

Virginia Regulatory Town Hall Agency Background Document Final Regulation

Agency Name: Departments of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; Social Services
VAC Number: 22 VAC 40-150-10 et seq., 8 VAC 20-50-10 et seq., 6 VAC 35-50-10 et seq., 12 VAC 35-30-10 et seq.
Regulation Title: Standards for Interdepartmental Regulation of Residential Facilities for Children
Action Title: Final Approval for Repeal of Regulation
Date: November 5, 1999

Summary:

These regulations, *Standards for the Interdepartmental Regulation of Residential Facilities for Children*, are being repealed as the proposed revisions are so extensive that it is more efficient to repeal the existing regulations and promulgate a new regulation in its place. The proposed regulation is 22 VAC 42-10-10 et seq., *Standards for the Interdepartmental Regulation of Children's Residential Facilities*.

Public Comment:

Throughout the process of developing the Interdepartmental Regulations for Children's Residential Facilities, the regulations that will replace the Interdepartmental Regulations for Residential Facilities for Children, the departments have worked closely with private and public providers of children's residential services and the Interdepartmental Regulation Advisory Committee. The departments received the support of the provider community to promulgate a regulation that addresses current good practices in the field of children's residential services. The public comment period extended from August 2, 1999 to October 1, 1999. A public hearing was scheduled on August 20, 1999. There were no comments opposing the repeal of the Interdepartmental Regulations for Residential Facilities for Children. One group, The ARC of

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RESIDENTIAL FACILITIES FOR CHILDREN**

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Virginia, the Mental Health Association of Virginia, and a professor from T.C. Williams School of Law Mental opposed the deletion of certain standards that were included in the Interdepartmental Regulations for Residential Facilities for Children that were not included in the proposed standards. Please see the attached Repeal of Standards for the Interdepartmental Regulation of Residential Facilities for Children Public Comment Summary for details.

Changes since Proposed Regulation:

Changes were made to the proposed Interdepartmental Regulations for Children's Residential Facilities as a result of the public comment period. Please see the Virginia Regulatory Town Hall Agency Background Document for the Standards for Interdepartmental Regulation of Children's Residential Facilities, 22 VAC 42-1-10 et seq.

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Basis, Purpose, Substance, Issues, and Estimated Impact

Basis of the regulation: Virginia Code ' ' 22.1-321, 22.1-323, 22.1-323.2, 16.1-309.9, 66-10, 66-24 37.1-182, 37.1-183.1, 37.1-189.1, 63.1-25, 63.1-196, 63.1-196.4, and 63.1-217, respectively, authorize and require the Boards of Education; Juvenile Justice; Mental Health, Mental Retardation and Substance Abuse Services; and Social Services to promulgate and repeal, if necessary, standards regulating children=s residential facilities. The Boards are also required to cooperate with each other in the promulgation and repeal of such regulation. The Boards have jointly developed the proposed *Standards for Interagency Regulation of Children=s Residential Facilities* and have approved them for a 60-day period of public comment. The Boards have agreed to repeal *Standards for the Interdepartmental Regulation of Residential Facilities for Children*.

Purpose of the regulation: The regulation is intended to: (a) protect the vulnerable children who are separated from their families and reside in children=s residential facilities and (b) assure that a minimally acceptable level of care, treatment, and education are provided by the regulants. The proposed regulation, 22 VAC 42-10-10 et seq., replaces the current *Standards for Interdepartmental Regulation of Residential Facilities for Children* (8 VAC 20-50-10 et seq., 6 VAC 35-50-10 et seq.,

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12 VAC 35-30-10 et seq., and 22 VAC 40-150-10 et seq.). The current regulations are being repealed.

Substance of the regulation: The proposed regulation: (a) reorganizes and simplifies the existing regulations, (b) assures the regulation addresses only the generic elements of care related to all children, (c) increases regulants' flexibility to provide care based on the facility's program and the population served, (d) increases regulants' and regulators' opportunities for use of professional judgment, and (e) deletes requirements which restate law or outline the departments= policies or procedures and which are better incorporated in the departments= guidance materials. Major substantive changes include: (a) eliminating requirements addressed by the *Virginia Statewide Fire Prevention Code*, (b) updating requirements governing tuberculosis screening as recommended by the Department of Health; (c) eliminating exceptions to the number of successive work days for staff attending training or supervising excursions, (d) increasing the number of staff members who must be certified in first aid or cardiopulmonary resuscitation, (e) requiring that all staff responsible for medication administration successfully complete a medication training program approved by the Board of Nursing or be licensed by the

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Commonwealth to administer medications; and (f) requiring that personnel records be maintained for volunteers and contractual service providers for whom background investigations are required. A number of requirements have been eliminated or liberalized.

Issues in the regulation: Children in residential care have a multitude of problems and disabilities. The regulants provide a variety of programs to meet the needs of their customers. As a result, many facilities are subject to regulation by more than one department. As did the *Standards for the Interdepartmental Regulation of Residential Facilities for Children*, the proposed *Standards for Interagency Regulation of Children=s Residential Facilities* establish consistency among the departments and eliminate duplicative and conflicting expectations among them. Consistent expectations facilitate implementation of the regulatory process for both regulants and regulators.

Estimated Impact of the regulation: The departments currently regulate approximately 185 children=s residential facilities which are subject to the regulation. The regulants are presently subject to substantially similar requirements. It is projected that regulants will experience some cost shifting due to eliminating some existing requirements and adding new requirements. The regulants may experience some additional costs. The proposed regulation was developed by an ad hoc standards development committee which included representatives of provider associations; they actively involved their constituents during the drafting process. They support the proposed regulation as consistent with standard practice in the field or as necessary to assure a minimally acceptable level of care, treatment, and education are provided by children=s residential facilities. The departments currently employ professional regulators to monitor children=s residential facilities; there will not be a fiscal impact on the departments.