



## Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40-770 (Repeal) 22 VAC 40-771 (New)
<b>Regulation title</b>	Adult Services Approved Providers
<b>Action title</b>	Establish New Regulation for Adult Services Providers
<b>Date this document prepared</b>	June 20, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

This action repeals 22 VAC 40-770, Standards and Regulations for Agency Approved Providers, and establishes a new regulation, 22 VAC 40-771, Adult Services Approved Providers.

22 VAC 40-770 includes generic provisions which address approval and regulation of service providers including adult service providers, child care providers and adoptive and foster care providers. Because of the uniqueness of each type of provider, it is no longer appropriate to attempt to address them in a single regulation. New regulations are being promulgated through separate actions to address different types of providers.

22 VAC 40-771 addresses standards and procedures for providers of services to adults contracted through local department of social services. As the result of recent General Assembly action, requirements to check an applicant's criminal history through the Central Criminal Records Exchange have been added.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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22 VAC 40-771, Adult Services Approved Providers, was approved on June 20, 2007 by the State Board of Social Services.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The legal basis for this regulation is §§ 63.2-217 and 63.2-1600 of the Code of Virginia and the 2007 Acts of Assembly, Chapter 572. These sections provide general authority for the development of regulations for program operation and mandatory authority for the development of regulations for the delivery of home-based services and the determination of eligibility for providers of such services.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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This regulatory action is necessary to repeal an outdated regulation and promulgate a new regulation to protect the health, safety, and welfare of citizens of the Commonwealth by setting a basis of quality in purchasing care and making placements for vulnerable adults age 60 and over and age 18 to 59 who have a disability. With these standards, assurances can be made that the care purchased or arranged meets health and safety standards and that the care is conducive to the health, safety and well-being of elderly individuals and persons with disabilities. The goal of the new regulation is to maintain these assurances, while also ensuring conformity with current federal and state laws and regulations.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

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The regulation focuses on adult services providers that are approved by local departments of social services, including out-of-home providers of adult day services and adult foster care; and in-home providers of chore, companion and homemaker services. Substantive provisions include:

1. Clear definitions of approved provider services.

2. Standards and requirements for adult services providers, assistants, the provider’s spouse and other persons.
3. Standards and requirements for care given by adult services providers, including requirements for the handling of medications.
4. Standards and requirements for the home of the adult foster care or adult day services provider, including physical accommodations, safety, sanitation, and capacity.
5. Record-keeping requirements for adult foster care and adult day services providers.
6. A section on the rights and responsibilities of adults in care.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*  
*If there are no disadvantages to the public or the Commonwealth, please indicate.*

The public is expected to benefit from this new regulation as it strengthens the standards and safety requirements for the providers who care for the vulnerable adults who receive services from the Commonwealth’s adult care system. It also strengthens the authority of the local departments of social services to hear all applicants’ grievances and make the final decision as to who will be approved as a provider. Finally, these new regulations will benefit local departments of social services and individuals providing care for adults by ensuring that the regulations are consistent with state and federal law and other related social services regulations. There are no known disadvantages to the public or the Commonwealth resulting from the promulgation of this regulation.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
22 VAC 40-771-30	Standards for providers and other persons: Lists requirements addressing the provider’s minimum age; interviews, reference checks, and employment history; assessment of provider knowledge, skills, abilities and capabilities; home interviews for adult foster care and day services provider applicants; financial resources and physical accommodations	Standards for providers and other persons: Adding the requirement for criminal history records checks.	As the result of recent General Assembly action, requirements to check applicants’ criminal history through the Central Criminal Records Exchange have been added.

	of adult foster care provider applicants; training; and medical requirements.		
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**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

