

Project 4602 - Final

DEPARTMENT OF SOCIAL SERVICES

**Repeal and replace regulation to ensure compliance with Child Care and Development
Block Grant Act**

CHAPTER 661
CHILD CARE PROGRAM (REPEALED)

CHAPTER 665
CHILD CARE PROGRAM

Part II

Subsidy Program Vendor Requirements for Family Day Homes

22VAC40-665-120. Definitions; subsidy program requirements for family day home vendors.

The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Assistant" means an individual who helps the provider in the care, protection, supervision, and guidance to children in the home.

"Attendance" means the actual presence of an enrolled child.

"Body fluids" means urine, feces, vomit, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Caregiver" means an individual who provides care, protection, supervision, and guidance to children in the home and includes the provider and assistant.

"Child" means any individual less than 18 years of age.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;
2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");
3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;
4. A child who is living in congregate, temporary, emergency, or transitional shelters;
5. A child who is abandoned in a hospital;
6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and

7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described in subdivisions 1 through 6 of this definition.

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water or the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the Commissioner of the Virginia Department of Social Services.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Evening care" means care provided after 7 p.m. but not through the night.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children less than 13 years of age, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth to 16 months of age.

"Lockdown" means a situation where children are isolated from a security threat, and access within and to the home is restricted.

"Overnight care" means care provided after 7 p.m. and through the night.

"Over-the-counter or nonprescription medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

"Parent" means a parent by blood, marriage, or adoption and also means a legal guardian or other person standing in loco parentis.

"Preschool" means a child from two years up to the age of eligibility to attend public school, age five years by September 30 of that same year.

"Provider" means a person, entity, or organization providing child care services.

"Residence" means the principal legal dwelling that is occupied for living purposes by the provider or a child in care and contains the facilities necessary for sleeping, eating, cooking, and family living.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"School age" means eligible to attend public school, age five years or older by September 30 of that same year.

"Serious injury" means a wound or other specific damage to the body, such as unconsciousness; broken bones; dislocation; a deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that has been inflicted upon the brain of an infant or young child. The injury can occur during violent shaking causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Toddler" means a child from 16 months of age up to 24 months of age.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a vendor that must be entered into and signed before child care payments paid to the vendor under the Child Care Subsidy Program can be authorized.

"Volunteer" means a person who works at the family day home and:

1. Is not paid for services provided in the family day home;
2. Is not counted in the caregiver-to-children ratios; and
3. Is in sight and sound supervision of a caregiver when working with a child.

Any unpaid person not meeting this definition shall be considered a "caregiver" and shall meet caregiver requirements.

22VAC40-665-130. (Reserved.)

22VAC40-665-140. Purpose and applicability.

The standards in this part apply to family day homes that participate in the Child Care Subsidy Program as a vendor. The purpose of these standards is to protect children who are less than the age of 13 years, less than the age of 18 years and physically or mentally unable to care for themselves, or under court supervision, and who are separated from their parents during part of the day by:

1. Ensuring that the activities, services, and facilities of family day homes participating in the Child Care Subsidy Program are conducive to the well-being of children; and
2. Reducing risks to the health and safety of such children in the child care environment.

22VAC40-665-150. Operational responsibilities.

A. The vendor shall ensure compliance with the standards in this part, the terms of the vendor agreement, and all relevant federal, state, or local laws and regulations.

B. The vendor shall ensure compliance with any of its own policies that have been disclosed to the parents of an enrolled child.

C. The vendor shall ensure that the applicant, household member, and any caregiver who is or will be involved in the day-to-day operations of the family day home or is or will be alone with, in control of, or supervising one or more of the children shall (i) undergo a background check in accordance with § 63.2-1725 of the Code of Virginia; (ii) shall not have been convicted of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia; and (iii) is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

D. The vendor shall ensure that the family day home does not exceed the capacity of children cared for as allowed by law or regulation.

E. When at least one child receives care for compensation, all children who are in care and supervision count in the capacity of children being cared for. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care and the vendor shall comply with the standards in this part for these children.

F. The vendor shall inform all caregivers of children's allergies, sensitivities, and dietary restrictions.

G. The vendor shall maintain, in a way that is accessible to all caregivers, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential.

22VAC40-665-160. General recordkeeping; reports.

