



VIRGINIA BOARD OF EDUCATION

AGENDA ITEM

Agenda Item: M

Date: July 21, 2022

Title: First Review of Comprehensive Revisions to the General Procedures and Information for Licensure, and Background Check Regulations for Child Day Programs and Family Day Systems (Proposed Stage)

Presenter: Jenna Conway, Deputy Superintendent, Early Childhood Care and Education

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Purpose of Presentation:

Action required by state or federal law or regulation.

Executive Summary:

Chapter [860](#) and [861](#) of the Acts of Assembly (2020) transferred oversight of child care programs and regulations to the Virginia Board of Education (Board). Action taken by the Board on April 21, 2021 transferred all child care regulations from the Board of Social Services to the Board of Education. The Board approved the Notice of Intended Regulatory Action (NOIRA) for the General Procedures and Information for Licensure (“General Procedures”; [8VAC20-820](#)) regulations and Background Checks for Child Day Programs and Family Day Systems (“Background Checks”; [8VAC20-770](#)) regulation at the November 18, 2021, meeting as a comprehensive review of the regulations were necessary to implement the programs in accordance with the Act, and to incorporate substantive policy changes to align with the Code of Virginia and revised program policy and procedures. The NOIRA’s were submitted for executive branch review, pursuant to the requirements of the Administrative Process Act. The 30-day public comment period on these regulatory actions ended on March 2, 2022.

The Virginia Department of Education (VDOE) staff began an initial review of the General Procedures and Background Checks regulations when the Board assumed the authority for these regulations in July 2021. VDOE staff created an internal workgroup to comprehensively review the regulations. The internal workgroup determined that a single regulatory chapter that contained the components of the General Procedures, the Background Checks, and the Fee Requirements for Processing Applications (“Fee Requirements”; [8VAC20-830](#)) regulations was the most prudent and efficient way to proceed. Therefore, a single replacement chapter was submitted to the Early Childhood Advisory Committee (ECAC) for their review and feedback on

May 19, 2022, and June 23, 2022. At the May meeting, ECAC reviewed a draft that contained the combined General Procedures and Fee Requirements. The draft submitted to ECAC for the June meeting integrated the proposed changes to Background Checks. Although the full draft was submitted to ECAC at the June 23, 2022, meeting, the committee did not have a quorum present to make a formal endorsement to the Board.

The draft before the Board eliminates informational and redundant language, defers to statutory structures in order to reduce conflicts and the need to update regulatory text, and streamlines processes for administrative convenience that will ultimately benefit the public. In the process, the draft has achieved a significant reduction and improved clarity without reducing protections for either children or child care providers. Major areas of revision include the specification of qualifications of licensure, standards of conduct to reduce gaps in enforcement, and a reduction of regulations regarding enforcement proceedings.

Action Requested:

Action will be requested at a future meeting. Specify anticipated date below:
September 15, 2022

Superintendent's Recommendation

The Superintendent of Public Instruction recommends that the Board of Education receive for first review the proposed comprehensive revisions to the General Procedures and Information for Licensure, and Background Check Regulations for Child Day Programs and Family Day Systems.

Previous Review or Action:

Date: November 18, 2021
Action: Final Review (NOIRA)

Background Information and Statutory Authority:

[Section 22.1-16 of the Code of Virginia](#) provides the Board with its general regulatory authority. It states:

The Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title.

[Section 22.1-289.03](#) requires the Board to establish a statewide unified public-private system for early childhood education and care in the Commonwealth:

A. The Board shall establish a statewide unified public-private system for early childhood care and education in the Commonwealth to ensure that every child has the opportunity to enter kindergarten healthy and ready to learn. Such system shall be administered by the Board, the Superintendent, and the Department and shall be formed, implemented,

and sustained through a structure that engages and leverages both state-level authority and regional-level public-private partnership assets.

B. It is the intent of the General Assembly that the system established pursuant to subsection A shall (i) provide families with coordinated access for referral to early childhood education programs, (ii) provide families with easy-to-understand information about the quality of publicly funded early childhood care and education programs, (iii) establish expectations for the continuous improvement of early childhood care and education programs, and (iv) establish shared expectations for early childhood care and education programs among the Department of Education, the Department of Social Services, local school divisions, and state and regional stakeholders.

C. The system established pursuant to subsection A shall consist of a combination of programs offered through (i) the Virginia Preschool Initiative, pursuant to § 22.1-289.09, or any other school-based early childhood care and education program; (ii) licensed programs, pursuant to Article 3 (§ 22.1-289.010 et seq.); and (iii) unlicensed programs, pursuant to Article 4 (§ 22.1-289.030 et seq.).

The Board’s regulatory authority over child day programs and family day systems is found in [§22.1-289.046 of the Code](#), which states in part that “[t]he Board shall adopt regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed under this chapter, which shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of the children under the control of such persons or agencies.”

Timetable for Further Review/Action:

It is anticipated that this item will come before the Board for final review at the September 15, 2022, meeting. Following Board approval, the proposed stage of this regulatory action will be submitted for executive branch review pursuant to the requirements of the Administrative Process Act.

When this action is in the final stage of the regulatory process, VDOE staff will bring to the Board a fast-track regulatory action to repeal the *Fee Requirements*.

Impact on Fiscal and Human Resources:

Any impact will be absorbed by the Office of Child Care Health and Safety’s (OCCHS) current processes and staff. The OCCHS is fully funded by federal funds.

State Board of Education

Adopt New Standards for the General Procedures and Information for Licensure

Chapter 770

Background checks for child day programs and family day systems (REPEALED)

8VAC20-770-10. Defining words and phrases. (Repealed.)

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

"Agent" means a person who is empowered to act on behalf of the applicant that is an association, partnership, limited liability company, business trust, public agency, or corporation in matters relating to a child day program or family day system.

"Applicant" means the person or persons applying for approval as a (i) licensed family day home; (ii) licensed family day system; (iii) voluntarily registered family day home; (iv) family day home approved by a licensed family day system; (v) religious exempt child day center or (vi) licensed child day center. In the case of a sole proprietorship, the applicant is the individual owner. In the case of a partnership, the applicants are all the partners. If the applicant is a corporation, association, or business trust, the applicants are officers. If the applicant is a limited liability company, the applicants are the members or managers. If the applicant is a public agency, the applicant is the person responsible for the overall operation of the public agency.

"Approved" means having obtained the status of approval through the process required in Minimum Standards for Licensed Family Day Systems (8VAC20-810). Approved facilities are family day homes approved by licensed family day systems.

"Background checks" means a sworn statement or affirmation, a criminal history record report, and a child protective services central registry check.

"Barrier crime" means a conviction identified at § 22.1-289.034 in the Code of Virginia. The convictions, and Code of Virginia references, are: a felony violation of a protective order as set out in § 16.1-253.2, murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.), malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A or B of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.), robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-59, felony stalking as set out in § 18.2-60.3, a felony violation of a protective order as set out in § 18.2-60.4, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive-by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, failure to secure medical attention for an injured child as set out in § 18.2-314, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense

~~under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state.~~

~~"Board" means State Board of Education.~~

~~"Central registry" means the record of founded complaints of child abuse and neglect maintained by the Department of Social Services.~~

~~"Central registry finding" means the record of founded complaints of child abuse and neglect for an individual.~~

~~"Central Criminal Records Exchange" or "CCRE" means the information system containing conviction data of crimes committed in Virginia. The system is maintained by the Department of State Police.~~

~~"Child day program" means 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 24-hour period.~~

~~"Contract agency" means an entity with which the facility or a parent has an agreement to provide services to a child or children while attending the facility.~~

~~"Contract employee" means a person with whom the facility or a parent has an agreement to provide services to a child or children while attending the facility.~~

~~"Contracting organization" means an agency that has been designated by the Department of Education to administer the voluntary registration program for family day homes.~~

~~"Criminal history record check" means the process the Department of State Police uses to generate a criminal record report on a person. The check may be a state check generated solely through the Central Criminal Records Exchange or a check forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information.~~

~~"Criminal history record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The report identifies convictions within the Commonwealth.~~

~~"Department" means the Department of Education.~~

~~"Department representative" means an employee of the department who carries out regulatory duties or an agency acting as an authorized agent of the department carrying out approval functions. Licensed family day systems have authority to approve family day homes.~~

~~"Disqualifying background" means having an offense, as defined in § 22.1-289.032 of the Code of Virginia. For the purpose of this chapter, having been the subject of a founded abuse or neglect complaint as described in "offense" includes records that have been purged from the child abuse and neglect central registry. However, no person is considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by the hearing officer after the administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No person is considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision.~~

~~"Employee" means a person hired by a facility or with whom the facility has an employment agreement. A provider assistant in a family day home is considered an employee in this chapter.~~

~~"Facility" means (i) a licensed family day home; (ii) a licensed family day system; (iii) a voluntarily registered family day home; (iv) a family day home approved by a licensed family day~~

system; (v) a licensed child day center; (vi) a religious exempt child day center; and (vii) an applicant seeking a waiver in order to establish one of the above listed entities.

