



**Virginia
Regulatory
Town Hall**

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Board of Juvenile Justice
VAC Chapter Number:	6 VAC 35-20
Regulation Title:	Regulations Governing the Certification Process
Action Title:	NOIRA
Date:	February 11, 2000

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 existing regulation sets forth the process by which the Department and the State Board monitor compliance with substantive standards for residential and non-residential programs and services in Virginia's juvenile justice system. The regulation provides for scheduled audits and unscheduled visits to ensure compliance with regulations; administrative review of audits and an appeals process in case of disagreement concerning audit findings; and the issuance of variances when the requirements of a particular standard are impractical or inappropriate for a given program. In addition, the current regulation sets out in considerable detail the procedural steps by which its substantive provisions shall be achieved.

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.

The legal authority to promulgate revised Regulations Governing the Monitoring, Approval and Certification of Juvenile Justice Programs is found in Code of Virginia Section 66-10, which gives the State Board of Juvenile Justice the power and the duty " ... 6. to promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department." The scope of this authority is broad, and the Code of Virginia in several places (e.g., Code of Virginia §§ 16.1-233.C and 16.1-309.9.A) requires the Board to issue substantive standards or regulations, while other statutes (e.g., Code of Virginia §§ 16.1-309.9 B and 16.1-309.10) give the Board the authority to enforce its regulations. This particular regulation is, however, discretionary, inasmuch as the Code of Virginia does not specifically require the Board to issue regulations governing its regulatory process. Nevertheless, some form of certification regulations has been in effect since the current Department of Juvenile Justice was a Division within the Department of Corrections. The current Regulations Governing the Certification Process replaced the Department of Corrections Regulations Governing the Certification Process (VR 230-01-003) by action of what was then the State Board of Youth and Family Services, effective September 9, 1992.

Although the Code of Virginia does not require the Board to promulgate this specific regulation, the Board and the Department have concluded that the revised regulation is essential to protect the safety of juveniles in residential facilities. The revised regulation provides the process by which the Board may ultimately decide to take action pursuant to Code of Virginia Section 16.1-309.9 B, which states that "the Board may prohibit, by its order, the placement of juveniles in any place of residence which does not comply with the minimum standards." In addition, the revised regulation is essential for the efficient performance of an important governmental function. Code of Virginia Section 16.1-309.1 states that "in the event that a detention home, group home or other residential care facility for children in need of services or delinquent or alleged delinquent youth is established by a county, city, or any combination thereof, it shall be subject to visitation, inspection and regulation by the State Board or its agents..." The revised regulation sets forth the process by which the Board and the Department will exercise this regulatory responsibility.

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 proposed revisions to the regulation addresses the following issues:

1. The revised regulation will continue to specify the process by which the Board will certify facilities and programs. But the revised regulation will give the Department greater flexibility to determine appropriate internal procedures and to assign personnel who will be responsible for scheduling certification audits, appointing audit teams, reviewing appeals, considering requests for variances and plans of action, and other administrative processes. In addition, the revisions

will authorize the Department to monitor certain programs on the basis of random sampling in cases that might not warrant the more intense scrutiny of individual certification.

2. The Board has expressed a desire for guidelines to help provide consistency and fairness in certification actions. The revised regulation will outline the certification actions the Board may take when a program meets or fails to meet stated criteria.

3. The revised regulation introduces the concept of "systemic deficiency" which is used in the Interdepartmental program to regulate residential facilities for children. When the number and pattern of discreet standards violations suggest a more serious problem than might be apparent if the individual violations are considered separately, the concept of systemic deficiency will permit regulators to require a more comprehensive plan of corrective action.

4. The Board has historically identified a number of critical standards within its regulations and designated these as "life, health and safety standards." However, existing regulations do not provide an adequate definition for what should constitute a life, health or safety standard, nor do existing regulations provide for a consistent, serious response when violations of such life, health and safety standards are found. The revised regulation reduces somewhat the number of life, health and safety standards, but defines these standards more strictly and spells out the range of actions that may be taken when life, health or safety standards are violated. In addition, the revised regulation will include a list of the life, health and safety standards in an appendix to the regulation.

5. Guidance documents: Although the current regulations mentions "suggested compliance documentation," the revised regulation goes further in requiring the Department to assist programs in meeting the requirements of standards by issuing compliance manuals that will specify how a program can demonstrate compliance with Board standards and policies.

6. Monitoring of compliance with policies. The State Board has the statutory authority "to establish programmatic and fiscal policies governing the operation of programs and facilities for which the Department is responsible," and "to monitor the activities of the Department and its effectiveness in implementing the policies of the Board," (see Code of Virginia Section 66- 10), but has lacked a process for monitoring compliance with policies that are not expressed in regulations or standards. The revised regulation will provide for the monitoring for compliance with Board policies that are identified in the guidance documents to be prepared by the Department.

7. Under the revised regulation, before a newly constructed, expanded or renovated residential program is approved to house juveniles, Department staff must visit the facility and verify that it meets life, health and safety standards and physical plant standards, including the Regulations for Local Juvenile Residential Facility Construction and Reimbursement of Local Construction Costs (6 VAC 35-30-10 et seq.) and the Department's Guidelines for Minimum Standards in

Design and Construction of Juvenile Facilities, and that the current certification issued by the Board is appropriate to the facility's program and construction.

8. Finally, the phase-in period for programs to comply with new standards (Virginia Administrative Code, 6 VAC35-20-140) is repealed. Since the Administrative Process Act permits the Board to specify a delayed effective date of newly promulgated standards the Board will be free, when it enacts new regulations, to set longer or shorter transitional periods, depending on the circumstances.

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 Department has considered terminating the Regulations Governing the Certification Process in favor of policies issued by the Board and procedural guidelines developed by the Department. While such an approach would allow the Department and the Board to quickly modify the certification process in response to changing circumstances, it would deprive localities and private providers of the opportunity they have under the Administrative Process Act to comment on the proposed changes. The revised regulation seeks a middle ground, retaining the regulation and its attendant protections for localities and private providers, while giving the Department the procedural flexibility to carry out the administrative functions that are inherent in the regulatory framework.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation is procedural in nature and should have no impact on the institution of the family and family stability.