A. Caregiver records and children's information shall be kept confidential.

B. The vendor shall maintain a written hard copy record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Children's records shall be made available to a child's parent upon request, unless otherwise ordered by the court.

D. Records, reports, and information required by this part may be kept as hard copy or electronically, except attendance records must be maintained pursuant to subsection B of this section, and shall be maintained in the home and made accessible to department's representative for five years after termination of services or separation from employment unless specified otherwise.

22VAC40-665-170. Children's records.

A. Vendors shall maintain, and keep at the family day home, written or electronic information for each enrolled child, which shall be made available to the department's representative upon request.

B. The child's information shall include the following:

1. Child's full name, nickname (if any), sex, address, and birthdate;
2. Proof of the child's identity;
3. Name, home address, and telephone number for each parent who has custody;
4. Name, address, and telephone number for each custodial parent's place of employment or school attendance, if applicable;
5. Name, address, and telephone number of at least one person designated by the parent to contact in case of an emergency if the parent cannot be reached;
6. If applicable, information on allergies, including food allergies, intolerances to food, medication, or other substances, and actions to be taken in an emergency situation; information on other physical problems; pertinent developmental information; and any special accommodations needed;

7. Names of persons other than the custodial parent who are authorized to pick up the child;
8. Immunization records for the child received on or before the child's first day of attendance, except that children experiencing homelessness may provide such records within 90 days of enrollment;
9. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection for the provision of medical treatment on religious or other grounds;
10. Written authorization to administer prescription or nonprescription medications if the vendor agrees to administer medication;
11. Special care instructions, including recommendations for the care and activities of a child with special needs, exception to infant being fed on demand, etc.;
12. A written care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and the steps to be taken in the event of a suspected or confirmed allergic reaction;
13. Record of any accidents or injuries sustained by the child while in care;
14. Permission to transport child if the vendor provides transportation;
15. Permission for field trips;
16. Permission for swimming or wading activities to include a parent's statement of the child's swimming ability, if applicable;
17. A written statement that the vendor will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the vendor;
18. Any written agreements between the parent and the vendor; and
19. Documentation of the enrollment of a child experiencing homelessness enrolled under provisions of 22VAC40-665-210 A 2.

22VAC40-665-180. Caregiver records.

The following records shall be kept for each caregiver:

1. Name, address, verification of age, and date of employment or volunteering.
2. Documentation that background checks were completed, including:
 - a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:
 - (1) Satisfactory results of the fingerprint-based national criminal background check; and
 - (2) Satisfactory results of the Virginia Child Protective Services Central Registry check.
 - b. Satisfactory results of the child abuse and neglect registry from any other state in which the individual has resided in the preceding five years.
 - c. The individual's sworn statement or affirmation as to whether the individual has ever been:
 - (1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or
 - (2) Convicted of a crime or is the subject of any pending criminal charges with the Commonwealth or any equivalent offense outside the Commonwealth.

- c. The vendor shall have such documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service.
 - d. Documentation of subsequent background checks conducted every five years.
3. Tuberculosis screening results.
 4. Certifications for first aid, cardiopulmonary resuscitation, and other certifications as required by the responsibilities held by the caregiver.
 5. Documentation that training required by 22VAC40-665-230 has been completed that includes the name and topic of the training, the date completed, the total hours of the session, and the names of the organization that sponsored the training and of the trainer.
 6. Date of separation from employment where applicable.
 7. Documentation of the health requirements under 22VAC40-665-190.

22VAC40-665-190. Health requirements for caregivers.

A. Each caregiver must be evaluated by a health professional and be issued a statement that the individual is determined to be free of communicable tuberculosis (TB). Documentation of the screening shall be submitted at the time of employment and prior to coming into contact with children. The documentation shall have been completed within the last 30 calendar days of the date of employment and be signed by a physician, physician's designee, or an official of the local health department].

B. Caregivers shall undergo TB screenings at least every two years from the date of the initial screening, or more frequently if recommended by a physician.

C. The vendor or the department's representative may require a report of examination by a licensed physician or mental health professional when there are indications that a caregiver's physical or mental health may endanger the health, safety, or well-being of children in care.

D. A caregiver who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

22VAC40-665-200. Reports.

