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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-100
VAC Chapter title(s)	Minimum Standards for Licensed Child Caring Institutions
Date this document prepared	12/11/2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CCI-child caring institutions

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 or 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.

The State Board of Social Services has the legal authority to adopt regulations and requirements in accordance with §§ 63.2-217 and 63.2-1734 of the Code of Virginia. The Code mandates promulgation

of regulations for the services and facilities that are conducive to the welfare of the children under the custody or control of such persons or agencies.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no alternatives for achieving the purpose of this regulation. This regulation is the least burdensome alternative available as § 63.2-1734 of the Code of Virginia requires the adoption of regulations that are conducive to the welfare of children under the custody or control of child welfare agencies.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Stacy Garrett, Sabrina L. Zegarelli, Selinna Creasy, Ph.D., Bethanne Tarpley, Andres Lindeman, Nicole Donnelly, Elizabeth C. Weaver, Cheryl A. Thayer, Crystal Hicks, Amy Myers, M.Ed., CM, and Morgan Kane	See attached letter.	Thank you for your comments. The agency is required to retain this regulation in accordance with § 63.2-1737 C, and will propose minor technical amendments and amendments to reduce regulatory burden, pursuant to Executive Order 19 .

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation meets the criteria set forth in the Executive Order 19 (2022). It provides the requirements for the protection of health, safety, and welfare of children and youth receiving services from child welfare agencies. The regulation is clearly written and easy to understand.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The agency recommends amending the regulation for technical and clarification purposes and reduce regulatory requirements, pursuant to Executive Order 19.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to 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, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This regulation is necessary for the health, safety, and welfare of children placed in CCI. Comments received reflect that this regulation should be retained. The regulation does not duplicate or conflict with federal or state law. The regulation was last reviewed in 2016 and there are no changes in technology, economic conditions, or other factors that are affected by the regulation. The amendments will have minimum to no impact on small businesses.

Miller Home of Lynchburg, Virginia
2134 Westerly Drive
Lynchburg, VA 24501
434-845-0241

August 8, 2024

The Department of Social Services reviews regulation 22VAC40-100, Minimum Standards for Licensed Child Caring Institutions. This review aims to determine whether this regulation should be terminated, amended, or retained in its current form. Let me state upfront that I firmly believe that the regulation should be retained in its current form for Miller Home of Lynchburg, Virginia (Miller Home).

Terminating the regulation would be highly detrimental to Miller Home. Miller Home will celebrate its 150th Year the following year, a very lengthy history of service to children not only in Virginia but also from other states. The inspections and certification for Miller Home have shown the quality of care and dedication to the profession of caring for children throughout the years.

Terminating 22 VAC40-100 would necessitate Miller Home's current license (under that regulation) to be licensed under 22 VAC40-100, CORE Standards. Forcing Miller Home to make this switch would interfere tremendously with our ability to carry out our Mission.

The concept of one-size-fits-all in the regulating of Residential Child Care Facilities is ill-advised. It is essential to understand that there are some genetic differences in childcare programs that require separate attention. Miller Home was incorporated as a private, non-profit, charitable program. The dream of helping children with needs that could not be met in their natural homes was shared by many people who were willing to give of themselves and make financial commitments. These commitments have led to the development of programs, keeping the facility up to all requirements, providing equipment, and supporting our operating budget **entirely** with private funding. The charity and dedication of this work are reflected in the services offered free to those who cannot afford to pay. Remember that this has been accomplished **without** government funding for nearly 150 years.

No one would argue that minimum requirements to ensure the basic safety, health, and general welfare of the children in care are essential. Still, these requirements already exist in the Minimum Standards. Requiring Miller Home to change to CORE Standards would go far beyond the concept of basic safety and well-being to the point of becoming intrusive to the uniqueness of our program. Miller Home strives to be "family-like," which is appreciated by our placing families, donors, and supporters.

If Miller Home had not existed, the state would have had the responsibility for every girl who has walked through the doors of Miller Home since 1875. Miller Home provides nearly \$350,000 worth of services in the form of residential group homes and case management **each year**. I feel safe in saying that it is an irrefutable fact that the private sector has done a great job

in caring for girls from Virginia. Unfortunately, altering or terminating the Minimum Standards would effectively bring Miller Home from a private institution to the dominant control of the public sector, and the individuality of our program would diminish. Residential group homes are sometimes the best environment for some children to grow up in. What no one seems willing to acknowledge is that group homes can provide forever families. I could bring in numerous examples of individuals who have forever-family connections with the group home they grew up in. Some of these children become donors/supporters or even staff members.

There is also the failure to acknowledge that group homes can often work with the child's biological family and facilitate reunification of the family when that is in the best interest of the child. Could there be a more robust definition of a forever family than that?

The department is specifically seeking comments regarding the essential need for the regulation. The need for the existing regulation has already been addressed: it is the need to ensure that the safety and welfare of each child are protected, that basic needs like food, water, shelter, clothing, and medical care are provided for, and that there is oversight provided for those individuals who are providing the care of the children in licensed programs. There is certainly no need for additional standards that would come along with the switch from Minimum Standards to CORE Standards. Miller Home has provided QUALITY care for children for years. Just look at our file. Our inspections show how well we are doing. Please take a moment to review those documents. Our intent is honorable, and our performance speaks for itself. We have been licensed since our respective programs began operating, and we have not objected to the concept of Minimum Standards. Miller Home is vehemently opposed to the possibility of the elimination of the Minimum Standards; however, because they are at a time in direct conflict with our fundamental philosophies and are, in part, based upon requirements related to public funding, which we do not accept and have no intention of accepting.

I still feel that the Minimum Standards are essential to ensure the safety, health, and general welfare of each child. We require that Miller Home transition to CORE Standards; however, it would go far beyond this concept. Not only are the CORE Standards time in conflict with our organization's philosophies, but they also dictate the details of the administrative procedures and operating policies, which we would be required to follow. Implementation would be highly costly and would not improve the primary care being provided for the children. In effect, the CORE Standards would take over the management of our program. This would be an unwarranted intrusion into the affairs of a private institution. Accordingly, **any action other than retaining the Minimum Standards in their current form would be more burdensome and intrusive.**

The uniformity achieved by the elimination of the Minimum Standards would be convenient for those charged with the responsibility of licensing and public accountability. Still, this concept is genuinely inappropriate for our program. There even appears to be ample grounds to contest the legal authority of the state to require a privately operated, privately funded facility that provides services to privately placed children to conform to the exact requirements of a publicly funded and publicly operated facility for the right to acquire a license.

There are no specific or measurable goals that CORE Standards would achieve that we cannot achieve under Minimum Standards regarding caring for the children in our program. The

Minimum Standards, as they exist, are written, easily understandable, and sufficient for the protection of the children in our care. I request that Miller Home be permitted to continue to be licensed under Minimum Standards. This is a reasonable and appropriate request. I recognize that I am only talking about Miller Home, one out of perhaps hundreds that the state must license. Still, it is a critical element of the history of our country (and indeed our state) that the rights of even one institution be preserved. **Miller Home may be the oldest residential home in Virginia, if not in our country, that has survived nearly 150 years without accepting State or Federal money and still operates TODAY. Miller Home has provided quality care, so why change our standards when we have done very well operating under Minimum Standards?**

On behalf of Miller Home, I ask that you act favorably upon my request to retain Minimum Standards in their current form.