"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 under the age of 13 years, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home must disclose to the parents or guardians of children in his care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, must be licensed. No family day home shall care for more than four children under 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. However, a family day home where the children in care are all related to the provider by blood or marriage is not required to be licensed.

"Family day system" means any person that approves family day homes as members of its system; that refers children to available family day homes in that system; and that, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Good character and reputation" means that the person (i) maintains business, professional, family, and community relationships that are characterized by honesty, fairness, truthfulness and dependability and (ii) has a history or pattern of behavior that demonstrates that the person is suitable and able to care for, guide, supervise, and protect children.

"Involved in the day to day operations" means:

1. In a supervisory or management position, making daily decisions regarding the operation of the facility;
2. Counted by the facility for purposes of staff to children ratios;
3. Employed by a licensed family day system as a home visitor; or
4. Having access to child related and client related records or to facility personnel records.

"Licensed" means having met the requirements of and obtained licensure as a licensed family day system, licensed child day program, or licensed family day home.

"Living in" means to reside in a place for an extended or permanent period of time.

"Local agency" means local department of social services.

"May" means has permission.

"Must" means the action is a requirement.

"Must not" means the action is prohibited.

"National criminal background check" means criminal history record information from the Federal Bureau of Investigation.

"Offense" means a (i) conviction of a barrier crime, (ii) conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction, (iii) founded complaint of child abuse or neglect within or outside the Commonwealth, or (iv) a conviction of an offense set forth in § 9.1-902 of the Code of Virginia or a finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901 of the Code of Virginia, or any similar registry in any other state. Convictions include prior

~~adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.~~

~~"Other felony" means conviction for any felony in the last five years that is not a barrier crime felony.~~

~~"Parent volunteer" means someone supervising, without pay, a group of children that includes the parent volunteer's own child in a program that operates no more than four hours per day, provided that the parent volunteer works under the direct supervision of a person who has received a clearance pursuant to § 22.1-289.035 or 22.1-289.039 of the Code of Virginia.~~

~~"Registered" means having obtained the status of registration through the process required in Voluntary Registration of Family Day Homes – Requirements for Providers (8VAC20-850).~~

~~"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes and obtained a certificate of registration from the Superintendent.~~

~~"Religious exempt center" means an unlicensed child day center operated or conducted under the auspices of a religious institution that has filed with the Superintendent a satisfactory annual statement of intent to operate a child day center and other information as specified in § 22.1-289.031 of the Code of Virginia and has a letter of exemption from the Superintendent.~~

~~"Search of central registry" means the process the Virginia Department of Social Services' Child Protective Services Unit uses to generate a central registry report on a person.~~

~~"Superintendent" means Superintendent of Public Instruction or his designee.~~

~~"Sworn statement or affirmation" means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or an equivalent offense outside the Commonwealth or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Additionally for family day homes, the provider affirms if he, or any person known to the provider who resides in the home, has a sex offense conviction or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Any person making a false statement regarding any such offense shall be guilty of a Class 1 misdemeanor pursuant to § 22.1-289.035 of the Code of Virginia.~~

~~"8VAC" means Title 8 of the Virginia Administrative Code. This is the education title.~~

~~"Visit" means a stay or sojourn as a guest for no longer than 30 calendar days.~~

~~"Volunteer" means a person who provides services without pay and who is alone with a child or children in performance of his duties.~~

8VAC20-770-20. Describing background checks. (Repealed.)

~~A. The background checks covered by this chapter are:~~

- ~~1. Sworn statement or affirmation;~~
- ~~2. Criminal history record check;~~
- ~~3. National criminal background check; and~~
- ~~4. Central registry search.~~

~~B. The provisions for background checks are in §§ 22.1-289.015 and 22.1-289.034 through 22.1-289.041 of the Code of Virginia.~~

~~C. Provisions for enforcement of background check regulations and other licensing, registration, and approval standards are in Chapter 14.1 (§ 22.1-289.010 et seq.) of Title 22.1 of the Code of Virginia.~~

~~D. The sworn statement or affirmation is a written document in which a person must disclose any criminal conviction and any pending criminal charges within or outside Virginia.~~

1. For the purposes of this chapter, conviction includes any juvenile conviction or determination of delinquency if the offense involved would be a felony if committed by an adult within or outside Virginia.
2. The person must also disclose any instance of being the subject of a founded complaint of child abuse or neglect within or outside Virginia.
3. The person must use either the model form prepared by the department or use a self-created form that includes all of the information that appears on the model form.

The department provides the model sworn statement or affirmation form on its website. Requesters are permitted to submit copies of the form. The person who signs the sworn statement or affirmation affirms the truth of the statement.

E. The criminal history record check is the process of the Department of State Police to generate a criminal record report on a person. The report must be either the criminal record clearance or the criminal history record. The criminal record clearance shows whether the person is guilty of:

1. A barrier crime, as defined in § 22.1-289.034 of the Code of Virginia; and/or
2. Any other felony not included in the definition of barrier crime unless five years have elapsed since the conviction.

The criminal history record report shows all convictions.

F. The person must use the form and process of the Central Criminal Records Exchange (CCRE) of the Department of State Police for this check. The Department of State Police provides original criminal history record check forms to facilities upon receipt of request. The Department of State Police also provides website access to this form for facilities that are noncriminal justice inquiry interface users. The CCRE verifies criminal history record reports.

G. The national criminal background check is the process of obtaining criminal history record information from the Federal Bureau of Investigation through the Central Criminal Records Exchange.

1. The person must submit to fingerprinting and provide personal descriptive information.
2. The person must use the process of the Central Criminal Records Exchange to request and receive a national criminal background check.

H. The search of the central registry is a check to determine if the person has ever been the subject of a founded complaint of child abuse or neglect in Virginia.

I. The person must use the form and process of the Department of Social Services' Office of Background Investigations (OBI). The Department of Social Services provides the central registry request form on its website. Requesters are permitted to submit copies of this form. OBI verifies child protective services central registry check findings.

The department and registering and approval agencies provide copies of all forms in application packets.

8VAC20-770-30. Identifying the facilities that are not covered by this chapter. (Repealed.)

A. Certified preschools or nursery schools operated by accredited private schools that are accredited in accordance with § 22.1-289.032 of the Code of Virginia; and family day homes that are not required to be licensed, registered, or approved are not covered by this chapter.

B. Background check requirements for certified preschool or nursery school programs operated by accredited private schools are at § 22.1-289.032 of the Code of Virginia.

C. Background check requirements for child day centers or family day homes that are not licensed, registered, approved, or exempt from licensure and receive federal, state or local child care funds are at § 22.1-289.040 of the Code of Virginia.

8VAC20-770-40. Identifying who is covered by this chapter. (Repealed.)

A. This chapter applies to:

1. Licensed family day homes;
2. Licensed family day systems;
3. Family day homes approved by family day systems;
4. Voluntarily registered family day homes;
5. Religious exempt child day centers; and
6. Licensed child day centers.

B. Except as provided in 8VAC20-770-50 A, no person with a disqualifying background who has not been granted a waiver according to 8VAC20-770-90 may operate or volunteer or work at a facility governed by this chapter.