A. The vendor shall inform the department's inspector as soon as practicable, but not to exceed one business day, of the following:

1. The death of a child while under the vendor's supervision;
2. A missing child when local authorities have been contacted for help; and
3. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

B. The vendor shall inform the department's representative as soon as practicable, but no more than two business days, of any injury to a child while under the vendor's supervision when a referral is made for treatment from a medical professional.

C. Any suspected incident of child abuse or neglect shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

22VAC40-665-210. Immunizations for children.

A. Before a child may attend the family day home, the vendor shall obtain documentation that the child has been immunized according to the requirements of subsection A of § 32.1-46 of the Code of Virginia and applicable State Board of Health regulations.

1. The vendor may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's conditional enrollment shall be maintained in the child's record. A conditional enrollment means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan from a physician or local health department for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of the hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

2. If a child is experiencing homelessness and does not have documentation of the required immunizations, the vendor may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of required immunizations.

B. The vendor shall obtain documentation of additional immunizations once every six months for children less than the age of two years.

C. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the vendor on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices; or

2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

22VAC40-665-220. General qualifications.

A. The vendor and any caregivers who are left alone with children shall be capable of communicating effectively both orally and in writing as applicable to the job responsibility and be capable of communicating with emergency personnel.

B. Caregivers must be at least 16 years of age; however no caregiver less than the age of 18 years may administer medication. Caregivers less than the age of 18 years shall be under supervision of an adult caregiver who is present in the home.

22VAC40-665-230. Caregiver training and development.

A. Prior to approval as a subsidy vendor, the prospective vendor shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, which shall include the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or service all caregivers shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, which shall include training on the following topics and training modules:

1. Building and physical premises safety;
2. Emergency preparedness and response planning;
3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;
4. Administration of medication, consistent with standards of parental consent;
5. Prevention of shaken baby syndrome and abusive head trauma (AHT);
6. Prevention of and response to emergencies due to food and allergic reactions;
7. Recognizing child abuse and neglect and reporting responsibilities;
8. Preventing the spread of disease, including immunization requirements;
9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;
10. Transportation;
11. Foundations of child development;
12. Inclusion: Exploring the meaning and the mindset;
13. Oral health; and
14. Introduction to the Child Care Subsidy Program.

C. All caregivers hired prior to October 17, 2018, shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics described in subsection B of this section, within January 16, 2019. This training may count for staff annual training requirements in subsection H of this section.

D. Orientation training for caregivers shall be completed on the following specific topics prior to the caregiver working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;
2. Responsibilities for reporting suspected child abuse or neglect;
3. Confidentiality;
4. Supervision of children, including arrival and dismissal procedures;
5. Procedures for action in the case of lost or missing children, ill or injured children, medical and general emergencies;
6. Medication administration procedures, if applicable;
7. Emergency preparedness plan as required in 22VAC40-665-400 B;
8. Procedures for response to natural and man-made disasters;
9. Prevention of shaken baby syndrome or abusive head trauma including coping with crying babies and fussy or distraught children;
10. Prevention of sudden infant death syndrome and use of safe sleeping practices;
11. Caregivers who work with children who have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination and recognizing and responding to any allergic reactions; and

12. Transportation.

E. All caregivers shall have within 90 days of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the age of children in care. The training shall include an in-person competency demonstration; and
2. Current certification in first aid. However, a caregiver who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

F. Caregivers employed prior to October 17, 2018, must complete CPR and first aid training as required by this section within January 16, 2019. During this 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

G. CPR and first aid training may count toward the annual training hours required in subsection H of this section if documentation for training as required in subdivision 5 of 22VAC40-665-180 is maintained.

H. Caregivers who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training, to include the department's health and safety update course. This training shall be related to child safety, child development, health and safety in the family day home environment, and any required department sponsored training.

I. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a caregiver who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist or (ii) administration shall be performed by a caregiver who is licensed by the Commonwealth of Virginia to administer medications.

The vendor may determine by policy what medications, if any, will be administered at its family day home, including prescription medications or over-the-counter or nonprescription medications.

J. Caregivers required to have the training required in subsection I of this section shall be retrained at three-year intervals.

22VAC40-665-240. Building or home maintenance.

A. Areas and equipment of the family day home, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include splintered, cracked, or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting, or breakage of any equipment; head entrapment hazards; protruding nails, bolts, or other components that entangle clothing or skin; the presence of poisonous plants; tripping hazards; and unstable heavy equipment, furniture, or other items that a child could pull down on himself.

