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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(s)	22VAC40-185
Regulation title(s)	Standards for Licensed Child Day Centers
Action title	Adopt New Standards for Licensed Child Day Centers
Date this document prepared	October 14, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

Standards for Licensed Child Day Centers provide criteria for the public and the Department of Social Services (DSS) to evaluate the safety of care that children receive in licensed child day centers. The existing regulation, 22VAC40-185 (formerly 22VAC15-30) in effect since 1993, has undergone seven revisions between 1996 and 2012. 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 while incorporating updates to address ever-changing national health and safety guidelines and practices; thereby creating requirements conducive to the greater protection of the health, safety, and welfare of children in care.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Sections 63.2-100, 63.2-217, and 63.2-1734 of the *Code of Virginia* provide the legal authority for the State Board of Social Services (SBSS) to adopt regulations and requirements for licensed child day centers. 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 welfare of the children under the custody or control of such persons or agencies. Section 63.2-1734 further mandates that:

Such regulations shall be developed in consultation with representatives of the affected entities and shall include, but need not be limited to, matters relating to the sex, age, and number of children and other persons to be maintained, cared for, or placed out as the case may be, and to the buildings and premises to be used, and reasonable standards for the activities, services and facilities to be employed. Such regulations shall not require the adopting of a specific teaching approach or doctrine or require the membership, affiliation, or accreditation services of any single private accreditation or certification agency.

Purpose

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

This proposed regulatory action is a joint action to repeal the existing regulation, 22VAC40-185 and establish a new regulation, 22VAC 40-186, for licensed child day centers to address health and safety issues. The purpose of the adoption of a new regulation is to support the agency's effort to expand and clarify health and safety 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.

The current regulation has been amended seven times since its adoption in 1993 and its current terminology and format is burdensome and confusing for providers, parents and Division of Licensing Programs (DOLP) staff to navigate. In fact, the current regulations are supplemented by a 67-page guidance document to assist providers, parents, and DOLP staff in interpreting and enforcing the current regulation. The goal of this proposed action is to present a clearly written regulation that will eliminate or substantially decrease the need for such an elaborate technical assistance document.

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

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

Provisions included in the proposed regulation to be considered include revisions to address federal law changes that necessitate the development of a new regulation in current areas, as well as areas not previously considered to address the health and safety of children. In addition, areas of concern to be addressed in the new regulation include but are not limited to: (1) restructure and reformat of content by subject matter; (2) increased options for program director and lead teacher qualifications; (3) clarification and simplification of staff training requirements; (4) simplification and updating of playground surfacing requirements to bring centers into compliance with national safety standards; and (5) updates to address ever-changing national health and safety guidelines and practices.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

The following options were considered: (1) make no changes to the existing standards and retain the current structure and language; (2) continue to amend the regulation in the current structure and format; and (3) repeal the existing regulation and adopt a new regulation. The agency 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 adopt a new restructured, re-formatted regulation.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Tatanishia Armstrong, 801 East Main**

Street,9th Floor, Richmond, Virginia 23219-2901, phone (804) 726-7152 ,fax number (804) 726-7132, e-mail tatanishia.armstrong@dss.virginia.gov . Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight 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.

A panel will be appointed and the agency's contact if you're interested in serving on the panel is Tatanishia Armstrong, Program Consultant, (804) 726-7152 or tatanishia.armstrong@dss.virginia.gov.