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Date: Mon, Jul 1, 2019 at 3:38 PM
Subject: Effective July 1, 2019 Changes to Code of Virginia § 63.2-1715 "Exemptions from Licensure
To: <DSS_LICENSING@listserv.cov.virginia.gov>

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COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

DATE: July 1, 2019

TO: Child Day Programs

FROM: Tara Ragland, Director
Division of Licensing Programs

SUBJECT: Senate Bill (SB) 539 Changes to Code of Virginia § 63.2-1715
“Exemptions from licensure.”

CONTACT: Marty Jo Quade, Operations Consultant, (804) 726-7143,
Marty.Quade@dss.virginia.gov

This memo informs you of the SB 539 changes to Code of Virginia “Exemptions from licensure.” These changes only apply to child day programs that are exempt from licensure as outlined in this Code reference.

If you are not an exempt child day program, this memo is provided for informational purposes only. Your assistance with getting the word out regarding the SB 539 changes to the Code is greatly appreciated. If you know of any exempt child day programs that are referenced in this section of Code, please share this memo with them. You may visit the “Exempt Child Day Program Filing” webpage for more information at <https://www.dss.virginia.gov/facility/exemptions.cgi>

WHEN DO THE SB 539 CHANGES GO INTO EFFECT?

SB 539 was passed in 2018 and had a delayed effective date. The changes to § 63.2-1715 are effective *July 1, 2019*.

WHAT ARE THE SB 539 CHANGES TO THE CODE OF VIRGINIA § 63.2-1715?

Currently, § 63.2-1715 A lists 15 child day programs that are exempt from licensure.

A *child day program* is defined as a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to

assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a twenty-four hour period.

Effective July 1, 2019, SB 539 legislative changes in § 63.2-1715 clarify who should be considered a child day program and redefines the list of programs that are exempt from licensure. § 63.2-1715 A lists the eight programs that are not child day programs and are not required to be licensed. § 63.2-1715 B lists the seven programs that are considered a child day program but are exempt from licensure.

[HB 2756](#) adds a new, eighth license exempt program type to § 63.2-1715 B of the Code of Virginia. The new exemption is for any child day program in which child-minding services are offered on the premises of a business to no more than four children under the age of 13 at any given time and for no more than eight hours per day, provided that the parent or guardian of every child receiving care is an employee of the business who is on the premises of the business and can resume responsibility for the child's supervision within 30 minutes upon request.

Table 1.

<p style="text-align: center;">§ 63.2-1715 A (effective July 1, 2019) The programs below are no longer identified as “child day programs” and are not subject to licensure</p>	<p style="text-align: center;"><i>Child Day Program</i></p>	<p style="text-align: center;"><i>Subject to Licensure</i></p>
Single Focus Instructional Program	no	no
Instructional or Recreational Program	no	no
Private School Instructional Program for School-Age Children/Single Interest School-Sponsored Extracurricular Activities Program	no	no
Public School Instructional Program for Preschool-Age Children	no	no
Early Intervention Program Part C IDEA	no	no
Competitive Sports Practice or Competition	no	no
Religious Instruction Program	no	no
Summer Instructional or Athletic Program	no	no

Table 2.

<p style="text-align: center;">§ 63.2-1715 B (effective July 1, 2019) The programs below are identified as “child day programs” and are exempt from licensure</p>	<p style="text-align: center;"><i>Child Day Program</i></p>	<p style="text-align: center;"><i>Exempt From Licensure</i></p>
Religiously Exempt Child Day Center <i>*please see next section</i>	yes	yes
“Come and Go” Program	yes	yes
Short Term Program	yes	yes
Child Minding Services (Commercial/Recreational)	yes	yes
Certified Preschool or Nursery School <i>*please see next section</i>	yes	yes
Local Government Recreational Program	yes	yes
Local School Division Program	yes	yes
Child Minding Services (Business)	yes	yes