B. Inside areas occupied by children shall be maintained no lower than 65°F and shall not exceed 80°F unless fans or other cooling systems are in use.

C. In areas used by children of preschool age or younger, the following shall apply:

1. Fans, when used shall be out of reach of children, and cords shall be secured so as not to create a hazard.
2. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

D. Sharp kitchen utensils and other sharp objects shall be inaccessible to children unless being used by the caregiver or with children under close supervision.

E. The home shall have an in-service, nonpay telephone.

F. No equipment, materials, or furnishings shall be used if recalled or identified by the U.S. Consumer Product Safety Commission as being hazardous.

G. Radiators, oil and wood burning stoves, floor furnaces, fireplaces, portable electric heaters, and similar heating devices located in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials.

H. Unvented fuel burning heaters, such as portable oil-burning (kerosene) heaters; portable, unvented liquid or gas fueled heaters; and unvented fireplaces, shall not be used when children are in care.

I. Wood burning stoves and fireplaces and associated chimneys, if used, shall be inspected annually by a knowledgeable inspector to verify that the devices are properly installed, maintained, and cleaned as needed. Documentation of the inspection and cleaning shall be maintained by the vendor.

J. All flammable and combustible materials, including matches, lighters, lighter fluid, kerosene, turpentine, oil and grease products, aerosol cans, and alcohol, shall be stored in an area inaccessible to children.

K. Stairs shall not be accessible to children less than two years of age and children older than two years of age who are not developmentally ready to climb or descend stairs without supervision.

L. Stairs with three or more risers that do not have protective barriers or guardrails on each side shall not be accessible to children over the age of two years.

M. Decks, porches, lofts, or balconies that do not have protective barriers or guardrails shall not be accessible to children.

N. Windows and doors used for ventilation shall be securely screened.

O. Machinery in operation, such as lawnmowers and power tools shall be inaccessible to the children in care.

22VAC40-665-250. Hazardous substances and other harmful agents.

A. Potentially poisonous substances, materials, and supplies such as, but not limited to, cleaning agents, disinfectants, deodorizers, plant care chemicals, pesticides, and petroleum distillates shall be stored away from food in areas inaccessible to children.

B. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils or single-service articles and stored separately from food.

C. If hazardous substances are not kept in original containers, the substitute container shall clearly indicate their contents.

D. The vendor shall ensure that:

1. No person smokes or uses an electronic smoking device:

- a. Indoors while children are in care,
- b. In a vehicle when children are transported, or
- c. Outdoors in an area occupied by children.

2. No caregiver is under the effects of medication that impairs functioning, alcohol, or illegal drugs.

22VAC40-665-260. Bathroom area and furnishings.

A. Each bathroom area provided for children shall:

1. Be within a contained area, readily available, and within the home used by the children;
2. Have toilets that are flushable;
3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F; and
4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of the children.

B. There shall be a toilet chair or an adult-sized toilet with a platform or steps and adapter seat available to a child being toilet trained.

22VAC40-665-270. Play areas.

A. The vendor shall ensure that all areas of the premises accessible to children are free of obvious injury hazards.

B. A nonclimbable barrier at least four feet high, such as a fence or impenetrable hedge, shall surround outdoor play areas located within 30 feet of hazards including lakes, ponds, railroad tracks, and streets with speed limits in excess of 25 miles per hour or with heavy traffic.

C. Stationary outdoor playground equipment shall not be installed over concrete, asphalt, or any other hard surface.

D. Trampolines shall not be used during the hours children are in care.

22VAC40-665-280. Supervision and ratio requirements.

A. A caregiver shall be physically present on site and provide direct care and supervision of each child at all times. Direct care and supervision of each child includes:

1. Awareness of and responsibility for each child in care, including being near enough to intervene if needed; and
2. Monitoring of each sleeping infant in one of the following ways:
 - a. By placing each infant for sleep in a location where the infant is within sight and hearing of a caregiver;
 - b. By in-person observation of each sleeping infant at least once every 15 minutes; or
 - c. By using a baby monitor.

B. Caregivers shall actively supervise each child during outdoor play to minimize the risk of injury to a child.

C. A caregiver may allow only school age children to play outdoors while the caregiver is indoors if the caregiver can hear the children playing outdoors.