C. Background checks are required at the time of initial application.

1. These background checks are required at the time of initial application for licensure, registration, or approval:

Who	What
a. Any applicant	Sworn statement or affirmation of central registry, and criminal record check
b. Any agent at the time of application who is or will be involved in the day-to-day operations of the child day program or who is or will be alone with, in control of, or supervising one or more of the children	Same
c. Any other adult living in the home of an applicant for licensure or registration as a family day home, or any existing employee or volunteer	Same
d. Operator of family day home requesting approval by family day system	Sworn statement or affirmation of central registry, and criminal record check
e. Any other adult residing in the family day home requesting approval and any employee or volunteer of a family day home	Same

2. These background checks are required at the time of initial application for religious exemption status:

Who	What
Any person who will be expected to be alone with one or more children enrolled in a religious exempt child day center except a parent-volunteer, as defined in this chapter, or a parent or guardian who may be left alone with his or her own child	Documentary evidence, affirmation, search of criminal history record

D. Background checks are required after the initial licensure, registration, approval, or receipt of religious exemption status.

1. These background checks are required after initial licensure, registration, or approval:

Who	What	When
a. New person designated as applicant, licensee, registrant, family day home operator approved by a family day system, or agent who is or	Sworn statement or affirmation	Whenever operator,

will be involved in the day-to-day operations of the facility or who is or will be alone with, in control of, or supervising one or more of the children	Search of central registry and criminal history record check	Before the
b. Any employee of a licensed, registered, and approved facility who is involved in the day-to-day operations or who is alone with, in control of, or supervising one or more children	Sworn statement or affirmation	Prior to fi
	Search of central registry and criminal history record check	Before 30
c. Any applicant, licensee, family day home operator approved by a family day system, agent, employee, volunteer, and person living in the family day home who is required to have background checks	Sworn statement or affirmation, search of central registry and criminal history record check	Before the or affirma recent cri
d. Voluntary registration provider, provider assistant, substitute provider, if any, and any adult residing in the home	Sworn statement or affirmation, search of central registry and criminal history record check	90 days b current ce must be r 45 days b registratio
e. Volunteer at licensed, registered, or approved facility who will be alone with any child in the performance of duties, excluding a parent-volunteer for children attending a licensed, registered, or approved program	Sworn statement or affirmation	Prior to fi
	Search of central registry and criminal history record check	Before 30

~~2. These background checks are required after receipt of the initial religious exemption status letter.~~

~~Annually, prior to the expiration date in the current exemption letter, the religious exempt child day center must file with the department documentary evidence that the center is in compliance with the following:~~

Who	What
Prospective employee, volunteer, or any other person who is expected to be alone with one or more children enrolled in the religious exempt child day center except a parent-volunteer, or a parent or guardian who may be left alone with his or her own child	Sworn statement Search of central criminal history re requested by the

~~3. Background checks are required for independent contract employees and employees hired by a contract agency.~~

~~If a licensed, registered, or approved facility uses independent contract employees or contract employees hired by a contract agency who will be involved in the day to day operations of the facility or who will be alone with, in control of, or supervising one or more children, the facility must:~~

- ~~a. Obtain background checks according to the above requirements for employees, or view the original required background checks maintained by the contract employee or contract agency;~~

- ~~b. Accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at facilities;~~
- ~~c. Make copies, and keep them at the licensed, registered, or approved facilities. Staff must write on the copies of the criminal record reports that they are photocopies of originals that facility staff verified; and~~
- ~~d. Provide a sworn statement or affirmation, search of central registry and criminal history record check before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.~~

4. A person 18 years of age and older must have background checks:

Who	What	When
A Person living in: The home of an applicant* or	Sworn statement or affirmation	When person age- a person in the home
The home of a licensed or registered family day home provider	Search of central registry and criminal history record check, as requested by the individual	Within 30 days of a in the home or a pe

*Note: This does not apply to applicants for family day systems, child day centers, or to religious exempt child o

5. A person 14 years of age and older must have a search of the central registry and make the information available for regulatory purposes:

Who	What	When
Person living in: An applicant's home, Home of a licensed or registered family day home provider,	Child protective services central registry check	Within 30 days of a 14-year the home becoming 14 year

~~6. A facility must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or other person required to obtain background checks that is dated more than 90 days prior to the date of employment, volunteering, residing in the home.~~

~~7. Exception: See provisions for contracting agencies in subdivision 3 of this subsection.~~

~~8. The department must not accept a required criminal history record report or a central registry finding from an applicant, licensee, registrant, or person who signs the statement of intent to operate a religious exempt center that is dated more than 90 days prior to date of licensure, registration, approval or exemption, or from the date when the person designated as the applicant or licensee changes.~~

~~9. The background checks remain valid at the facility if no more than 12 consecutive months have passed from when a person (i) began a leave of absence from that facility; (ii) was terminated from employment at that facility; or (iii) was transferred to a facility owned and operated by the same employer or entity, unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period.~~

8VAC20-770-50. Explaining requirements for satisfactory background checks. (Repealed.)

~~A. The department and registering and approving authorities must require documentation of satisfactory background checks for applicants, agents, employees, volunteers, and others living in family day homes as specified in 8VAC20-770-40.~~

~~1. A satisfactory sworn statement or affirmation is:~~

- ~~a. A fully completed original that states that the person does not have an offense; and~~
- ~~b. There is no other knowledge that the individual has an unsatisfactory background.~~

~~Criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. Convictions also include convictions in other states that are equivalent to those specified in this section.~~

~~2. A satisfactory central registry finding is one in which:~~

- ~~a. A copy of the Department of Social Services child protective services check form is returned to the requesting agency, the Department, or local department of social services indicating that, as of the date on the reply, the individual whose name was searched is not identified in the central registry as an involved caregiver with a founded disposition of child abuse/neglect; and~~
- ~~b. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.~~

~~3. A satisfactory criminal history record check report is one in which:~~

- ~~a. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the agency, individual or authorized agent making the request with:
 - ~~(1) No convictions indicated; or~~
 - ~~(2) Convictions indicated, but no barrier crimes, offenses, or other felony convictions in the last five years;~~~~
- ~~b. A letter is received from the Office of Background Investigations with a finding of "eligible"; and~~
- ~~c. There is no other knowledge that the individual has an offense in Virginia or elsewhere.~~

~~The facility must have viewed an original criminal history record report maintained by a contract employee or contract agency that is dated less than six months before the independent contract employee or contract employee is hired by a contract agency begins providing services at the facility. (See also 8VAC20-770-90.)~~

~~4. A licensed child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense as defined in § 18.2-57 of the Code of Virginia if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.~~

~~B. Background checks results are not open ended.~~

~~1. When a minor living in a family day home turns 18 years of age, the operator is responsible for making sure that the 18 year old complies with all background check requirements for adults pursuant to 8VAC20-770-40 D.~~

~~2. Operators must submit new background checks as part of the renewal application packages of registered family day homes. With the exception of those facilities that are exempt per § 22.1-289.031 of the Code of Virginia, background checks are required every~~

~~three years for all other persons required to have background checks pursuant to 8VAC20-770-40-D.~~

~~3. If a person leaves a facility and the criminal history record report or central registry check finding is less than 91 days old, the person must be permitted to take the report or reports with him. The facility must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.~~

~~4. Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period, a background check remains valid at a facility if no more than 12 consecutive months have passed from when a person:~~

~~a. Began a leave of absence from that facility;~~

~~b. Was terminated from employment at that facility; or~~

~~c. Was transferred to a center owned and operated by the same employer or entity.~~

~~5. The facility, department, or registering or approving authority may require a new background check relevant to this suspicion if there is reason to suspect that a person who has submitted acceptable background checks, as required by this chapter, has an offense in Virginia or elsewhere.~~

~~6. When the facility, department, or registering or approving authority chooses to require a new background check:~~

~~a. The facility, department, or registering or approving authority may allow the person to continue the same relationship with the child day program until the child care provider or licensing, registering, or approval authority receives the new Virginia background check information or equivalent documentation from another state; or~~

~~b. If there is reason to suspect that a person has an offense, the facility, department, or registering or approving authority may require that the person not be alone with children, even if the documentation is not Virginia background check information or equivalent information from another state.~~

~~G. Waivers of some criminal convictions are possible. Refer to 8VAC20-770-90 through 8VAC20-770-130 for an explanation of the waiver.~~

~~8VAC20-770-60. Explaining consequences of unsatisfactory background checks results. (Repealed.)~~

~~A. Applicants are denied licensure, registration or approval when there are unsatisfactory background checks results for:~~