WHAT ARE THE NEW REQUIREMENTS IN § 63.2-1715 FOR EXEMPT CHILD DAY PROGRAMS? *

**Does not apply to religiously exempt child day programs; refer to section § 63.2-1716 of the Code of Virginia for program-specific requirements*

**Does not apply to certified preschool or nursery school programs; refer to section § 63.2-1717 of the Code of Virginia for program-specific requirements*

Exempt Child Day Programs shall:

- File with the Commissioner annually and prior to beginning operation of a child day program a statement indicating the intent to operate a child day program, identifying the specific provision of this section relied upon for exemption from licensure, and certifying that the child day program has disclosed in writing to the parents or guardians of the children in the program the fact that it is exempt from licensure
- Report to the Commissioner all incidents involving serious physical injury to or death of children attending the child day program. Reports of serious physical injuries, which shall include any physical injuries that require an emergency referral to an offsite health care professional or treatment in a hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the death occurred
- Post in a visible location on the premises notice that the child day program is operating as a program exempt from licensure with basic health and safety requirements but has no direct oversight by the Department.

THE REQUIREMENTS BELOW DO NOT APPLY TO**

***Religiously exempt child day programs; refer to section § 63.2-1716 of the Code of Virginia for program-specific requirements*

***Certified preschool or nursery school programs; refer to section § 63.2-1717 of the Code of Virginia for program-specific requirements*

***Exemption § 63.2-1716 B 6 A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by the local government offering the program.*

*** Exemption § 63.2-1716 B 7 A program offered by a local school division, operated for no more than four hours per day, staffed by local school division employees, and attended by children who are at least four years of age and are enrolled in public school or a preschool program within such school division. Such programs shall be subject to safety and supervisory standards established by the local school division offering the program.*

Exempt Child Day Programs shall:

- Have a person trained and certified in first aid and cardiopulmonary resuscitation present at the child day program whenever children are present or at any other location in which children attending the child day program are present
- Maintain daily attendance records that document the arrival and departure of all children
- Have an emergency preparedness plan in place
- Comply with all applicable laws and regulations governing transportation of children
- Comply with all safe sleep guidelines recommended by the American Academy of Pediatrics

Table 3.

<i>Effective July 1, 2019 Exempt Child Day Programs affected by 63.2-1715 and their regulatory requirements</i>	<i>Filing</i>	<i>Serious Injury/Death Reporting</i>	<i>Posting</i>	<i>First Aid/CPR Certified Staff</i>	<i>Daily Attendance Record</i>	<i>Emergency Preparedness Plan</i>	<i>Transportation Laws/Regs</i>	<i>Safe Sleep Guidelines</i>
"Come and Go" Program	√	√	√	√	√	√	√	√
Short Term Program	√	√	√	√	√	√	√	√
Child Minding Services (Commercial/Recreational)	√	√	√	√	√	√	√	√
Local Government Recreational Program	√	√	√					
Local School Division Program	√	√	√					
Child Minding Services (Business)	√	√	√	√	√	√	√	√

WHEN VDSS-LICENSING RECEIVES A COMPLAINT AGAINST AN EXEMPT CHILD DAY PROGRAM *

**These procedures do not apply to a religiously exempt child day center program or certified preschool or nursery school programs*

- VDSS will inspect exempt child day programs identified in § 63.2-1715 B upon receipt of a complaint alleging noncompliance with any of the requirements contained in Code of Virginia § 63.2-1715.
- During the inspection of the complaint, VDSS will also conduct a monitoring inspection to check the program's compliance with all the requirements in § 63.2-1715.

HOW ARE RELIGIOUSLY EXEMPT CHILD DAY CENTERS AND CERTIFIED PRESCHOOLS/NURSERY SCHOOLS AFFECTED BY SB 539?

Both religiously exempt child day centers (RECDC) and certified preschool and nursery school programs (CNS) are still identified in Code of Virginia § 63.2-1715 as being child day programs that are exempt from licensure.

Religiously exempt child day centers shall continue to follow their program-specific requirements outlined in the Code of Virginia § 63.2-1716.