D. No child less than five years of age or a child older than five years who lacks the motor skills and strength to avoid accidental drowning, scalding, or falling while bathing shall be left unattended while in the bathtub.

E. An additional caregiver will be needed to supervise the number of children at a given time when, using the following point system, 16 points is exceeded:

1. Children from birth through 15 months of age count as four points each;
2. Children from 16 months through 23 months of age count as three points each;
3. Children from two years through four years of age count as two points each;
4. Children from five years through nine years of age count as one point each; and
5. Children who are 10 years of age and older count as zero points.

F. A vendor's own children and resident children under eight years of age shall count in point calculations.

G. In accordance with § 63.2-100 of the Code of Virginia, no family day home shall care for more than four children less than the age of two years, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.

22VAC40-665-290. Supervision near water.

A. Access to the water in aboveground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

B. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, inground swimming or wading pools, ponds, or fountains not enclosed by safety fences.

C. Portable wading pools without integral filter systems shall:

1. Be emptied after use by each group of children, rinsed, and filled with clean water, or more frequently as necessary; and
2. When not in use during the vendor's hours of operation, be emptied, sanitized, and stored in a position to keep them clean and dry.

D. Portable wading pools shall not be used by children who are not toilet trained.

E. Hot tubs, spas, and whirlpools shall:

1. Not be used by children in care, and
2. Covered with safety covers while children are in care.

F. The level of supervision by caregivers required and the point system as outlined in 22VAC40-665-280 shall be maintained while the children are participating in swimming or wading activities.

G. Caregivers shall have a system for accounting for all children in the water.

H. Outdoor swimming activities shall occur only during daylight hours.

I. When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the family day home:

1. A minimum of least two caregivers shall be present and able to supervise the children; and
2. An individual currently certified in basic water rescue, community water safety, water safety instruction, or lifeguarding shall be on duty supervising the children participating in swimming or wading activities at all times.

22VAC40-665-300. Daily activities.

A. Infants and toddlers shall be provided with opportunities to:

1. Interact with caregivers and other children in the home in order to stimulate language development;
2. Play with a wide variety of safe, age-appropriate toys;
3. Receive individual attention from caregivers including holding, cuddling, talking, and reading; and
4. Reach, grasp, pull up, creep, crawl, and walk to develop motor skills.

B. Infants and toddlers shall spend no more than 30 continuous minutes during waking hours, with the exception of mealtimes, confined in a crib, play pen, high chair, or other confining piece of equipment. The intervening time period between such confinements shall be at least one hour.

C. Infants shall be placed on their backs when sleeping or napping unless otherwise ordered by a written statement signed by the child's physician.

D. An infant, toddler, or preschool child who falls asleep in a play space other than his own crib, cot, mat, or bed shall be moved promptly to his designated sleeping space if the safety or comfort of the infant, toddler, or preschool child is in question.

E. School age children shall be allowed to nap if needed, but not forced to do so.

F. Infants shall be protected from older children.

22VAC40-665-310. Behavioral guidance.

A. Behavioral guidance shall be constructive in nature, age and stage appropriate, and intended to redirect children to appropriate behavior and resolve conflicts.

B. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, caregivers shall model desired, appropriate behavior and interact with the child and one another to provide needed help, comfort, and support and:

1. Respect personal privacy;
2. Respect differences in cultural, ethnic, and family background;
3. Encourage decision-making abilities;
4. Promote ways of getting along;
5. Encourage independence and self-direction; and
6. Use consistency in applying expectations.

C. If time-out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;
2. It shall not be used with infants or toddlers;
3. The child shall be in a safe, lighted, well-ventilated place and within sight and sound of a caregiver; and
4. The child shall not be left alone inside or outside the home while separated from the group.

22VAC40-665-320. Forbidden actions.

The following actions or threats thereof are forbidden:

1. Physical punishment, including striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or using exercise as a punishment;
2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play yards, high chairs, and safety gates when used for their intended purpose with children preschool age or younger;
3. Punishment by another child;
4. Withholding or forcing of food, water, or rest;
5. Verbal remarks that are demeaning to the child;
6. Punishment for toileting accidents; and
7. Punishment by applying unpleasant or harmful substances.

22VAC40-665-330. Parental involvement and notifications.

