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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	22VAC40-181
<b>VAC Chapter title(s)</b>	Voluntary Registration of Family Day Homes – Requirements for Providers
<b>Action title</b>	Repeal existing regulation and adopt new Standards for Voluntary Registration of Family Day Homes
<b>Date this document prepared</b>	12/11/2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

Voluntary Registration is a form of regulation available to family day homes that are not required to be licensed. These homes have four or fewer children in care at any one time, not including the provider's own child and any children who reside in the home.

This regulation sets forth the application requirements; health and background check requirements for providers, caregivers and adult household members; certification procedures for issuance, renewal, denial and revocation of a certificate; and basic provider record and reporting requirements. In addition, the regulation establishes a health and safety checklist comprised of only the most basic health and safety criteria to be used by the provider and the agency certifying compliance with the requirements.

The intent of this action is to repeal the existing outdated regulation; replacing it with a new regulation that will provide applicants and existing providers with current health and safety practices; remove outdated

health requirements related to tuberculosis testing; and clarify background check requirements for applicants, caregivers, and household members. The new regulation will also include basic training requirements for caregivers to include CPR and First Aid certification and approved medication administration training for providers who administer prescription medications to enrolled children; introduce minimum training requirements to be met during the certification period; and expand the emergency preparedness procedures beyond just basic evacuation drills.

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 updated health and safety guidelines and practices; thereby creating requirements conducive to the greater protection of the health, safety and welfare of children in care.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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CPR – Cardiopulmonary resuscitation

DOLP – Division of Licensing Programs

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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This action is prompted by an internal agency review and will meet the requirements for a periodic review. The changes include incorporating the health and safety criteria into the regulation; updating health and safety standards to include safe sleep practices; introducing caregiver training requirements; updating background check and tuberculosis screening requirements; and updating the regulation to address state and national health and safety guidelines to protect children in care.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The State Board of Social Services has the authority to adopt regulations for the voluntary registration of family day home under sections 63.2-217 and 63.2-1704 of the *Code of Virginia*. Section 63.2-1704 of the Code established the voluntary registration of small family day homes that operate below the required capacity threshold for licensure. The State Board of Social Services is tasked with promulgating regulations that include the following mandated information: criteria and process for the approval of certificates of registration; requirements for a self-administered health and safety guidelines evaluation checklist; a schedule of fees to be paid by providers to the contract organization, or to the Department if it

implements processing applications and inspecting homes, renewal criteria; investigation of complaints, and procedures for revocation of a certificate of registration.

## Purpose

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The proposed regulatory action is a joint action to repeal the existing regulation, 22VAC40-180 and establish a new regulation, 22VAC40-181, for voluntary registration of small family day homes to address health and safety issues, introduce training requirements, and update application processes to current practice. The action is necessary to enhance the health, safety and welfare of children in care. Adopting a new regulation will support the agency's effort to expand and clarify health and safety requirements and provide information necessary to enhance compliance and enforcement, and incorporate updates to national health and safety guidelines and practices.

The current regulation was established in 1993 and has only been amended by exempt actions to include Code requirements such as capacity changes, proof of identity and age, and liability insurance. The current terminology and format is burdensome and confusing for providers, parents, contract agency staff, and DOLP staff to navigate.

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 in care.

## Substance

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

In addition to organizing the regulation for clarity, substantive provisions in the proposed regulation to be considered include revisions to address Child Care and Development Block Grant Act of 2014 requirements such as allergy information, children experiencing homelessness, expanding emergency preparedness plan requirements, safe sleep, and other areas to address the health and safety of children. Topics to be addressed in the new regulation include:

New provisions:

- Background check requirements to include compliance with the *Background Checks for Child Welfare Agencies*;
- Introducing training requirements for caregivers;
- Additional provider reporting requirements including liability insurance disclosure;
- Clarifying children's record requirements to include proof of identity and age requirements, information required for custodial parents, food allergy information, updating immunization requirements, injury reports, etc.;
- Replace outdated ratio requirements with the "point system" used to determine the need for an additional caregiver;
- Add behavioral guidance and prohibited actions for consistency with other child care regulations;
- Organize health and safety criteria into expanded topic areas such as building maintenance, furnishings, equipment and materials, bathroom requirements, play areas, preventing the spread

of disease, safe sleep, supervision, medication administration, emergency supplies and procedures; and

- Add provisions for overnight care, requirements for homes with pets, provisions for transporting children, and requirements for programs that offer swimming or wading activities;

Changes to existing chapter:

- Updating the definitions section;
- Updating application processes to address providers that are located in an geographic area in which oversight is provided by a licensing office rather than a contract agency;
- Tuberculosis screening requirements to reflect recommendations from the Virginia Department of Health; and
- Updates to address ever-changing state and national health and safety guidelines and practices.

### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

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. The current terminology and format is burdensome and confusing for providers, parents, contract agency staff, and DOLP staff to navigate. Through use of a panel, the agency will seek additional ways to reduce burden and identify alternatives to specific provisions.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."*

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

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**INSERT:**

The State Board of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Cynthia Carneal Heflin, Program Consultant, Virginia Department of Social Services, Division of Licensing Programs, 801 E. Main Street, 9<sup>th</sup> floor, Richmond, Virginia 23219-2901, or by phone at (804) 726-7140, by fax at (804) 726-7132, or by e-mail at [cynthia.carneal@dss.virginia.gov](mailto:cynthia.carneal@dss.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A panel will be appointed and the agency's contact, if you are interested in serving on the panel, is Cynthia Carneal Heflin and the contact information is listed above.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.