No public comment was received during the public comment period following publication of the proposed regulation.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
	22 VAC 40-771-10		Definitions: Defines terms used in the regulation including: activities of daily living, adult, adult abuse, adult day services provider, adult exploitation, adult foster care, adult foster care provider, adult neglect, adult services, assistant, chore provider, client, companion provider, department, home-based services, homemaker services, in-home provider, instrumental activities of daily living, local board, local department, local department approved provider, out-of-home provider, personal care services and responsible person.
	22 VAC 40-771-20		Adult Services approved providers: Lists providers to whom this regulation applies, including out-of-home providers (adult day services and adult foster care) and in-home providers (chore, companion and homemaker). Addresses changes in jurisdiction.
	22 VAC 40-771-30		Standards for providers and other persons: Lists requirements addressing the provider's minimum age; criminal history records

			checks; interviews, reference checks, and employment history; assessment of provider knowledge, skills, abilities and capabilities; home interviews for adult foster care and day services provider applicants; financial resources and physical accommodations of adult foster care provider applicants; training; and medical requirements.
	22 VAC 40-771-40		Standards for care for adult services providers: Lists standards for care provided to adults, including: nondiscrimination; supervision; food provided; transportation of adults in care; medical care; recreational and other activities; and clothing requirements. Describes provider responsibility for immediate reporting of suspected adult abuse, neglect or exploitation to the local department or APS hotline.
	22 VAC 40-771-50		Standards for the home of the adult foster care or adult day services provider: Lists standards for physical accommodations; home safety; sanitation; maximum capacity. The maximum capacity for unlicensed adult day services and adult foster care homes is three adults.
	22 VAC 40-771-60		Record requirements for adult foster care and adult day services providers:  Providers are required to maintain legible written information on each adult in care, including identifying information; responsible person information; persons authorized to pick up, call, or visit the adult in care; admission and discharge dates, daily attendance; medical information; correspondence; and the placement agreement. Records are confidential. The local department and Department shall have access to all records.
	22 VAC 40-771-70		Approval period: The approval period for a provider is up to 24 months when the provider meets the standards.
	22 VAC 40-771-80		Allowable variance: The provider may request an allowable variance on a standard if the variance does not jeopardize the safety and proper care of the adult or violate federal, state, or local law and the local department approves the request. The local department shall consult with the Adult Services regional consultant prior to granting an allowable variance. The allowable variance shall be in writing, and the

			provider and local department will develop a plan to meet the applicable standard. The allowable variance must be requested and granted prior to the approval of the provider or at the time of the provider's renewal.
	22 VAC 40-771-90		Emergency approval: Establishes conditions for emergency approval of a provider, including a court order; or the request of an adult or adult's responsible person, in which case the local department must visit the provider's home and interview the provider. Emergency approval shall not exceed 30 days. The provider must meet all applicable standards if services will be provided beyond the 30-day emergency period.
	22 VAC 40-771-100		Provider monitoring: The local department representative must visit the adult day services or adult foster care provider's home and interview the provider least semi-annually. The local department representative will interview home-based providers face-to-face at least semi-annually. Provider monitoring shall include interviews with adults in care. The adult in care or his responsible person shall have access to all provider monitoring reports upon request.
	22 VAC 40-771-110		Renewal process: The local department shall reapprove the provider prior to the end of the approval period if the provider continues to meet standards. The homes of adult day services and adult foster care providers must continue to meet standards.
	22 VAC 40-771-120		Inability to meet standards: If the provider cannot meet the standards for adult services approved providers, the local department shall grant provisional approval, suspend approval, or revoke approval, depending on the duration and nature of noncompliance. A provisional approval of up to three months may be granted if noncompliance does not jeopardize the safety or proper care of adults in care. Approval may be suspended for up to three months if noncompliance may jeopardize the safety and proper care of the adults in care. If the provider is out of compliance for three months and a variance is not granted, the approval shall be revoked. The local department shall revoke approval immediately if noncompliance jeopardizes the health, safety and proper care to the adults in care. Adults in day services or foster