A. The caregiver shall notify the parent immediately if a child is lost, requires emergency medical treatment, sustains a serious injury, or dies.

B. The caregiver shall notify the parent by the end of the day of any known minor injuries.

C. The caregiver shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type and circumstance of the injury;
4. Caregiver present and treatment;
5. Date and time when parents were notified; and
6. Caregiver and parent signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion of any food identified in the written care plan required in 22VAC40-665-170 B 12 even if a reaction did not occur.

E. Parents shall be informed of the vendor's emergency preparedness plan.

F. Caregivers shall promptly inform parents when persistent behavioral problems are observed and identified.

G. Caregivers shall provide information weekly to parents about the child's health, development, behavior, adjustment, or needs.

H. Parents shall be informed of the reason for a child's termination from care.

I. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the care of the vendor, pursuant to § 63.2-1813 of the Code of Virginia.

J. When children at the family day home have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the vendor's having been informed unless forbidden by law. Children's exposure to life threatening diseases shall be reported to parents immediately.

22VAC40-665-340. Furnishings, equipment, and materials.

A. Furnishings, materials, and equipment used for child care shall be age and stage appropriate for the children.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children less than three years of age.

C. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

D. Disposable products shall be used once and discarded.

E. If play yards, portable cribs, or mesh-sided cribs are used for sleeping or napping, they shall meet the requirements of subsections H through L of this section.

F. Cribs shall be provided for children from birth through 12 months of age and for children 12 months of age or older who are not developmentally ready to sleep on a cot, rest mat, or bed during the designated rest periods and shall not be occupied by more than one child at a time.

G. Cots, rest mats, or beds shall be provided for children 12 months of age or older and shall not be occupied by more than one child at a time.

H. Full-size cribs shall:

1. Meet the current Consumer Product Safety Commission Standards (16 CFR Part 1219).
2. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib.

I. Pillows and filled comforters shall not be used by children less than two years of age while sleeping or resting, including quilts, sheepskins, or stuffed toys.

J. Cribs shall be placed where objects outside the crib such as electrical cords or cords from blinds, curtains, etc. are not within reach of infants or toddlers.

K. Use of bumper pads shall be prohibited.

L. There shall be at least 12 inches of space between occupied cribs, cots, beds, and rest mats.

M. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants older than five months of age or infants who are able to push up on their hands and knees.

N. Crib sides shall always be up and the fastenings secured when a child is in the crib.

O. Use of double-deck cribs is prohibited.

22VAC40-665-350. Bedding and linens for use while sleeping or resting.

A. Linens shall be assigned for individual use.

B. Pillows when used shall be assigned for individual use and covered with pillow cases.

C. Mattresses when used shall be covered with a waterproof material that can be cleaned and sanitized.

22VAC40-665-360. Preventing the spread of disease.

A. A child shall not be allowed to attend the family day home for the day if he has:

1. A temperature over 101°F;
2. Recurrent vomiting or diarrhea; or
3. Symptoms of a communicable disease.

B. If all children in care are from a single family unit, the caregiver may choose not to exclude a child who is ill.

C. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the family day home as soon as possible after the signs or symptoms are observed; and
2. The child shall remain in a designated quiet area until leaving the family day home.

D. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

22VAC40-665-370. Hand washing and toileting procedures.

A. When hand washing, the following shall apply:

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.
2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces, or urine.
3. Caregivers shall wash their hands with soap and running water before and after helping a child use the toilet or changing a diaper, after the caregiver uses the toilet, after any contact with body fluids, before feeding or helping children with feeding, and before preparing or serving food or beverages.
4. If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. A child shall not be left unattended on a changing table during diapering.

C. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately upon discovery.

D. During each diaper change or after toileting accidents, the child's genital area shall be thoroughly cleaned with a moist disposable wipe or a moist, clean individually assigned cloth if the child is allergic to disposable wipes.

E. The diapering surface shall be:

1. Separate from the kitchen, food preparation areas, or surfaces used for children's activities;
2. Nonabsorbent and washable; and
3. Cleaned and sanitized after each use.

F. Soiled disposable diapers and wipes shall be disposed of in a leak-proof or plastic-lined storage system that is either foot operated or used in such a way that neither the caregiver's hand nor the soiled diaper or wipe touches the exterior surface of the storage system during disposal.

G. When cloth diapers are used, a separate leak-proof storage system as specified in subsection F of this section shall be used.

