of the regulation is to ensure that the activities and services of contracting organizations meet and are maintained in accordance with the requirements of the contract issued by the Department of Social Services and to provide the information and procedures necessary for contracting organizations to administer the voluntary registration program.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 63.2-100, 63.2-217, 63.2-1704 and 63.2-1734 of the *Code of Virginia* provide the legal authority for the State Board of Social Services to adopt regulations and requirements for local agencies and community organizations to which a contract may be issued for the certification of family day homes as eligible for registration.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The Voluntary Registration of Family Day Homes – Requirements for Contracting Organizations (22 VAC 40-170) regulation has not been revised since it became effective in April 1993. Changes that have occurred in the *Code of Virginia* since the effective date will be incorporated. The regulation will be renumbered in accordance with requirements established by the Virginia Registrar.

Revisions will be made for clarity to assist affected organizations in understanding the regulatory requirements.

Requirements that, through implementation, have been determined to be burdensome will be deleted.

Statutory references throughout the regulation will be updated to the new citations in the recodified licensing statute, Title 63.2.

Amendments include, but may not be limited to, the following:

22 VAC 40-170-10. Definitions

Minor changes will be made to the following definitions for clarity: “*certificate of registration*”, “*contract*”, “*contracting organization*”, “*department’s representative*”, “*good character and reputation*”, “*monitor*”, “*parent*”, “*provider and registered family day provider*”, “*provider assistant*”, *substitute provider*.

The “*family day home*” definition will be updated to be consistent with current law.

Definitions for “*Requirements for Contracting Organizations*” and “*Requirements for Providers*” will be deleted.

Definitions for “*applicant*”, “*review committee*” and “*surrender of a certificate of registration*” will be added.

22 VAC 40-170-20. Legal authority

This section will be deleted. It provides background information on the voluntary registration law that will be included elsewhere.

22 VAC 40-170-70. Contracting organization records

Time frames will be added for submission of quarterly reports that are consistent with the requirements in the signed contract.

The contents of quarterly reports will be clarified and revised to include only information necessary for monitoring contractor performance and the performance of the voluntary registration program.

22 VAC 40-170-90. Public access to records.

The requirement that chronological lists of events about the provider on compliance and enforcement matters will be deleted. Contracting organizations are not required to maintain chronological lists anywhere else in the regulation. The Freedom of Information Act does not require the creation of documents for public release. This requirement creates an unnecessary burden for contracting organizations.

22 VAC 40-170-170. Collection of registration fees

The fee that a contracting organization may assess for an additional home visit if corrective action is needed after the initial home visit will be increased from an amount not to exceed \$10, to an amount not to exceed \$20. This increase will encourage compliance to the extent that follow up visits to confirm corrective action will be at a minimum, and generate additional income for use by contracting organizations in administering the Voluntary Registration program.

22 VAC 40-170-200. Technical assistance

Information on Immunization Schedules for children will be added to the list of information to be made available to providers by contracting organizations. Monitoring of providers has identified lack of documentation of children’s immunizations as a major area of noncompliance.

22 VAC 40-170-210. Information to parents

The requirement that contracting organizations supply to providers a sufficient number of copies of a written information to parents statement for the parents of all enrolled children will be eliminated, as this is an unmanageable and unenforceable requirement.

22 VAC 40-170-230. Denials, revocations, refusals to renew, provider appeals procedures

An exception will be added to this section that states that if the basis for a recommendation for revocation or refusal to renew a certificate is a substantiated case of child abuse or neglect, or a criminal conviction that is a barrier to registration, the contracting organization's review committee will not be required to review the matter. The findings and recommendation will be forwarded to the department for processing through the department's appeals process. This change will assure maintenance of confidentiality as required by the background clearance and child protective services statutes. It will eliminate unnecessary steps and time delays in the adverse action process.

The requirement that the contracting organization request that the provider notify the parent of each child enrolled in the family day home within 10 calendar days of revocation or refusal to renew will be deleted. This notification responsibility can be handled more efficiently and expeditiously by the department as part of the final order issued by the commissioner.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

Because the regulation is required by law, no alternatives to the proposed regulatory action are available. Consideration was given to combining this regulation with Voluntary Registration of Family Day Homes – Requirements for Providers, but it was concluded that this would be cost prohibitive and could discourage providers from choosing to become voluntarily registered, since they would have more information than they needed. Currently, the department has contracted with six organizations to administer the program. Copies of this regulation are not routinely requested, except when requests for proposals are advertised. In addition to the printing costs to the department, the contracting organization would incur additional expenses if the combined regulation were mailed routinely to prospective providers, as is currently the case.

Impact on family

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have no adverse impact on the institution of the family and family stability. Streamlining and simplification of the regulation has the potential to increase the availability of regulated care by making the operation of the voluntary registration program more appealing to community organizations and agencies.

Periodic review

If this NOIRA is not the result of a periodic review of the regulation, please delete this entire section. If this NOIRA is the result of a periodic review, please (1) summarize all public comment received in response to the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This NOIRA is the result of a periodic review. However, no public comments were received in response to the Notice of Periodic Review.

The regulation is necessary for the protection of public health, safety, and welfare. The intent of the proposed amendments is to make the regulation easily understandable and clearly written.