



**Virginia  
Regulatory  
Town Hall**

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-121
<b>Regulation Title:</b>	Minimum Standards for Licensed Family Day Systems
<b>Action Title:</b>	Proposed new regulation
<b>Date:</b>	April 19, 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.*

This regulation is considered essential to protect the health, safety, and welfare of children who are separated from their parents during a part of the day by (i) establishing standards to ensure that the activities, services, and facilities of a family day system are conducive to the health, safety, and well-being of children and (ii) by reducing the risk of harm to children in a family day system member home.

### 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.*

§§ 63.1-25, 63.1-195, 63.1-196, and 63.1-202 of the Code of Virginia provide the legal authority for the State Board of Social Services to promulgate regulations for family day systems. The Code of Virginia mandates the licensure of family day systems by the Commissioner of Social

Services. The State Board of Social Services is mandated to promulgate regulations for the activities, services, and facilities of family day systems to ensure that the activities, services, and facilities are conducive to the welfare of the children in care.

## 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.*

This regulation will incorporate the repealed Minimum Standards for Licensed Family Day Care Systems (22 VAC 40-120-10 et seq.) and necessary amendments into a proposed regulation entitled Minimum Standards for Licensed Family Day Systems (22 VAC 40-121-10 et seq.). The text will be reorganized and reworded for clarity as has been requested by licensed family day systems and regional licensing staff. Attached is a matrix outlining the issues that will be addressed in the proposed regulation.

## 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 following methods were used to identify less burdensome and less intrusive alternatives for achieving the essential purpose of the regulation:

1. Notice of the 20-day public comment period for the periodic review published in The Virginia Register February 15, 1999;
2. Notice of the 20-day public comment period for the periodic review mailed to licensed family day systems, regional licensing offices, and individuals on the interested parties list for the regulation;
3. Interviews with regional licensing administrators and regional children's programs licensing specialists;
4. Interviews with child care advocates and licensed family day systems' staff;
5. Review of comments received during the 20-day public comment period for the periodic review;
6. Review of written suggestions received from the licensed family day systems;
7. Review of technical assistance questions that have been received on the current standards; and
8. Review of all other Virginia Department of Social Services' licensing standards for children's and adult's programs.

## 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 proposed regulation will strengthen the authority and rights of parents in the education, nurturing, and supervision of their children. The following components of the proposed regulation will enable parents to be better informed when making decisions about child day care: clarifications which make the requirements for licensed family day systems easier to understand, the incorporation of Code requirements that prohibit licensees from using misleading advertising, and the addition of requirements allowing parents access to information on complaints and compliance history on systems' member homes.

The proposed regulation encourages economic self-sufficiency, self-pride, and the assumption of responsibility for one's self, one's spouse, and one's children. Parents will be able to be employed and have the assurance that their children are being cared for by family day systems' member homes which have requirements protecting the health, safety, and welfare of the children.

The proposed regulation has no impact on marital commitment.

Potentially, the regulation could have a positive impact on disposable family income. Parents will have the option of safe care for their children in systems' member homes. Having this option could result in having the parent decide to enter the workforce. The regulation also increases the number of homes in a system home visitor's caseload so a system would have to employ fewer staff members. This could result in a decrease in the fees charged to parents by the system.

REPEALED SECTION	PROPOSED SECTION	CHANGE	JUSTIFICATION
		Regulation will use term “Licensed Family Day Systems” instead of “Licensed Family Day Care Systems”	Change in language in Code of Virginia
<b>PART I INTRODUCTION</b>			
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 <b>Definitions</b>	Added definitions of assistant, caregiver, good character and reputation, parent, provider, regional licensing office, and substitute provider	Clarity and consistency in licensing standards; matches the definitions used in the <u>Minimum Standards for Licensed Family Day Homes</u>
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 <b>Definitions</b>	Changed definition of child	Same as above
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 <b>Definitions</b>	Changed definition of day care to child day program as defined in the Code of Virginia	Same as above
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 <b>Definitions</b>	Changed definition of department’s representative	Same as above
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 <b>Definitions</b>	Changed definition of family day system	Clarity; matches the definition used in the Code of Virginia
22 VAC 40-120-10 B § I. B.	22 VAC 40-121-10 <b>Definitions</b>	Changed definition of family day system home	Clarity; incorporates changes made to definition of family day home in the Code of Virginia