H. Children five years of age and older shall be permitted privacy when toileting.

I. Caregivers shall respond promptly to a child's request for toileting assistance.

J. Toilet chairs, when used, shall be emptied promptly, cleaned, and sanitized after each use.

22VAC40-665-380. General requirements for medication administration.

A. Prescription and nonprescription medications shall be given to a child:

1. According to the home's written medication policies, and
2. Only with written authorization from the parent.

B. The vendor may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a caregiver who meets the requirements of 22VAC40-665-230 I and J;
2. The caregiver administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and
3. The caregiver administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

C. The vendor may administer nonprescription medication provided the medication is:

1. Administered by a caregiver 18 years of age or older;
2. Labeled with the child's name;
3. In the original container with the manufacturer's direction label attached; and
4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

D. Nonprescription medication shall not be used beyond the expiration date of the product.

E. Medications for children in care shall be stored separately from medications for household members and caregivers.

F. When needed, medication shall be refrigerated.

G. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

H. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and medications for caregivers and household members, shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall be inaccessible to the children.

I. The vendor shall keep a record of prescription and nonprescription medication given children, which shall include the following:

1. Name of the child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child;
4. Name of the caregiver administering the medication;
5. Any adverse reactions; and
6. Any medication error.

22VAC40-665-390. First aid and emergency supplies.

A. The following emergency supplies shall be in the family day home, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:
 - a. Scissors;
 - b. Tweezers;
 - c. Gauze pads;
 - d. Adhesive tape;
 - e. Bandages, assorted types and sizes;
 - f. An antiseptic cleansing solution and pads;
 - g. Digital thermometer; and
 - h. Single-use gloves such as surgical or examination gloves.
2. An ice pack or cooling agent.

B. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight; and
2. One working, battery-operated radio.

22VAC40-665-400. Procedures for emergencies.

A. The vendor shall have a written emergency preparedness plan that addresses caregiver responsibility and home readiness with respect to emergency evacuation, relocation, lockdown, and shelter-in-place procedures. The plan shall address the most likely to occur emergency scenarios, including fire, severe storms, flooding, tornadoes, loss of utilities, earthquakes, intruders, violence on or near the premises, chemical spills, and facility damage or other situations that may require evacuation, lockdown, or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Sounding of alarms (evacuation, intruder, shelter-in-place such as for tornado or chemical hazard);
2. Emergency communication to include:
 - a. Notification of local authorities (fire and rescue, law enforcement, emergency medical services, poison control, health department, etc.), parents, and local media; and
 - b. Availability and primary use of communication equipment;
3. Evacuation and relocation procedures, including:

- a. Assembly points, designated relocation site, head counts, primary and secondary means of egress, and complete evacuation of the buildings;
 - b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;
 - c. Securing of essential documents (attendance record, parent contact information, etc.) and special health care supplies to be carried off site on immediate notice;
 - d. Method of communication after the evacuation; and
 - e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child;
4. Shelter-in-place, including:
- a. Scenario applicability, inside assembly points, head counts, and primary and secondary means of access and egress;
 - b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;
 - c. Securing essential documents (attendance record, parent contact information, etc.) and special health supplies to be carried into the designated assembly points;
 - d. Method of communication after the shelter-in-place; and
 - e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child;
5. Lockdown procedures, including:
- a. Methods to alert caregivers and emergency responders;
 - b. Methods to secure the family day home and designated lockdown locations;
 - c. Methods to account for all children in the lockdown locations;
 - d. Methods of communication with parents and emergency responders;
 - e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and
 - f. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child;
6. Caregiver training requirements, drill frequency, and plan review and update; and
7. Continuity of operations procedures to ensure that essential functions are maintained during an emergency.

C. A 911 or local dial number for police, fire, and emergency medical services and the number of the regional poison control center shall be posted in a visible and conspicuous place.

22VAC40-665-410. Emergency response drills.

A. The emergency response drills shall be practiced as follows:

1. Evacuation procedures shall be practiced at least monthly;
2. Shelter-in-place procedures shall be practiced twice a year; and
3. Lockdown procedures shall be practiced at least annually.

B. The vendor shall maintain a record of the dates of the practice drills for one year. For vendors offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

22VAC40-665-420. Nutrition and food services.

