



Periodic Review / Retain Regulation Agency Background Document

Agency name	Department of Behavioral and Developmental Services
Virginia Administrative Code (VAC) citation	12 VAC35-46
Regulation title	Children's Residential Regulations
Document preparation date	4/22/13

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

§37.2-203 outlines the duties and responsibilities of the State Board, which includes promulgation of regulations and §37.2-408 requires that the Board adopt regulations governing residential facilities for children.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The Code of Virginia specifically requires that the Board establish these regulations and the OAG confirms that the current regulations satisfy the Code requirement. There is no less burdensome alternative to the regulations.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Virginia Association of Independent Specialized Education Facilities (VAISEF)	12 VAC35-46 300 B 7 Modify this provision to allow individuals to work with children prior to completion of the background checks.	§37.2-408.1 A Requires that the results of background checks must be received before an individual can work with children.
	12 VAC35-46 310 C Eliminate the 15 hour annual training required for all full-time employees who work with children.	Given the needs of the children being served and minimal qualifications required for direct line staff, 15 hours of training a year is an essential protection that should be not eliminated.
	12 VAC35-46 910 D Change 15 minute checks to 30 minutes.	The safety of children being served is paramount. A great deal can happen in 15 minutes when a child is distressed and agitated. The minimum 15 minute check is an essential protection.
VAISEF member – Matthews Center	See above	See above
VAISEF member – Oak Valley Center	See above	See above
VAISEF member – The Hughes Center	See above	See above

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The provisions of 12 VAC35-46 are necessary for the health, safety and welfare of the children served in residential facilities .

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

At an April 9th meeting, the State Board reviewed the OAG opinions, public comments, and other information resulting from the periodic review of 12 VAC35-46 and determined that the regulations should stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s determination whether the

regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

Many of the entities regulated by 12 VAC35-46 are small businesses. Achieving and maintaining licensing credentials have a positive impact for these small businesses, by allowing them to seek reimbursement for services provided.

Family impact

Please provide an analysis of the regulation’s impact on the institution of the family and family stability.

The regulations have a positive impact on the families. The regulations protect children who need residential placement to effectively address their needs. Many of the children in residential facilities are able to stabilize their situation to return to their families.