<b>REPEALED SECTION</b>	<b>PROPOSED SECTION</b>	<b>CHANGE</b>	<b>JUSTIFICATION</b>
22 VAC 40-120-10 A § I. A.	22 VAC 40-121-20 <b>Legal Base</b>	Reworded legal base section to give more specific references to the Code of Virginia.	Clarity
None	22 VAC 40-121-30 <b>Purpose and applicability</b>	Added section explaining the purpose and applicability of the regulation;	Clarity
22 VAC 40-120-10 C § I. C. <b>The license</b>	None	Eliminated information on licensure procedures	This information is included in the regulation, General Procedures and Information for Licensure (22 VAC 40-80-10 et seq.)
<b>PART II ORGANIZATION AND ADMINISTRATION</b>			
22 VAC 40-120-20 A § II. A.	22 VAC 40-121-40 <b>Licensee</b>	Reworded	Clarity
22 VAC 40-120-20 B § II. B.	None	Eliminated requirements for governing board	Makes regulations more consistent with other regulations for family day care programs
None	22 VAC 40-121-50 <b>General requirements of the licensee</b>	Added section consolidating and further explaining the responsibilities of the licensee	Clarity
22 VAC 40-120-F § II. F.	22 VAC 40-121-60 <b>Family day system setting</b>	Reworded	Clarity

<b>REPEALED SECTION</b>	<b>PROPOSED SECTION</b>	<b>CHANGE</b>	<b>JUSTIFICATION</b>
22 VAC 40-120-20 C 1 § II. C. 1.	22 VAC 40-121-70 <b>Program description</b>	Eliminated requirements for goals and added requirement for program description	Clarity; consistency with other regulations for family day care programs
22 VAC 40-120-20 C 2 and 22 VAC 40-120-60 B §§ II. C. 2. and IV. B.	22 VAC 40-121-80 <b>Policies and procedures for administration of system</b>	Reworded	Clarity
22 VAC 40-120-20 D 1 and 22 VAC 40-120-20 D 2 §§ II. D. 1 and II. D. 2.	22 VAC 40-121-90 <b>System financing plan</b>	Reworded	Clarity and simplification; consistency with other regulations for family day care programs
22 VAC 40-120-20 D 3 § II. D. 3.	22 VAC 40-121-100 <b>Fee and payment schedules</b>	Reworded	Clarity and simplification
22 VAC 40-120-20 G § II. G.	22 VAC 40-121-110 <b>Number of member homes</b>	Reworded	Clarity
None	22 VAC 40-121-120 <b>Misleading advertisement</b>	Added section prohibiting licensee from using deceptive or misleading advertising	Requirement of the Code of Virginia

<b>REPEALED SECTION</b>	<b>PROPOSED SECTION</b>	<b>CHANGE</b>	<b>JUSTIFICATION</b>
None	22 VAC 40-121-130  <b>Public access to records</b>	Added requirements for licensee to make available information on complaints and compliance history of member homes	Public comment received during periodic review of regulation identified problem of lack of public access to information on member homes; Office of Attorney General suggested section be added to regulation
22 VAC 40-120-60 A 4  § IV. A. 4.	22 VAC 40-121-140  <b>Confidentiality</b>	Added more specific information on confidentiality requirements	Clarity and consistency with other regulations for family day care programs
22 VAC 40-120-20 E and 22 VAC 40-120-40 B 7  §§ II. E. and IV. B. 7.	22 VAC 40-121-150  <b>Reporting requirements</b>	Consolidated reporting requirements into one section; added requirements for reporting to the department the injury, loss, or death of child in care; added requirements for reporting situations that would affect the operation of the system	Clarity and consistency with other regulations for family day care programs
22 VAC 40-120-60 C  § IV. C. 1.	22 VAC 40-121-160  <b>System administrative records</b>	Added requirement for system to maintain copies of current, relevant licensing standards; added requirement for system to maintain record of cumulative totals of services provided to member homes and referrals of children to health and social service agencies	Same as above

