ACTION ITEM # 0 7

COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

Office of the Commissioner

S. Duke Storen
COMMISSIONER

August 21, 2019

MEMORANDUM

TO: Members, State Board of Social Services

FROM: S. Duke Storen

REGULATION: 22VAC40-151, Standards for Licensed Children's Residential Facilities

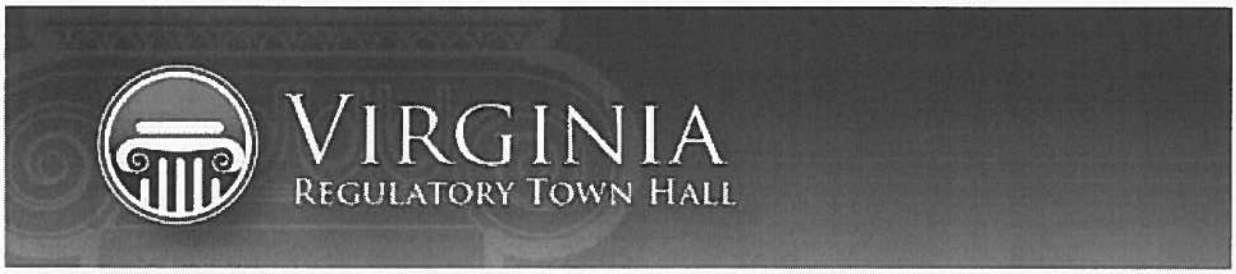
ACTION: Notice of Intended Regulatory Action

This regulatory action will amend 22VAC40-151, Standards for Licensed Children's Residential Facilities. Amendments are necessary to align the regulation with the Code of Virginia and make other changes as may be necessary.

I request that you approve the Notice of Intended Regulatory action for publication in the *Virginia Register*, subject to approval under Executive Order Number 14 (2018).

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

SDS:kc
Attachment



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-151
Regulation title(s)	Standards for Licensed Children's Residential Facilities
Action title	Amend Standards for Licensed Children's Residential Facilities
Date this document prepared	6-26-19

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations.*

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

Standards for Licensed Children's Residential Facilities, 22VAC40-151, provide criteria for the public and the Department of Social Services to evaluate the safety and stability of care that children and youth receive in licensed children's residential facilities (CRF). These regulations provide rules for current practices in children's residential facilities that ensure the well-being of children and youth residing in a CRF.

Proposed amendments in this action are intended to bring the regulation into alignment with the federal Foster Connections to Success and Increasing Adoptions Act of 2008, Preventing Sex Trafficking and Strengthening Families Act of 2014, and the Family First Prevention Services Act of 2018. This action will align the regulation with state and federal law, adding definitions, clarifying language, and making technical edits and any other changes deemed necessary after public comment and review.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document. .

CRF Children's Residential Facilities
VDSS Virginia Department of Social Services

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Federal mandates and changes to the Code of Virginia (Code) precipitate this regulatory action.

This action will align the regulation with federal requirements in Preventing Sex Trafficking and Strengthening Families Act of 2014. This Act mandates the addition of the reasonable and prudent parent standard defined in 42 U.S.C. § 675(10)(A) and policies and procedures to support normalcy for children in foster care, including children and youth in foster care residing in a CRF. Code changes in 2016 resulting from this Act in § 63.2-904 mandate VDSS to establish reasonable and prudent parenting standards and normalcy for children in foster care.

This action will align the regulation with § 63.2-1737 of the Code which requires training on shaken baby syndrome and its effects for staff in children's residential facilities.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The State Board of Social Services has the legal authority to adopt regulations and requirements for licensed children's residential facilities in accordance with §§ 63.2-217 and 63.2-1734 of the Code. The Code mandates promulgation of regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed which shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies. This regulatory action will provide direction regarding the provision of these services.

Purpose

Please describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

This regulatory action is essential to protect the health, safety, and welfare of the children and families involved with licensed children's residential facilities by aligning regulation requirements with Virginia Code, federal requirements and applicable practices.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory action will incorporate technical information, language, and processes necessary to ensure consistency with state and federal law. Substantive amendments include:

- Establish standards and training for normalcy and reasonable and prudent parenting for children in foster care;
- Update annual training requirements;
- Add training requirements that cover topics such as shaken baby syndrome, behavioral interventions for infants and toddlers residing with their parents;
- Update relief staff requirements;
- Add requirement to review and update behavior support plan;
- Clarify requirements about fire inspections;
- Update and clarify responsibilities to ensure educational needs of children are met;
- Add requirement that policies on religious participation be provided to children and individuals or agencies prior to admission to the facility;
- Add definitions, language, and technical edits necessary for clarification of existing requirements.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no other alternatives to the proposed regulatory action, as the action is necessary to make the regulation consistent with state and federal law.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)),

and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation 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. Please include one of the following choices: 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 regulation.

The Virginia Department of Social Services is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. Also, the agency is 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 written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at https://www.townhall.virginia.gov. Written comments must include the name and address of the commenter. Comments may also be submitted by mail, email or fax to **Tammy Trestrail, 801 East Main Street, 9th Floor, Richmond, Virginia 23219, 804-726-7382 and email tammy.trestrail@dss.virginia.gov**. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A panel will be appointed and if you are interested in serving on this panel, please contact Tammy Trestrail at the above contact information.