~~1. Applicants as a child day program or family day system;~~

~~2. Agents at the time of application who are or will be involved in the day-to-day operations of the child day program or who are or will be alone with, in control of, or supervising one or more of the children;~~

~~3. Any other adult, or any child aged 14 or older, living in the home of an applicant for licensure or registration as a family day home with an unsatisfactory central registry finding;~~

~~4. Prospective family day home operators and family members seeking approval by family day systems.~~

~~B. An employee or volunteer of a licensed or registered child day program or of a family day home approved by a family day system must not be employed or provide volunteer service until the agency or home has the person's completed sworn statement or affirmation.~~

~~C. An employee or volunteer of a licensed or registered child day program, or of a family day home approved by a family day system, must be denied continued employment or volunteer service if:~~

- ~~1. The licensed or registered child day program or family day system does not have an original criminal history record report within 30 days of employment or volunteer service; or~~
- ~~2. The licensed or registered child day program or family day system does not have a central registry finding within 30 days of employment or volunteer service.~~

~~D. No violation will occur and an employee may continue to work, provide service, or live in a licensed, registered, or approved family day home if the facility has documentation that the criminal history record request, or the request for search of the central registry, was submitted within seven calendar days of the person being employed or volunteering, but the report is not returned within 30 calendar days.~~

- ~~1. If a requested report was sent within seven calendar days but was not returned within 30 calendar days, the requester must contact within four working days:
 - ~~a. The Central Criminal Records Exchange of the Department of State Police; or~~
 - ~~b. The Office of Background Investigations of the Department of Social Services.~~~~
- ~~2. If the request was not received, the requester must submit another request within five working days after the contact.~~
- ~~3. This provision also applies to someone beginning to live in a family day home after licensure, registration or approval is given or a child who becomes 18 years of age. It also applies to a child protective services central registry check for a person who becomes 14 years of age.~~

~~E. If the department or a local department of social services becomes aware that a person covered by this chapter has a disqualifying background, the department or local department of social services may release this information to facilities that are covered by this chapter. Those facilities must not further disseminate this information.~~

~~This provision also applies to a new adult beginning to live in a family day home or a child living in a family day home who becomes 18 years of age after licensure, registration or approval is given. It also applies to a child protective services central registry clearance for a person who becomes 14 years of age.~~

~~F. Licensed, registered, or approved facilities must inform compensated employees and volunteers that the facilities are requesting child protective services registry checks and criminal history record reports for them.~~

~~G. A facility may choose to request a national criminal background check, instead of the criminal history record check, for employees and volunteers.~~

- ~~1. The facility must adhere to Department of State Police requirements for obtaining fingerprints, in accordance with § 19.2-392.02 of the Code of Virginia.~~
- ~~2. The department and family day system will accept a national criminal background check result of "qualified" from the Department of State Police.~~
- ~~3. If the screening result is "disqualified," the facility must obtain a satisfactory criminal history record check from the Central Criminal Record Exchange for the person if:
 - ~~a. The facility wishes to employ the person or approve the person as a volunteer;~~
 - ~~b. The entity wishes the department to issue a license or registration; or~~
 - ~~c. The facility wishes a family day system or child placing agency to issue an approval.~~~~

~~H. The facility may also require a background check from another state per the provisions in subdivision B 5 of 8VAC20-770-50.~~

~~I. A facility that does not comply with this chapter may have its licensure, registration, approval, or religious exempt status revoked or denied.~~

~~J. If a facility has knowledge that a person required to have a background check has an offense, and this person has neither a waiver nor an exception per 8VAC20-770-50, and the facility refuses to separate the person from employment, service, or residence in a family day home, then licensure, registration, or approval must be revoked or denied.~~

8VAC20-770-70. Keeping background check records. (Repealed.)

~~A. A facility must keep background check records at the location where the person is an applicant, agent, employee, contract employee, volunteer, other adult in the home, or is any other adult who is involved in the day-to-day operations of the facility or who is alone with, in control of, or supervising one or more children.~~

~~1. If a facility is among two or more owned by the same entity, the background check reports and findings may be kept at corporate headquarters or at the facility and must be made available to the department representative upon request.~~

~~2. If a facility is not the primary work place for a person, the facility may keep copies on site, if there is:~~

- ~~a. Documentation of the place where original background check records are kept; and~~
- ~~b. Copies of the sworn disclosure statement or affirmation, criminal history record report with a statement that the facility designee has viewed and verified the original, and the child protective services central registry check form must be kept on site.~~

~~B. Contracting organizations and voluntarily registered family day homes certified eligible for registration by contracting organizations must keep background check records.~~

~~1. The contracting organization must keep:~~

- ~~a. The original criminal history record report and sworn statement or affirmation for the voluntarily registered provider;~~
- ~~b. The original or a copy of the central registry findings; and~~
- ~~c. A copy of the criminal history record report and central registry findings for all provider assistants, substitute providers, and central registry findings for persons aged 14 and older residing in the home.~~

~~2. The voluntarily registered family day home provider must keep:~~

- ~~a. The original criminal history record report and sworn statement of affirmation for any provider assistant, substitute provider, and any adult residing in the home; and~~
- ~~b. The original or a copy of the central registry finding for any provider assistant, substitute provider or any person aged 14 and older residing in the home; and~~
- ~~c. Copies of the provider's own background check records.~~

~~C. Family day systems and family day homes approved by family day systems must keep background check records. The requestor identified on the form must keep the original criminal history record check result and the original or copy of the child protective services central registry finding, and the other party keeps copies. The family day system must keep the original sworn disclosure statement or affirmation.~~

~~D. A voluntarily registered family day home must keep all background check information for two years after a person required to provide background check terminates his duties with a facility or no longer resides in the home. All other facilities must keep all background check information~~

~~for one year after a person required to provide background checks terminates his duties with a facility or no longer resides in the home.~~

~~E. The sworn statement or affirmation, criminal history record report, and central registry finding must be kept in locked files.~~

~~F. Applicants and agents, and their designees, are the only facility staff who may have access to these documents. The board president must have access to these documents.~~

~~G. If a person is denied licensure, registration, or approval, or is denied employment or volunteer service because of information on a sworn statement or affirmation, a central registry finding, or criminal history record report, the facility must provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the person.~~

~~H. A facility must also release a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both when the subject of the information requests it.~~

~~I. Further dissemination of the background check information is prohibited other than to the Superintendent's representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. (See the provisions at 8VAC20-770-60 E8.)~~

~~8VAC20-770-80. Describing the waiver of criminal conviction. (Repealed.)~~

~~The waiver of criminal conviction is the department's canceling the consequences of an unsatisfactory criminal history record check only for specific convictions.~~

~~8VAC20-770-90. Identifying who may apply for a waiver. (Repealed.)~~

~~A. Any person who wants to operate or to volunteer or work at a facility covered by this chapter, but who is disqualified because of a criminal conviction, or a criminal conviction in the background check of any other adult living in a family day home governed by this chapter, may apply in writing to the Superintendent of the department for a waiver.~~

~~B. The superintendent may grant a waiver if:~~

~~1. A nonbarrier crime felony conviction occurred less than five years previously and the superintendent determines that the person is of good moral character and reputation and the waiver would not adversely affect the safety and well being of the children in the person's care; or~~

~~2. Any other adult living in the home of a family day home applicant or provider has been convicted of not more than one misdemeanor offense of assault and battery or assault and battery against a family or household member as set out in §§ 18.2-57 and 18.2-57.2 of the Code of Virginia, provided five years have elapsed following the conviction and the department has conducted a home study that includes, but is not limited to:~~

~~a. An assessment of the safety of the children placed in the home and~~

~~b. A determination that the offender is now a person of good moral character and reputation.~~

~~The other adult must not be an assistant or substitute provider.~~

~~8VAC20-770-100. Explaining waiver application requirements. (Repealed.)~~

~~A. The person requests a waiver application package from the Office of Child Care Licensing. The person sends the completed application and a waiver application fee made out to "Treasurer of Virginia" to the Office of Child Care Licensing. The Superintendent establishes the fee. It is identified in the application package.~~

~~B. Exception: A person wishing to operate a voluntarily registered family day home requests a waiver application from either the contracting organization or the voluntary registration consultant in the Office of Child Care Licensing. The person sends the completed application and application fee to the voluntary registration consultant in the Office of Child Care Licensing.~~

~~C. The superintendent acknowledges, in writing, receipt of the application and notifies the requester and the sponsor whether the request appears to be complete.~~

8VAC20-770-110. Describing the contents of a waiver application. (Repealed.)