SB 539 also makes changes to § 63.2-1716, the section of the Code of Virginia for religiously exempt child day centers. Please refer to [§ 63.2-1716](#) on the *Legislative Information System* (LIS) website to view this section of the Code and its new requirements.

Certified preschool and nursery school program requirements have not changed, and they shall continue to adhere to Code of Virginia [§ 63.2-1717](#) that contains requirements specific to their programs

EXEMPTION INITIAL FILING PROCESS

- Effective July 1, 2019, Code of Virginia § 63.2-1715 C 1 requires exempt child day programs to file with the VDSS Commissioner annually and prior to beginning operation of a program a statement indicating:
 - Their intent to operate,
 - The exemption from § 63.2-1715 B that the program claims
 - Certifying that the program has disclosed in writing to the parents or guardians of the children in the program that it is exempt from licensure.
- The Virginia Department of Social Services (VDSS) highly recommends that the program submits a “Statement of Exemption” online through the VDSS webpage at <http://www.dss.virginia.gov/facility/exemptions.cgi> . Exempt programs may choose to print and submit a paper version of this statement as a filing option. A paper version of the “Statement of Exemption” can be requested by emailing exemptions@dss.virginia.gov Programs may also file by sending an email or letter to the VDSS Home Office that addresses all the required components outlined in § 63.2-1715 C 1. Hard copies of the “Statement of Exemption” must be mailed to VDSS/Division of Licensing Programs, ATTN: Exemptions, 801 E. Main Street, 9th Floor, Richmond, VA 23219.
- If there are any missing or confusing fields of information in a filed “Statement of Exemption,” Home Office staff will contact the program for additional information.
- Home Office staff will email/mail out the “Notice of Receipt of Filing for Exempt Program” to the program after the “Statement of Exemption” has been filed successfully.

EXEMPTION ANNUAL FILING PROCESS

- Home Office staff will mail/email a “Notice of Annual Filing for Exempt Program” to a program 30 days prior to the program’s filing anniversary date.
- If the program fails to submit a “Statement of Exemption” prior to its filing anniversary date, Home Office staff mails/emails a “Notice of Expiration of Statement of Exemption” to the program.
- VDSS highly recommends that the program submits a “Statement of Exemption” online through the VDSS webpage at <http://www.dss.virginia.gov/facility/exemptions.cgi> . Exempt programs may choose to print and submit a paper version of this statement as a filing option. A paper version of the “Statement of Exemption” can be requested by emailing exemptions@dss.virginia.gov Programs may also file by sending an email or letter to VDSS Home Office that addresses all the required components outlined in § 63.2-1715 C 1. Hard copies of the “Statement of Exemption” must be mailed to VDSS/Division of Licensing Programs, ATTN: Exemptions, 801 E. Main Street, 9th Floor, Richmond, VA 23219.
- If there are any missing or confusing fields of information, Home Office staff will contact the program for additional information.
- Home Office staff will email/mail out the “Notice of Receipt of Filing for Exempt Program” to the program after the “Statement of Exemption” has been filed successfully.

REPORTING SERIOUS INJURIES AND DEATH

A child day program that is required by § 63.2-1715 C 2 to report a serious physical injury annually and a death no later than one business day after the death occurred may report online at <http://www.dss.virginia.gov/facility/iromt.cgi>

VDSS highly recommends that the program submit the report online on this VDSS webpage.

Once on this webpage, click on the green box that applies to the program, “Subsidy Programs” or “Non Subsidy Programs” to begin the online report. On the report, select “Exempt Child Day Program” as the “Type of Provider.”

The exempt program may also choose to submit a report of a serious physical injury or death by phone call, email, and letter.

