ACTION ITEM # 0 2

COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

Office of the Commissioner

Margaret Ross Schultze
COMMISSIONER

August 20, 2014

MEMORANDUM

TO: Members, State Board of Social Services

FROM: Margaret Ross Schultze

REGULATION: 22VAC40-80, General Procedures and Information for Licensure

ACTION: Notice of Intended Regulatory Action

This regulatory action will repeal 22VAC40-80, General Procedures and Information for Licensure, and replace it with a new regulation, 22VAC40-81.

I request that you approve the Notice of Intended Regulatory Action for 22VAC40-80, General Procedures and Information for Licensure, for publication in the *Virginia Register,* subject to approval under the provisions of Executive Order 17 (2014) and the Administrative Process Act.

If you have questions concerning this requested regulatory action, please contact our Regulatory Coordinator, Karin Clark, by telephone at (804) 726-7017 or by e-mail at karin.clark@dss.virginia.gov.

MRS:kc

Attachments

Virginia
Regulatory
Town Hall

townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA)
Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-80
Regulation title	General Procedures and Information for Licensure
Action title	Comprehensive revision of general regulatory provisions for information and licensure
Date this document prepared	August 20, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual.*

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This regulatory action will repeal 22VAC40-80, "General Procedures and Information for Licensure," and establish a comprehensive new regulation, 22VAC40-81. The current regulation was promulgated in 1984 and has undergone amendment several times to incorporate statutory changes. There has not been, however, any comprehensive revision to incorporate changed practices and procedures. Repeal of the existing regulation and adoption of a new regulation is the most efficient and effective way to incorporate all applicable requirements from the Code of Virginia and make the necessary changes to achieve clarity and consistency with current practices and procedures.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The State Board of Social Services (Board) has the authority to promulgate this regulation under §§ 63.2-217 and 63.2-1700 of the Code of Virginia.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Department of Social Services (Department) needs to update, reorganize, and clarify General Procedures and Information for Licensure to reflect changed practices and procedures that have been implemented in the almost three decades since the regulation was first promulgated. A comprehensive new regulation will provide clear, understandable requirements for licensees and providers and will best protect the health, safety, and welfare of children and adults receiving services. This regulatory action is being taken on advice from the Office of the Attorney General.

Substance

Please detail any changes that will be proposed. Be sure to define all acronyms. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The majority of the provisions of the repealed regulation will be incorporated into the new regulation.

Additional changes to be made in the new regulation include, but are not limited to, inclusion of: (1) a complete list of license types and description of when each may be issued; (2) new information on the Performance Standardization Guidance for Licensure performance levels for license issuance; (3) new information on the risk assessment process used to assess likely or actual harm or injury from critical violations of standards related to health, safety, and well-being, (4) provisions regarding who and what will be included in character and reputation investigations; and (5) clarification that if a licensee fails to comply with a special order the Department shall have the authority to impose an enforcement action deemed appropriate by the commissioner.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The following alternatives were considered: (1) make no changes to the existing regulation and retain the current structure and language; (2) amend the regulation in its current structure and format; and (3) repeal the existing regulation and adopt a new regulation.

Due to the number of changed practices and procedures that have been implemented in the almost three decades since the regulation was first promulgated, it was determined that promulgation of a comprehensive new regulation that has been restructured and re-formatted for clarity and consistency would be in the best interest of all affected by this regulation. A comprehensive new regulation will

provide clear, understandable requirements for licensees and providers and will best protect the health, safety, and welfare of children and adults receiving services.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

Please also indicate pursuant to your Public Participation Guidelines whether a panel will be appointed to assist in the development of the proposed regulation. Please state one of the following: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The Department is using the participatory approach in the development of this regulatory action. It plans to establish a regulatory advisory panel (RAP) made up of adult care facility and child welfare agency providers and DOLP staff to provide professional technical assistance and review as the regulation is developed.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (**http://www.townhall.virginia.gov**), or by mail, email, or fax to Janice M. Sigler; 801 East Main Street, Richmond VA 23219; telephone: (804) 726-7901; fax: (804) 726-7132; jan.sigler@dss.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (**http://www.townhall.virginia.gov**) and on the Commonwealth Calendar website (**http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi**). Both oral and written comments may be submitted at that time.

Family impact

Assess 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 regulatory action will have no adverse impact on the institution of the family and family stability; the increased clarity and consistency that this regulatory action will bring to the General Procedures and Information for Licensure will improve the health, safety and welfare of children and adults receiving services.