~~A. The waiver application is a personally prepared application.~~

~~B. The waiver application must be submitted in typewritten form or neatly printed and must include:~~

~~1. A statement that the request was solely and personally prepared by the requester, or other adult living in a family day home, as applicable, and has not been edited or changed by anyone else. Exception: the document may be typed by another person;~~

~~2. A statement that the requester understands that the waiver will be available for inspection by the public and that the facility will provide a copy of the waiver to every parent and guardian if the waiver is granted;~~

~~3. A statement that the requester understands that information in the waiver application package will be made available by the Superintendent to any person upon request if the waiver is granted;~~

~~4. Personal and employment information;~~

~~5. If the request is for a family day home, all members of the household and their relationship to the requester;~~

~~6. A factual account of the crime of the person with the disqualifying conviction;~~

~~7. The current status and history with justice systems of the person with the disqualifying conviction;~~

~~8. Other information the person with the disqualifying background wants the superintendent to consider in evaluating the waiver request;~~

~~9. An explanation of why the waiver should be granted; and~~

~~10. Seven attachments:~~

~~a. A nonrefundable check, made payable to the "Treasurer of Virginia," for waiver application processing;~~

~~b. For the person with the disqualifying conviction:~~

~~(1) A "Current Employment and Employment History Form";~~

~~(2) A copy of the current sworn statement or affirmation;~~

~~(3) A copy of the current criminal history record report;~~

~~(4) A copy of all necessary documents verifying the person's statements regarding past and current involvement with adult or juvenile justice systems within or outside the Commonwealth;~~

~~(5) At least four references by disinterested individuals who will vouch for the "good moral character and reputation" of the person with the disqualifying conviction;~~

~~(6) The Sponsoring Agency Statement; and~~

~~(7) A notarized signature page.~~

~~C. If the waiver application is for another adult living in a family day home, the department conducts a home study to:~~

~~1. Assess the safety of children placed in the home; and~~

~~2. Determine that the offender is now a person of good moral character and reputation.~~

8VAC20-770-120. Describing the waiver evaluation criteria. (Repealed.)

~~A. The superintendent may delegate all aspects of processing and evaluating waiver requests, provided that responsibility for making the final decision may not be delegated below the level of a division director.~~

~~B. The final decision is based on the following:~~

- ~~1. The content of the waiver application package;~~
- ~~2. The nature of the conviction or convictions and relevance to decision criteria; and~~
- ~~3. The extent and pattern of criminal history or child abuse and neglect, including the person's age when the act occurred and how long ago the act occurred.~~

~~C. The applicant may be required to provide additional information that is reasonable and necessary to evaluate the application.~~

~~D. The superintendent may interview the applicant or other persons sufficient to verify and evaluate the information in the application package.~~

~~E. The superintendent may grant a waiver if the superintendent determines that:~~

- ~~1. The person is now of good moral character and reputation; and~~
- ~~2. The waiver would not adversely affect the safety and well-being of children in the person's care.~~

~~F. The superintendent will consider a waiver application abandoned, and close the file, when:~~

- ~~1. More than 60 days have passed since the superintendent advised the requester and the sponsoring agency that the waiver application was incomplete, or since the superintendent requested additional information that was reasonably necessary to evaluate the application; and~~
- ~~2. The superintendent informs the requester by certified mail that the waiver application would be considered abandoned unless the requester provides the requested information within 15 days.~~

~~G. Waiver decisions are not appealable.~~

8VAC20-770-130. Describing the waiver decision notification process. (Repealed.)

~~A. The superintendent notifies the requester, or other adult if applicable, and the sponsor of his approval or denial in writing by certified mail.~~

~~B. Any approved waiver is for a specific person and a specific facility and must include:~~

- ~~1. Name of individual;~~
- ~~2. Name of facility;~~
- ~~3. Effective dates;~~
- ~~4. Terms, conditions, and stipulations, if any;~~
- ~~5. Criminal conviction for which the waiver was granted;~~
- ~~6. Date of criminal conviction;~~
- ~~7. Relevant court and location;~~
- ~~8. Sentence served; and~~
- ~~9. Signature of superintendent, or designee, and date.~~

8VAC20-770-140. Modifying, revoking, and terminating waivers. (Repealed.)

~~A. The person and the sponsoring agency may request a modification of any of the terms, conditions, or stipulations of a waiver.~~

~~B. The superintendent may revoke a waiver if, after investigation, he determines that:~~

- ~~1. The waiver application contained false, deceptive, or misleading information;~~

~~2. The terms, conditions, or stipulations of a waiver have been violated; or~~

~~3. New or expanded information becomes known about the person that would change the previous determination made about the person's character, reputation, or suitability to work with or be in proximity to children.~~

~~C. If a waiver is revoked, the superintendent informs the person and the sponsoring agency, in writing by certified mail, of the reasons for the revocation.~~

~~D. A waiver automatically expires when:~~

~~1. The person terminates the approved arrangement with the sponsoring facility;~~

~~2. Five years have passed from the last date of a conviction for the felony or felonies for which the waiver was granted; or~~

~~3. The other adult living in a family day home was the reason for the waiver and the other adult no longer lives in the home.~~

8VAC20-770-150. Explaining the waiver public notification requirements. (Repealed.)

~~A. Notification about waivers is conducted in accordance with agency policy.~~

~~B. The facility must post in a conspicuous place on the premises any waiver granted by the department.~~

~~C. The facility must notify in writing every parent and guardian of the children in its care of any waiver granted for its operators, employees, volunteers, or adult family members living in the home. This notification includes parents and guardians who, in the future, enroll children.~~

Chapter 820

General Procedures and Information for Licensure (REPEALED)

Part I

Introduction

8VAC20-820-10. Definitions. (Repealed.)

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

"Administrative hearing" means a hearing that is conducted pursuant to § 2.2-4020 of the Administrative Process Act.

"Adverse action" means any case where the department either gives notice of revocation or refuses to issue a license for a child day program or family day system or imposes another administrative sanction pursuant to § 22.1-289.023 of the Code of Virginia.

"Aggrieved party" means an applicant or licensee who has requested an appeal in accordance with instructions provided after the department has given written notice of the imposition of an administrative sanction or adverse action for a child day program or family day system.

"Allowable variance" means permission is granted by the department to a licensee or applicant for licensure to meet the intent of a standard by some means other than as specified by the standard when the applicant or licensee has demonstrated that (i) the implementation of a standard would impose a substantial financial or programmatic hardship and (ii) the variance would not adversely affect the safety and well-being of persons in care.

"Applicant" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that has applied for a license to operate or maintain a child day program or family day system.

"Board" means the State Board of Education.

"Child day program" means a child day center or family day system.

"Complaint" means an accusation that a facility that is subject to licensure is operating without a license or that a licensed facility is not in compliance with licensing standards or law.

"Conditional license" means a license that may be issued to a new facility to operate in order to permit the applicant to demonstrate compliance with specified standards.

"Consent agreement" means an agreement between the licensee and the department that the licensee will perform specific actions for the purpose of correcting violations to come into compliance with standards or statutes.

"Day" means a calendar day unless otherwise specified.

"Denial" means the act of refusing to grant a license after receipt of an initial or renewal application.

"Department" means the Department of Education.

