

NOTICE OF INTENDED REGULATORY ACTION

The Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Juvenile Justice; and Social Services propose to repeal the existing *Standards for Interdepartmental Regulation of Residential Facilities for Children* (8 VAC 20-50-10 et seq., 6 VAC 35-50-10 et seq., 12 VAC 35-30-10 et seq., and 22 VAC 40-150-10 et seq.) and promulgate a replacement regulation. Although the agencies jointly promulgated an identical regulation, it is published and considered as four different regulations in the *Virginia Administrative Code*. In addition to any substantive changes that may be made, the agencies propose to (a) reorganize and simplify the regulation, (b) assure the regulation addresses only the generic elements of care related to all children, (c) increase providers' flexibility to provide care based on the facility's program and the population served, and (d) increase providers' and regulators' opportunities for use of professional judgment. The need for such revisions was verified in the agencies' "Regulation Review Analysis" prepared in response to Executive Order Fifteen (94): Comprehensive Review of All Existing Agency Regulations. The agencies anticipate holding a public hearing on the proposed regulation.

Item 1. An explanation of the specific reason for the proposed regulation.

The departments have statutory responsibility for the regulation of public and private sector residential facilities providing care, treatment or education to children. The regulation is intended to assure: (a) the care, treatment and education which residential facilities provide to children is adequate, and (b) the regulation applies uniformly to public and private sector residential facilities.

Item 2. a. Statement identifying the source of the legal authority to promulgate the regulation, and

b. statement as to whether the regulation is mandated by state or federal law and a statement of the source and scope of the mandate.

a. Source of the legal authority to promulgate the regulation

1) Virginia Law.

a) Board of Education.

The State Board of Education is responsible for issuing certificates to operate residential schools for children with disabilities in the Commonwealth of Virginia, as specified in Chapter 16 of Title 22.1 (' 22.1-319 through ' 22.1-335) of the *Code of Virginia*. It is further

responsible for the general supervision of the public school system for all school age residents of Virginia (for children with disabilities, ages 2-21) and for approval of private non-sectarian education programs for children with disabilities, as specified by ' 22.1-218 of the *Code of Virginia*.

b) Board and Department of Juvenile Justice.

The legal authority for the State Board of Juvenile Justice to promulgate this regulation is ' 66-10 of the *Code of Virginia*, which authorizes the Board "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." Further, ' 66-24, which authorizes the Department to establish and maintain such a system of community group homes or other residential care facilities for the care of children in direct state care facilities, directs the Board to "adopt such regulations for the operation of such facilities as it may deem appropriate."

c) Department of Mental Health, Mental Retardation and Substance Abuse Services

The department is responsible for licensing facilities or institutions for persons with mental illness, mental retardation and problems of substance abuse within the Commonwealth of Virginia, as specified in Chapter 8 of Title 37.1 (' 37.1-179 through ' 37.1-189.1) of the *Code of Virginia*.

d) Department of Social Services.

The Department of Social Services is responsible for licensing or certifying certain private or public sector child welfare agencies and facilities in Virginia, as specified in Chapter 10 of Title 63.1 (' 63.1-195 through ' 63.1-219) of the *Code of Virginia*.

2) Federal law.

P.L. 94-63 and Title XX of the Social Security Act require the establishment of quality assurance systems.

- b. The *Code of Virginia* both authorizes and mandates regulations governing residential facilities for children. Virginia law requires (' ' 22.1-323.2, 37.1-189.1, and 63.1-196.4) the agencies to cooperate with other state agencies in fulfilling their regulatory responsibilities and in reducing and simplifying the regulations involved in such regulation. The *Standards for Interdepartmental Regulation of Residential Facilities for Children* have been jointly promulgated by the identified State boards to minimize duplication of regulation and ensure uniform standards for the many categories of residential facilities for children.

- Item 3. Statement setting forth the reasoning by which the agency has concluded that the regulation is essential to protect the health, safety or welfare of citizens or for the efficient and economical performance of an important governmental function.

Assuring that adequate care, treatment and education are provided by children's residential facilities is one of the Commonwealth's most important obligations.

When a child is placed in a residential facility other than his or her own home, appropriate standards are necessary:

- a) to protect the health, safety and welfare of the child by ensuring that such residential facilities provide a suitable physical environment, clothing and food, as well as appropriate supervision and treatment;
- b) to protect the public safety in those instances where a child is delinquent, in need of supervision or in need of services; and

- c) to ensure that facilities are operated according to accepted norms, thus reducing the liability exposure of the Commonwealth and its localities.

A coordinated approach to the regulation of children's residential facilities is critical to assuring the adequacy of care, treatment and education since many facilities are statutorily regulated by more than one state agency. The *Standards for Interdepartmental Regulation of Residential Facilities for Children*, by establishing uniform standards, presents an efficient and economical way for the agencies to perform an important and statutorily mandated government function. The *Interdepartmental Standards* provide a measure of consistency in the types and levels of services provided to children in residential facilities in the Commonwealth.

Item 4. Alternatives to regulation that have been considered.

Not regulating children's residential facilities is unacceptable. The *Code of Virginia* clearly requires regulations to govern residential facilities for children, but the *Code* does not specify what form such standards should take. The *Standards for Interdepartmental Regulation of Residential Facilities for Children* are themselves an alternative to the piecemeal regulation that existed before the agencies promulgated the current regulation. These jointly promulgated standards provide a single, coordinated process that applies to both public and private sector residential facilities and that includes a single application for licensure or certification; a consistent system for review of compliance with applicable standards; clear lines of responsibility for enforcement; and central coordination of the agencies' regulatory efforts.

Item 5. Impact of the proposed regulation on families.

There is a substantial impact on families whenever a child is placed in a living situation other than his own home. The impact may be positive or negative, depending on the child's and the family's circumstances. The child's placement in a residential facility may relieve pressures on the family or remove the child from adverse influences. Conversely the child's removal may create additional stress and family reunification issues. The content of the regulation may have a significant impact on families and children. The *Standards for Interdepartmental Regulation of Residential Facilities for Children* are intended to have a positive effect on Virginia's families.

The standards make provision for parental involvement, when appropriate, in the decision to place a child outside the home; for family visits and

communication with families by telephone and mail; for notification of parents when significant events occur; and for involvement of parents or guardians in major decisions regarding the child. In addition, there are requirements for: (a) individualized service plans that take into account the needs of the child and the family; and (b) procedures for obtaining, when necessary, the agreement or consent of parents or guardians. Reunifying the child and the family is the goal whenever possible.