<b>REPEALED SECTION</b>	<b>PROPOSED SECTION</b>	<b>CHANGE</b>	<b>JUSTIFICATION</b>
22 VAC 40-120-60 C 2  § IV. C. 2.	22 VAC 40-121-170  <b>Records on member homes</b>	Consolidated all requirements for records on member homes into one section; added requirements for maintaining a copy of application for approval, notification to the department of child abuse or neglect reports, corrective action plans, suspension or termination notifications; reworded requirements for caregivers	Clarity and consistency with other regulations for family day care programs
22 VAC 40-120-60 C 3  § IV. C. 3.	22 VAC 40-121-180  <b>System staff records and health requirements</b>	None	
22 VAC 40-120-60 C 4  § IV. C. 4.	22 VAC 40-121-190  <b>Records on children referred for care</b>	Added requirement for maintaining record of any complaint investigation involving the individual child	Same as above
<b>PART III QUALIFICATIONS FOR SYSTEM'S STAFF</b>			
22 VAC 40-120-30 A  § III. A.	22 VAC 40-121-200  <b>General staff qualifications</b>	None	



<b>REPEALED SECTION</b>	<b>PROPOSED SECTION</b>	<b>CHANGE</b>	<b>JUSTIFICATION</b>
22 VAC 40-120-30 B and 22 VAC 40-120-30 C 1  §§ III. B. 1 &2. and III. C. 1.	22 VAC 40-121-210  <b>Position descriptions</b>	Eliminated requirements for written personnel policies and requirements for composition and size of system staff	Makes regulation more consistent with other regulations for child welfare programs
22 VAC 40-120-30 C 2 a (2)  § III. C. 2. a. (2)	22 VAC 40-121-220  <b>Qualifications of the director</b>	Eliminated master’s degree in education from education qualifications and substituted master’s degree in human services	Change suggested by family day system during public comment
22 VAC 40-120-30 C 2 a (1)  § III. C. 2. a. (1)	22 VAC 40-121-230  <b>Responsibilities of the director</b>	Added requirements for director to ensure assignment of sufficient qualified staff to operate the system (requirement was in repealed regulation, but was not specifically a requirement of the director); added requirement for director to appoint staff member to act in his absence	Clarity and consistency with other regulations for child welfare programs
22 VAC 40-120-30 C 2 b (2)  § III. C. 2. b. (2)	22 VAC 40-121-240  <b>Qualifications of professional staff</b>	Eliminated bachelor’s degree in education from education qualifications and substituted bachelor’s degree in human services	Change suggested by family day system during public comment
22 VAC 40-120-30 C 2 b (1)  § III. C. 2. b. (1)	22 VAC 40-121-250  <b>Responsibilities of professional staff</b>	Increased the number of homes in a home visitor’s caseload from 25 to 40	Change suggested by family day system during public comment

<b>REPEALED SECTION</b>	<b>PROPOSED SECTION</b>	<b>CHANGE</b>	<b>JUSTIFICATION</b>
22 VAC 40-120-30 D § III. D	22 VAC 40-121-260 <b>Volunteers</b>	Reworded	Clarity
22 VAC 40-120-30 D § III. D	22 VAC 40-121-270 <b>Staff orientation</b>	Reworded; added requirement for system staff to have orientation on recognizing and reporting child abuse or neglect	To ensure compliance with the reporting requirements in § 63.1-248.3 of the Code of Virginia and to ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia)
22 VAC 40-120-30 C 3 c&d § III. C. 3. c&d	22 VAC 40-121-280 <b>Staff training</b>	Added requirements for trainers' qualifications and documentation of training received by system staff	Makes regulation more consistent with other regulations for child welfare programs
<b>PART IV SERVICES TO CHILDREN AND FAMILIES</b>			
22 VAC 40-120-50 A § V. A.	22 VAC 40-121-290 <b>Referral to member homes</b>	Reworded	Clarity
22 VAC 40-120-50 A § V. A.	22 VAC 40-121-300 <b>Written agreements</b>	Reworded	Same as above
22 VAC 40-120-50 B § V. B.	22 VAC 40-121-310 <b>Referral to health and social services</b>	Added specific requirements for referral of child with disabilities	Clarity and consistency with other regulations for family day care programs
<b>PART V SERVICES TO MEMBER HOMES</b>			
None	22 VAC 40-121-320 <b>Information for member home applicants</b>	Added section listing all documentation required to be given to homes applying to be members of a system	Clarity and consistency with other regulations for family day care programs