A. Vendors shall schedule appropriate times for snacks or meals, or both, depending on the hours of operation and time of the day.

B. Drinking water shall be accessible to all children.

C. When meals or snacks are provided by the vendor, the following shall apply:

1. Vendors offering both meals and snacks shall serve a variety of nutritious foods and in sufficient portions.

2. Children three years of age or younger shall not be offered foods that are considered to be potential choking hazards.

D. When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;

2. The vendor shall have extra food or provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and

3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

E. Tables and high chair trays shall be cleaned and sanitized daily and before and after each use for feeding.

F. Food shall be prepared, stored, served, and transported in a clean and sanitary manner.

G. When food is prepared to which a child is allergic, the caregiver shall take steps to avoid cross contamination in order to prevent an allergic reaction.

H. A child with a diagnosed food allergy shall not be served any food identified in the written care plan required in 22VAC40-665-170 B 12.

22VAC40-665-430. Special feeding needs.

A. High chairs, infant carrier seats, or feeding tables shall be used for children less than 12 months who are not held while being fed.

B. When a child is placed in an infant seat, high chair, or feeding table, the protective belt shall be fastened securely.

C. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated, and labeled with the child's name if more than one infant is in care.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula, or breast milk shall not be heated or warmed directly in a microwave. Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby food jar and is labeled with the child's name, dated, and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. Caregivers shall feed semisolid food with a spoon unless written instructions from a physician or physician's designee state differently.

22VAC40-665-440. Transportation and field trips.

A. If the vendor provides transportation, the vendor shall be responsible for the care of the child from the time the child boards the vehicle until returned to the parent or person designated by the parent.

B. Drivers must be 18 years of age or older and possess a valid driver's license to operate the vehicle being driven.

C. Any vehicle used by the vendor for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes as required by § 46.2-472 of the Code of Virginia;
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and
5. If volunteers supply personal vehicles, the vendor is responsible for ensuring that the requirements of this subsection are met.

D. The vendor shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100 of the Code of Virginia, and the stated maximum number of passengers in a given vehicle is not exceeded;
2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;
4. At least one caregiver or the driver always remains in the vehicle when children are present;
5. The caregiver has a list of the names of the children being transported;
6. The caregiver has a copy of each child's emergency contact information; and
7. An allergy care plan and information as specified in 22VAC40-665-170 B 12 shall be carried.

E. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

F. Caregivers shall verify that all children have been removed from the vehicle at the conclusion of any trip.

22VAC40-665-450. Animals and pets.

A. Animals shall not be allowed on any surfaces where food is prepared or served.

B. A pet or animal present at the home, indoors or outdoors, shall be in good health and show no evidence of carrying any disease.

C. Dogs or cats, where allowed, shall be vaccinated for rabies and shall be treated for fleas, ticks, or worms as needed.

D. The vendor shall maintain documentation of the current rabies vaccination for dogs and cats.

E. Caregiver shall closely supervise children when children are exposed to animals.

F. Children shall be instructed on safe procedures to follow when in close proximity to animals, for example, not to provoke or startle them or remove their food.

G. Monkeys, ferrets, reptiles, psittacine birds (birds of the parrot family), or wild or dangerous animals shall not be in areas accessible to children during the hours children are in care.

H. Animal litter boxes, toys, food dishes, and water dishes shall be inaccessible to children.

22VAC40-665-460. Evening and overnight care.

A. Caregivers shall remain awake until all children are asleep and shall sleep on the same floor level as the children in care.

B. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

C. For overnight, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

D. In addition to requirements in 22VAC40-665-350 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. When children are six years of age or older, boys and girls shall have separate sleeping areas.

F. For vendors providing overnight care, an operational tub or shower with heated and cold water shall be provided.

G. When bath towels are used, they shall be assigned for individual use.

H. Quiet activities shall be available immediately before bedtime.

FORMS (22VAC40-665)

[Commonwealth of Virginia Certificate of Religious Exemption, Form CRE-1 \(rev. 1992\)](#)

[Commonwealth of Virginia School Entrance Health Form, MCH 213G \(rev. 3/2014\)](#)

DOCUMENTS INCORPORATED BY REFERENCE (22VAC40-665)

[Child Care and Development Fund \(CCDF\) Plan for Virginia FFY 2016-2018, effective October 1, 2015](#)