			care shall be removed within five calendar days from the date of the decision.
	22 VAC 40-771-130		Relocation of out-of-home provider: If the out-of-home provider moves, the local department shall determine continued compliance with standards related to the home within 30 days. If an out-of-home provider moves outside of the locality that approved it, the local department in the new locality may accept the approval of the initial local department or initiate the approval process itself.
	22 VAC 40-771-140		Right to appeal: The provider shall have the right to appeal the actions of the local department and must request the appeal within 10 calendar days of the local department's action.
	22 VAC 40-771-150		Rights of adults in care: This section sets forth the rights of adults in care, including the right to be fully informed of his rights and of all rules and expectations, and of services available and any related charges; freedom to manage personal finances and funds and have access to personal accounts; a quarterly accounting for adults in foster care, unless a conservator has been appointed; to confidentiality regarding his personal affairs and records; and to the opportunity to participate in planning of his care and medical treatment, and the right to refuse treatment. This section also lists the rights of adults in foster care or adult day services involving transfer or discharge, including 30 days notice, and standards for emergency discharge; and the right the right not to be required to perform services for the home except as voluntarily contracted in writing. An adult in care has the right to be free to select health care services from reasonably available resources; to be free from mental, emotional, physical, sexual, and financial abuse or exploitation, and from forced isolation, threats or other degrading or demeaning acts; and when in adult foster care or adult day services, to not have his needs neglected or ignored by the provider. Adults in care have the right to be treated with courtesy, respect and consideration; and to be free to voice grievances and recommend changes in policies and services. Adults in out-of-home care from a local department approved provider have the right to retain and use personal clothing and possessions. An adult in care also has the right to be encouraged to function at his

			<p>highest potential; to receive and send uncensored mail; to refuse medication unless there has been a court finding of incapacity; to choose services to be provided; to receive all physician-prescribed treatments; to refuse services; to be free of restraint except in specified situations and with appropriate safeguards; to be free of prescription drugs except where medically necessary; to be accorded privacy in every aspect of daily living; to meet with and participate in social, faith-based and community group activities. A responsible person must be made aware of the adult's rights if the adult is unable to fully understand and exercise them as determined by a physician. Out-of-home providers shall post a copy of these rights and responsibilities including the name and number of the Adult Protective Services Hotline and Long-term Care Ombudsman toll-free telephone numbers; make their implementation policies and procedures available to adults, relatives, agencies and the general public; and provide staff training to implement these rights. Adults in care have the right to advance information about recommended care and treatment; and freedom from searches of personal belongings without their permission. An adult in out-of-home care has the right to be notified before his room or roommate is changed; and to private and unrestricted communication with any other adult who does not object to the communications. Adults have the right to appeal any believed violation of rights and to advocacy assistance throughout the appeal process.</p>
	<p>22 VAC 40-771-160</p>		<p>Responsibilities of adults in foster care or adult day services: An adult in care must follow the rules of the provider unless these rules violate his rights; must give two-week written notice of intent to leave the placement; and must notify providers of changes in the his health status.</p>

This regulation will replace 22 VAC-40-770 as that regulation related to agency approved providers of adult services. The regulation contains definitions for terms used in the provision of services to adults such as "adult exploitation," "adult foster care' and companion providers." It explains to whom the regulation applies and the requirements that must be met for approval as a provider. These requirements include criminal history record checks, assessment of knowledge and skill, financial viability and appropriate physical accommodations. This regulation also sets out standards for the care of adults including standards for food, clothing and medical care, as well as standards for physical accommodations of the provider.



The regulation sets out the types of written information and other forms and documents that must be maintained by the provider and explains the confidentiality requirements. The procedures for obtaining a variance from a particular standard as well as procedures for emergency approval of a provider are covered by the regulation. The regulation explains the renewal process, requirements for local agency monitoring of providers and what happens if a provider cannot meet standards, including the process for a provisional approval of up to three months if the noncompliance does not jeopardize the safety or proper care of adults in care.

In addition, the regulation sets out a provider's right to appeal the action of a local department of social services in relation to their approval and also sets out the rights and responsibilities of adults who are in care.

### Regulatory flexibility analysis

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

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An alternative to this regulation was not considered because the Code of Virginia requires regulations for this program. This proposed regulation is clearer and easier to use than the existing generic regulation that covers three separate program areas, which is to the advantage of providers, including small businesses. It specifically addresses standards and requirements for the provision of care to adults age 60 and over and age 18 to 59 with a disability. It also delineates the responsibilities of adults in adult day care and adult foster care. It is consistent with the health, safety, environmental and economic welfare of aging or disabled adults in the Commonwealth.

### Family impact

*Please assess the 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.*

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The regulatory action has a positive impact on family stability, responsibility, and safety. This regulation, which replaces 22 VAC 40-770, clearly states the responsibilities of providers and of aging and disabled adults while enhancing their safety. It also enumerates the rights and responsibilities of aging or disabled adults and addresses standards and requirements that families can expect from providers of services to adult loved ones.