"Early compliance" means that the licensee has demonstrated full compliance with requirements, allowing the department to replace a provisional or conditional license with a regular license.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangements, may provide central administrative functions including training of

~~operators of family day homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.~~

~~"Functional design" means the design features of building and grounds not regulated by the building code, necessary for particular activities and operations of a facility subject to licensure by the Department of Education.~~

~~"Good character and reputation" means findings have been established and knowledgeable, reasonable, and objective people agree that the individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision, and protection of children. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.~~

~~"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 of the Code of Virginia and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Code of Virginia in connection with the making of regulations or (ii) a similar right of private parties of public agencies as provided in § 2.2-4020 of the Code of Virginia in connection with case decisions.~~

~~"Hearing coordinator" means the person designated by the Department of Education to perform certain administrative functions involved in setting up and carrying out the hearings concerning adverse action on a license for a child day program or family day system, as set out herein.~~

~~"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024 of the Code of Virginia to preside at hearings concerning adverse action on a license for a child day program or family day system.~~

~~"Informal conference" means the informal fact-finding procedures available pursuant to §§ 2.2-4019 and 2.2-3021 of the Code of Virginia.~~

~~"Licensee" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity to whom a license is issued and who is legally responsible for compliance with the regulations and statutory requirements related to the operation or maintenance of the child day program or family day system.~~

~~"Probationary status" means placing a licensee on notice that the facility or agency is substantially out of compliance with the terms of its license and the health, safety, and well-being of persons in care are at risk. Probationary status is a precursor to more serious action such as revocation, denial, or injunctive action unless immediate corrective action occurs.~~

~~"Provisional license" means a license that may be issued upon expiration of a regular license when the licensee is temporarily unable to substantially comply with the requirements of the law and regulations.~~

~~"Recommended findings of fact and recommended decision" means the report prepared by the hearing officer upon evidence presented in the administrative hearing based on the applicable laws and regulations under which the department operates.~~

~~"Regular license" means a license that is issued for 12 months or more as provided in Article 3, Chapter 14.1 (§ 22.1-289.010 et seq.) of Title 22.1 of the Code of Virginia to a facility determined to be in substantial compliance with applicable standards and regulations. The actual duration of the licensure period is stated on the license.~~

~~"Revocation" means the act of terminating a license during its effective dates because of findings of serious noncompliance.~~

~~"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to Title 22.1 of the Code of Virginia by the superintendent that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. The 12-month period begins 30 days after notification of the issuance of a special order or at the conclusion of all appeal steps.~~

~~"Substantial compliance" means that while there may be noncompliance with one or more standards that represents minimal risk, compliance clearly and obviously exists with most of the standards as a whole.~~

~~"Superintendent" means the Superintendent of Public Instruction at the Department of Education.~~

~~8VAC20-820-20. Preplanning. (Repealed.)~~

~~A. Licensing staff are available throughout the application or licensing process to answer questions and provide consultation and technical assistance (see 8VAC20-820-130).~~

~~B. In order to avoid costly errors, applicants and prospective applicants are urged to present their building plans to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations (see 8VAC20-820-150).~~

~~C. The department will make an on-site inspection of the proposed facility and services; investigate the character and reputation of the licensee and, if required, staff and household members; and upon receipt of the initial application will investigate the financial responsibility of the applicant (see 8VAC20-820-160).~~

Part II

Licensing Regulations

~~8VAC20-820-30. Responsibility of the department. (Repealed.)~~

~~Through the administration of the licensing program, the Department of Education assumes responsibility to ensure that licensed facilities and agencies provide children with at least a minimum level of care in accordance with regulations prescribed by the State Board of Education. The department also has the responsibility to investigate allegations of illegal operations and to initiate action to suppress illegal operations. The Code of Virginia requires the State Board of Education to adopt regulations for the licensure of the following categories of facilities and agencies:~~

- ~~1. Child day centers;~~
- ~~2. Family day homes; and~~
- ~~3. Family day systems.~~

~~8VAC20-820-40. Adoption of regulations. (Repealed.)~~

~~The State Board of Education has adopted regulations for each category listed above. The definition of each category and requirements for licensure are contained in each regulation.~~

~~8VAC20-820-50. Regulation development/revision process. (Repealed.)~~

~~A. In developing or revising regulations for licensed facilities or agencies, the Department of Education, acting as agent for the State Board of Education, adheres to the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the public participation process.~~

~~B. Input from licensees, associations of licensees, experts in related fields, advocacy organizations, consumers, and the general public is solicited in the development or revision of licensing regulations through informal and formal comment periods and public hearings.~~

~~C. Periodic reviews are conducted and, when necessary, comprehensive revisions of each regulation to assure that its standards continue to protect children in out of home care while considering the interests of both providers and consumers of care.~~

Part III

The License

8VAC20-820-60. General. (Repealed.)

~~A. A license to operate a facility or agency is issued to a specific person or organization to provide out of home care to children. An organization may be a partnership, association, corporation, limited liability company, or public entity.~~

~~B. Pursuant to § 22.1-289.026 of the Code of Virginia, any person, officer, or member of a governing board of any association or corporation that operates a child day program or family day system shall be guilty of a Class 1 misdemeanor if he:~~

- ~~1. Interferes with any representative of the superintendent in the discharge of the superintendent's licensing duties;~~
- ~~2. Makes to the superintendent or any representative of the superintendent any report or statement with respect to the operation of any child day program or family day system that is known by such person to be false or untrue;~~
- ~~3. Operates or engages in the conduct of these facilities without first obtaining a license as required or after such license has been revoked, suspended, or has expired and not been renewed; or~~
- ~~4. Operates or engages in the conduct of one of these facilities serving more persons than the maximum stipulated in the license.~~

~~C. When a licensee plans to close or sell a facility, the licensee shall notify the appropriate licensing office at least 60 days prior to the anticipated closure or sale date. When the facility closes or the sale is finalized, the license shall be returned to the appropriate licensing office.~~

8VAC20-820-70. Nontransferability of license. (Repealed.)

~~A license is not transferable when there is a change in the ownership or location of the facility or agency to which the license has been issued.~~

~~EXCEPTION: Licenses issued for family day systems are transferable when agencies change location.~~

8VAC20-820-80. Conditional license. (Repealed.)

~~The department may issue a conditional license to a new facility or agency in order to permit the applicant to demonstrate compliance with specified standards. A conditional license may be renewed, but the issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months. When the conditional period is over, the facility or agency must substantially meet the standards or be denied a license. Conditional licenses may be used only for new facilities or agencies.~~

8VAC20-820-90. Regular license. (Repealed.)

~~A regular license is issued when the activities, services, facilities, and applicant's financial responsibility substantially meet the requirements for a license that are set forth by regulations adopted by the State Board of Education and any additional requirements that may be specified by the Code of Virginia.~~

8VAC20-820-100. Duration of licensure. (Repealed.)

~~Each license and renewal thereof may be issued for a period of up to three successive years. The criteria for determining the periods of licensure are based on the activities, services, management, and compliance history of the facility.~~

~~A three-year license may be issued when a facility's activities, services, and management routinely substantially exceed the minimum standards.~~

~~A two-year license may be issued when a facility's services and management routinely meet and maintain compliance with minimum standards and may exceed on a sustained basis in some areas.~~

~~An annual license may be issued when a facility's activities, services, and management indicate an inconsistent level of compliance but substantial compliance is reached. Some reinforcement and guidance are needed in order for the facility to meet or maintain minimum requirements.~~

~~EXCEPTION: A license, other than a conditional or provisional license, issued to a child day center shall have a duration of two years from the date of issuance.~~

8VAC20-820-110. Provisional license. (Repealed.)

~~When a regular license expires and the applicant is temporarily unable to comply with the requirements of the regulations, the department may issue a provisional license for any period not to exceed six months. A provisional license shall not be issued to a facility or agency immediately following a conditional license. At the conclusion of the provisional licensure period, the facility or agency must be in substantial compliance with licensing standards or be denied a license to continue operation.~~

8VAC20-820-120. Terms of the license. (Repealed.)