<b>REPEALED SECTION</b>	<b>PROPOSED SECTION</b>	<b>CHANGE</b>	<b>JUSTIFICATION</b>
None	22 VAC 40-121-330 <b>Application requirements</b>	Added section listing all documentation required from homes applying to be members of a system	Same as above
22 VAC 40-120-40 B 2 & 3 § IV. B. 2. & 3.	22 VAC 40-121-340 <b>Approval determination</b>	Reworded; changed maximum capacity of home from nine to twelve	Clarity; compliance with requirements of § 63.1-195 of the Code of Virginia
22 VAC 40-120-40 B 3 § IV. B. 3.	22 VAC 40-121-350 <b>Approval notification</b>	Changed requirement for notification to be 30 days after receipt background clearances, TB tests, etc. instead of 30 days after interview of applicant	Receipt of background clearances may take longer than 30 days and home could not be approved until received according to Regulation for Background Clearances for Child Welfare Agencies (22 VAC 40-191-10 et seq.); change suggested by family day system during public comment
22 VAC 40-120-40 B 5 § IV. B. 5.	22 VAC 40-121-360 <b>Annual evaluation</b>	None	
22 VAC 40-120-40 A 2 § IV. A. 2.	22 VAC 40-121-370 <b>Agreements with member homes</b>	Included rights and responsibilities of system to supervise and suspend or terminate approval of member homes	Clarity; compliance with requirements of § 63.1-195 of the Code of Virginia
22 VAC 40-120-40 C 2 § IV. C. 2.	22 VAC 40-121-380 <b>Orientation of providers</b>	Reworded; added requirement for orientation on the applicable sections of the Minimum Standards for Licensed Family Day Homes	Consistency with other regulations for family day care programs; change suggested by family day system during public comment

<b>REPEALED SECTION</b>	<b>PROPOSED SECTION</b>	<b>CHANGE</b>	<b>JUSTIFICATION</b>
22 VAC 40-120-40 C 3 § IV. C. 3.	22 VAC 40-121-390 <b>Training of caregivers</b>	Reworded; increased training requirements for homes with 9-12 children	Consistency with other regulations for family day care programs
None	22 VAC 40-121-400 <b>Qualifications of trainers</b>	Added section listing the qualifications of trainers	Makes regulation more consistent with other regulations for child welfare programs
22 VAC 40-120-40 D § IV. D.	22 VAC 40-121-410 <b>Technical assistance and consultation</b>	Reworded	Clarity; change suggested by family day system during public comment
22 VAC 40-120-40 B § IV. B.6.	22 VAC 40-121-420 <b>Monitoring</b>	None	
22 VAC 40-120-50 C § V. C.	22 VAC 40-121-430 <b>Complaint investigation</b>	Reworded; added requirements for procedures to follow when complaint on member home received by system	Clarity; family day system requested during public comment that language be added to clarify this standard
22 VAC 40-120-50 C § V. C.	22 VAC 40-121-440 <b>Child abuse and neglect</b>	Reworded	Clarity; family day system requested during public comment that language be added to clarify this standard
22 VAC 40-120-60 C 5 § VI. C. 5.	22 VAC 40-121-450 <b>Complaint records</b>	No change	
22 VAC 40-120-40 C 5 § VI. C. 5.	22 VAC 40-121-460 <b>Corrective action plans</b>	Added requirements for developing, monitoring, and documenting corrective action plans to correct violations of standards or system's policies and procedures	Clarity; consistency with other regulations for family day care programs

<b>REPEALED SECTION</b>	<b>PROPOSED SECTION</b>	<b>CHANGE</b>	<b>JUSTIFICATION</b>
22 VAC 40-120-40 B 4  § IV. B. 4.	22 VAC 40-121-470  <b>Suspensions and terminations</b>	Added requirement that approval of member homes be suspended or terminated for failure to abate violations of standards; require member home to be notified of suspension or termination within 5 calendar days (had been within 2 weeks in repealed regulation)	Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia); consistency with other regulations for family day care programs
<b>PART IV REQUIREMENTS FOR MEMBER HOMES</b>			
22 VAC 40-120-40 C  § IV. C.	22 VAC 40-121-480  <b>Qualifications of caregivers</b>	Added section summarizing qualifications for caregivers	Clarity
None	22 VAC 40-121-490  <b>Responsibilities of providers</b>	Added section summarizing responsibilities of providers; added requirement for posting compliance evaluation and corrective action plan; added reporting requirements for member homes to report to system situations that would affect the operation of the home or the health, safety, and welfare of children in care	Ensure the health, safety, and welfare of children in care (§ 63.1-202 of the Code of Virginia) and ensure parental notification of home’s violation of standards; consistency with other regulations for family day care programs