VDSS-LICENSING HOME OFFICE POINT OF CONTACT

Please reach out to Home Office Operations Consultant, Marty Jo Quade, with any questions. She can be contacted at 804-726-7143 and Marty.Quade@dss.virginia.gov

The general email address for exemptions is exemptions@dss.virginia.gov

§ 63.2-1715. Exemptions from licensure

A. The following programs are not child day programs and shall not be required to be licensed:

1. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period.
2. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation.
3. Instructional programs offered by private schools that serve school-age children and that satisfy compulsory attendance laws or provide services under the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.
4. Instructional programs offered by public schools that serve preschool-age children, satisfy compulsory attendance laws, or provide services under the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.
5. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per week.
6. Practice or competition in organized competitive sports leagues.
7. Programs of religious instruction, such as Sunday schools, vacation Bible schools, Bar Mitzvah or Bat Mitzvah classes, and nurseries offered by religious institutions and provided for the duration of specified religious services or related activities to allow parents or guardians or their designees who are on site to attend such religious services and activities.
8. A program of instructional or athletic experience operated during the summer months by, and as an extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-19 and administered by the Virginia Council for Private Education.

B. The following child day programs shall not be required to be licensed:

1. A child day program or child day center that has obtained an exemption pursuant to § 63.2-

1716.

2. A program where, by written policy given to and signed by a parent or guardian, school-age children are free to enter and leave the premises without permission. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection, and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.

3. A program that operates no more than a total of 20 program days in the course of a calendar year, provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.

4. Child-minding services that are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) can be contacted and can resume responsibility for the child's supervision within 30 minutes and (ii) is receiving or providing services or participating in activities offered by the establishment.

5. A certified preschool or nursery school program operated by a private school that is accredited by an accrediting organization recognized by the State Board of Education pursuant to § 22.1-19 and complies with the provisions of § 63.2-1717.

6. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by the local government offering the program.

7. A program offered by a local school division, operated for no more than four hours per day, staffed by local school division employees, and attended by children who are at least four years of age and are enrolled in public school or a preschool program within such school division. Such programs shall be subject to safety and supervisory standards established by the local school division offering the program.

8. Child-minding services offered by a business on the premises of the business to no more than four children under the age of 13 at any given time and for no more than eight hours per day, provided that the parent or guardian of every child receiving care is an employee of the business who is on the premises of the business and can resume responsibility for the child's supervision within 30 minutes upon request.

C. Child day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1 or 5, shall:

1. File with the Commissioner annually and prior to beginning operation of a child day program a statement indicating the intent to operate a child day program, identifying the specific provision of this section relied upon for exemption from licensure, and certifying that the child day program has disclosed in writing to the parents or guardians of the children in the program the fact that it is exempt from licensure;

2. Report to the Commissioner all incidents involving serious physical injury to or death of children attending the child day program. Reports of serious physical injuries, which shall include any physical injuries that require an emergency referral to an offsite health care professional or treatment in a hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the death occurred; and

3. Post in a visible location on the premises notice that the child day program is operating as a program exempt from licensure with basic health and safety requirements but has no direct oversight by the Department.

D. Child day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1, 5, 6, or 7 shall:

1. Have a person trained and certified in first aid and cardiopulmonary resuscitation present at the child day program whenever children are present or at any other location in which children attending the child day program are present;
2. Maintain daily attendance records that document the arrival and departure of all children;
3. Have an emergency preparedness plan in place;
4. Comply with all applicable laws and regulations governing transportation of children; and
5. Comply with all safe sleep guidelines recommended by the American Academy of Pediatrics.

E. The Commissioner shall inspect child day programs that are exempt from licensure pursuant to subsection B to determine compliance with the provisions of this section only upon receipt of a complaint, except as otherwise provided by law.

F. Family day homes that are members of a licensed family day system shall not be required to obtain a license from the Commissioner.

G. No person to whom parental and legal custodial powers have been delegated pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20 shall be required to obtain a license to operate an independent foster home or approval as a foster parent from the Commissioner.

H. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed.

1993, cc. 730, 742, § 63.1-196.001; 1994, cc. 837, 940; 1999, c. 454; 2000, cc. 61, 1058; 2002, c. 747; 2003, c. 467; 2006, c. 725; 2011, c. 363; 2014, c. 130; 2016, c. 442; 2017, c. 748; 2018, cc. 189, 244, 810; 2019, cc. 297, 667.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.