~~A. A facility or an agency shall operate within the terms of its license, which are:~~

- ~~1. The operating name of the facility or agency;~~
- ~~2. The name of the individual, partnership, association, corporation, limited liability company, or public entity sponsoring the facility or agency;~~
- ~~3. The physical location of the facility or agency;~~
- ~~4. The maximum number of children who may be in care at any time;~~
- ~~5. The period of time for which the license is effective;~~
- ~~6. For child care facilities or agencies, the age range of children for whom care may be provided; and~~
- ~~7. Any other limitations that the department may prescribe within the context of the regulations for any facility or agency.~~

~~B. The provisional license cites the standards with which the licensee is not in compliance.~~

~~C. The conditional license cites the standards with which the licensee must demonstrate compliance when operation begins, and also any standards with which the licensee is not in compliance.~~

~~D. Prior to changes in operation that would affect the terms of the license, the licensee shall secure a modification to the terms of the license from the department. (See 8VAC20-820-190.)~~

~~E. Certain documents related to the terms of the license are required to be posted on the premises of each facility. These are:~~

- ~~1. The most recently issued license. Any provisional license shall be posted at each public entrance of the facility and a notice shall be prominently displayed next to the license that states that a description of specific violations of licensing standards to be corrected and~~

~~the deadline for completion of such corrections is available for inspection at the facility or on the facility's website, if applicable;~~

~~2. The findings of the most recent inspection of the facility;~~

~~3. Notice of the superintendent's intent to revoke or deny renewal of the license of a child day program or family day system. Such notice will be provided by the department and shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations.~~

~~4. A copy of any final order of summary suspension of all or part of a license for a child day program or family day system operated by an agency of the Commonwealth shall be prominently displayed by the provider at each public entrance of the facility, or the provider may display a written statement summarizing the terms of the order, printed in clear and legible size and typeface, in a prominent location and identifying the location within the facility where the final order of summary suspension may be reviewed.~~

~~5. Notice of the Superintendent's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of § 22.1-289.023 of the Code of Virginia. Such notice will be provided by the department, and a copy of the notice shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations.~~

~~6. A copy of any special order issued by the department shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations.~~

~~7. Any other documents required by the superintendent.~~

Part IV

The Licensing Process

8VAC20-820-130. Provider support services. (Repealed.)

~~A. The programmatic regulations require both general and specific training in various subject areas. The department provides preapplication consultation, ongoing technical assistance and consultation, and formal training sessions. The department's licensing representatives will provide assistance to any person seeking information about obtaining a license and information about initial and ongoing training requirements.~~

~~B. Applicants for licensure shall complete a prelicensure orientation program that focuses on health and safety standards offered through or approved by the department. The superintendent may, at the superintendent's discretion, waive the orientation requirement or issue a license conditioned upon the owner's or administrator's completion of the required training.~~

~~EXCEPTIONS: Applicants who have previously owned or managed a facility in satisfactory compliance with regulations are exempt from the requirements of prelicensure training.~~

8VAC20-820-140. The initial application. (Repealed.)

~~A. Upon request, the department will provide an application form for a license to operate a facility or agency. There are a number of licensing offices located throughout the state.~~

~~B. The department will consider an application complete when the application fee and all the required information is submitted in the form required by the department. The schedule of fees for licenses is provided in 8VAC20-830. If the department finds the application incomplete, the applicant will be notified in writing within 15 days of receipt of the incomplete application. If the applicant does not resubmit a complete application within 30 days from the notification, all materials except the nonrefundable fee will be returned to the applicant.~~

~~C. The applicant shall complete and submit the application to the department at least 60 days prior to a planned opening date to allow the department time to act on the application.~~

~~D. The applicant may withdraw a request for a license.~~

8VAC20-820-150. Approval of buildings and functional design features. (Repealed.)

~~A valid certificate of occupancy is one prerequisite for licensure. When an application is for licensure of a building that has not previously been used for the type of license or use group being sought, or when renovations are made in the building, the department must approve functional design features of the building in accordance with applicable department regulations. The procedures are as follows:~~

~~1. Prior to beginning construction or renovation, the applicant or prospective applicant shall submit to the department floor plans that clearly indicate the use of space and other plans for compliance with all requirements for the building and physical environment contained in the applicable regulations.~~

~~(NOTE: Applicants and prospective applicants are urged to present their plans for compliance with departmental regulations to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations. Architects, contractors, or building officials may not be thoroughly familiar with these functional design requirements, and costly errors can be avoided through early review by the department.)~~

~~2. The department will notify the applicant or prospective applicant within 10 working days of receipt if the plans to comply are incomplete, identifying the information still needed before the request can be considered complete.~~

~~3. When a complete plan is received, the department will issue within 20 days a preliminary approval statement or a letter indicating disapproval of the plan and the reasons for disapproval.~~

~~(NOTE: A preliminary approval statement does not imply that the department will approve the application for licensure since other factors will affect issuance decisions.)~~

~~4. All preliminary approval statements are conditional upon there being no change in the proposal or the circumstances affecting them and upon approval of all required fire, health, or building officials.~~

~~5. The department will forward a copy of the preliminary approval statement to the appropriate building official.~~

~~6. After construction or renovation, department staff will make an on-site inspection to evaluate compliance with the functional design requirements of the applicable regulations. Findings of this on-site inspection will be forwarded to the applicant and the local building official.~~

8VAC20-820-160. Investigation. (Repealed.)

~~A. Upon receipt of the application the superintendent shall:~~

~~1. Cause an investigation to be made of the activities, services, and facilities of the applicant, and of his character and reputation;~~

~~2. If the applicant is an association, partnership, limited liability company, or corporation, cause an investigation of the character and reputation of its officers and agents; and~~

~~3. Upon receipt of the initial application, cause an investigation of the applicant's financial responsibility.~~

~~B. At the time of the initial application and annually thereafter, the applicant or licensee shall be responsible for obtaining inspection reports from appropriate fire and health agencies to determine compliance with applicable regulations.~~

~~EXCEPTION: This subsection does not apply to family day systems.~~

~~1. All buildings shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed purpose.~~

~~2. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local fire authorities, as applicable, to determine compliance of the building or buildings with the Virginia Statewide Fire Prevention Code (13VAC5-51).~~

~~3. At the time of the initial application and at least annually thereafter, the applicant or licensee shall obtain an inspection report from state or local health authorities that shall include approval of general sanitation and, if applicable, water supply, sewage disposal systems, and food service operations for the building or buildings in which the facility is operated.~~

~~C. The department's representative will make an on-site inspection of the proposed facility or agency and an investigation of the proposed services, as well as an investigation of the character, reputation, and financial responsibility of the applicant. Compliance with all standards will be determined by the Department of Education. The licensee is responsible for correcting any areas of noncompliance found during any on-site inspection.~~

~~D. The applicant or licensee shall at all times afford the department's representative reasonable opportunity to inspect all of the facility's or agency's buildings, books, and records. Records that contain confidential proprietary information furnished to the department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5 of the Code of Virginia.~~

~~At the time of the initial application, the financial records of an applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference.~~

~~E. The applicant or licensee shall also allow the department's representative to interview the facility's or agency's agents, employees, participants, and any person under its custody, control, direction, or supervision. Interviews with participants and any person under the facility's or agency's custody, control, direction, or supervision shall be:~~

~~1. Authorized by the person to be interviewed or the person's legally authorized representative; and~~

~~2. Limited to discussion of issues related to the applicant's or licensee's compliance with applicable laws and regulations for licensure of the facility or agency.~~

~~F. After the on-site inspection the licensing representative will discuss the findings of the investigation with the administrator, licensee, or designee. As applicable, the applicant shall submit an acceptable plan for correcting any areas of noncompliance following these discussions.~~

~~G. At any time during the investigation, an applicant or licensee may request an allowable variance to any standard that creates a special hardship. (See Part V (8VAC20-820-220 et seq.) of this chapter.)~~

~~8VAC20-820-170. Notice to the applicant of issuance or denial of a license. (Repealed.)~~

~~A. When the investigation is completed, the department will notify the applicant of its decision regarding the issuance of a license.~~

~~B. When the department intends to deny the license, the department will send a letter stating the reasons for this action and the applicant's right to appeal the decision. (See Part VIII (8VAC20-820-320 et seq.) of this chapter.)~~

~~8VAC20-820-180. Determination of continued compliance (renewal and monitoring inspections). (Repealed.)~~

~~A. In order to determine continued compliance with standards during the effective dates of the license, the department's licensing representative will make announced and unannounced inspections of the facility or agency during the hours of its operation. The licensee is responsible for correcting any areas of noncompliance found during renewal or monitoring inspections.~~

~~B. All licensed child day programs and family day systems shall be inspected at least twice a year. At least one unannounced inspection of each licensed facility shall be made each year.~~

~~C. The department's representative may also make such inspections of any homes or facilities that are approved by the licensee for the care of children as one of the licensed services of the agency.~~

~~D. For any licensed child day center or family day system, the department may conduct such other announced or unannounced inspections as are considered appropriate.~~

~~NOTE: When necessary to respond to excessive workloads or to give priority to higher risk situations, the department may use its discretion to increase or decrease the frequency of announced and unannounced inspections made to licensed facilities during the year.~~

~~8VAC20-820-190. Modification. (Repealed.)~~

~~A. The licensee may request a modification of the terms of a license at any time during the period of the license. The request must be submitted in writing to the department's representative.~~

~~The department will evaluate written information about any planned changes in operation that would affect either the terms of the license or the continuing eligibility for a license. A licensing representative may inspect the facility during the process of evaluating a proposed modification.~~

~~Examples of such changes are: changes in the number of children to be served, staff responsibilities, availability and use of the physical plant, and changes in program focus or needs of the population to be served.~~

~~B. If a modification can be granted under the standards, the department will issue a modified license reflecting the changes. In the event that a new application is needed or the modification cannot be granted, the licensee will be advised by letter.~~

~~8VAC20-820-200. Early compliance. (Repealed.)~~

~~A. A provisional or conditional license may be voided and a regular license issued when all of the following conditions exist:~~

- ~~1. The facility or agency complies with all standards listed on the face of the provisional or conditional license prior to the mid point of the licensure period or within 90 days of the expiration date of the provisional or conditional license, whichever comes first, and the facility or agency is in substantial compliance with all other standards.~~
- ~~2. Compliance has been verified by an on-site observation by the department's licensing representative or, when applicable, by written evidence provided by the licensee.~~
- ~~3. All other terms of the license remain the same.~~

~~B. The licensee shall make a written request to the licensing representative for replacement of a provisional or conditional license with a regular license.~~

~~C. When the request is approved by the department, the effective date of the new regular license will be the same as the beginning date of the voided license. When the request is not approved, the reasons for this action will be confirmed to the licensee in writing.~~

~~D. Early compliance shall not be considered once the facility or agency has filed a renewal application.~~

8VAC20-820-210. Renewal process. (Repealed.)

~~A. The department will send an application for renewal of the license to the licensee prior to the expiration date of the current license. The licensee shall submit the completed application form, including all attachments and the licensing application fee, in a timely manner to assure adequate time for processing by the department. In order for the application to be considered complete, the licensee must have paid any outstanding civil penalty assessed in a case decision.~~

~~B. The department will not process a renewal application that is not complete or when the current license is being denied or revoked in accordance with the provisions of the Administrative Process Act.~~

~~C. Should a current license expire before a new license is issued, the current license shall remain in effect provided that a complete application was filed prior to expiration of the current license and a decision for licensure is pending.~~

~~D. The department will follow the procedure for investigation and notice to the applicant previously outlined in 8VAC20-820-160, 8VAC20-820-170, and 8VAC20-820-180.~~

~~Part V~~

~~Allowable Variances~~

8VAC20-820-220. Conditions for initiating a request. (Repealed.)

~~A licensee or applicant may request an allowable variance when he believes that the existing standard or requirement poses a substantial financial or programmatic hardship and when he believes that either an alternative method of compliance with the intent of the standard that is causing the hardship, or the actual suspension of all or part of that standard, would neither endanger the safety or well being of persons in care nor create a violation of statutes or of the requirements of another regulatory agency.~~

8VAC20-820-230. Process. (Repealed.)

~~A. The licensee or applicant shall make a written request for consideration of an allowable variance. The department's licensing representative may provide consultation to the applicant or licensee in the development of the written request and throughout the allowable variance process.~~

~~1. The licensee or applicant shall describe the special hardship or hardships to the existing program or to a planned innovative or pilot program that will be caused by the enforcement of the requirement or requirements.~~

~~2. The licensee or applicant shall propose alternatives to meet the purpose of the requirement that will ensure the protection and well being of persons in care.~~

~~3. The licensee or applicant shall obtain, when requested by the department, the opinions of professionals in the field or documented research, or both, that the proposed activities, facilities, or equipment are not injurious to persons in care.~~

~~4. The department can authorize allowable variances only to its own licensing standards, not to regulations of another agency or to any requirement in federal, state, or local laws.~~

~~B. The department's licensing representative will notify the petitioning applicant or licensee of the department's decision.~~

~~C. Approval.~~

~~1. The department may attach conditions to the granting of the allowable variance in order to protect persons in care.~~

~~2. Allowable variances are conditional upon there being no change in the circumstances that were the basis for the approval. Any allowable variance may be rescinded or modified if needs or conditions change; additional information becomes known that alters the basis for the original decision; the applicant or licensee fails to meet any conditions attached to~~

~~the allowable variance; or results of the allowable variance jeopardize the safety, comfort, or well-being of persons in care.~~

~~3. Allowable variances expire automatically when there is a change in the facility's location or a change in the sponsorship of the facility or agency.~~

~~EXCEPTION: Allowable variances issued to family day systems are transferable when agencies change location.~~

~~4. The department's licensing representative will review each allowable variance at least annually. At minimum, this review shall address the impact of the allowable variance on persons in care, adherence to any conditions attached, and the continuing need for the allowable variance.~~

~~D. Denial.~~

~~1. When the decision is to deny a request for an allowable variance, the reason will be provided in writing to the applicant or licensee.~~

~~2. When a request for an allowable variance is denied, it may be reconsidered if the applicant or licensee submits another written request and provides new or additional supporting information within 30 days of denial.~~

~~NOTE: After the 30-day period, the applicant or licensee may submit a new allowable variance request describing changed conditions.~~

~~3. The department will reconsider the new request and the additional information and will notify the applicant or licensee of the decision within 30 days of receipt of the second request. This decision will be considered final and is not appealable.~~

~~E. When an allowable variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed.~~

~~F. The applicant or licensee may at any time withdraw a request for an allowable variance.~~

Part VI

Problem Solving Conferences

8VAC20-820-240. Initiating a request for a problem solving conference. (Repealed.)

~~When an applicant or licensee has concerns about licensing procedures, interpretation of standards, or the actions of licensing personnel that cannot be resolved satisfactorily in discussion with the assigned licensing representative, the problem solving steps outlined below are available.~~

~~Licensing staff may also initiate a request for problem solving conferences with applicants or licensees when the need arises.~~

8VAC20-820-250. First step review. (Repealed.)

~~A. The applicant or licensee may request either a desk review by, or a meeting with, the assigned licensing representative's immediate supervisor.~~

~~B. If the request stems from a desire to contest the findings or conclusions of an inspection, the following procedures shall apply:~~

~~1. The applicant or licensee shall make the request within 15 days of receiving the compliance plan.~~

~~2. The request shall specify the contested finding or conclusion and shall specify whether a desk review or conference is being requested.~~

~~3. The request shall include the applicant's or licensee's reasons or other evidence supporting the request for a review or a conference.~~

~~C. The first step informal desk review or conference will be held at the supervisor's office unless the supervisor designates a different location. The following procedures shall apply:~~

~~1. The supervisor will report the findings of a desk review in writing within 10 days of receiving the request and supporting materials or will hold the requested conference within 30 days of receipt of such request and materials.~~

~~2. When the request is for a conference, the supervisor will, within 10 days following the conference, confirm to the applicant or licensee in writing the results of the conference and any subsequent decisions made by the supervisor.~~

8VAC20-820-260. Second step review. (Repealed.)

~~A. If after the first step review, the applicant or licensee believes that the laws, regulations, or departmental policies have been applied or interpreted in a manner that was unreasonable, arbitrary or capricious, he may request a second step review by program supervisory personnel as assigned by the Director of Child Care Licensing Programs according to the provisions of this section.~~

~~B. A second step review shall not be requested to challenge the content of an established law, regulation, or policy. However, the application of a law, regulation, or policy may be challenged.~~

~~C. When a second step review is requested, the request must be in writing.~~

~~D. The second step review request shall:~~

~~1. Be made within 15 days of the date of the first step response;~~

~~2. Specify the reason for requesting the second step informal review and include such information, explanation, or additional materials as necessary to support the applicant's or licensee's belief that the decision reached at the first step was unreasonable, arbitrary, or capricious; and~~

~~3. Include a copy of relevant materials and correspondence developed at the first step of the informal appeal process.~~

~~E. Within 30 days of receipt of this request, the director's office will respond in writing with the results of the desk review or schedule a conference.~~

8VAC20-820-270. Enforcement of disputed regulation. (Repealed.)

~~Nothing in this part shall prohibit the department from exercising its responsibility and authority to enforce the disputed regulation during the problem solving process, including proceeding directly to imposition of administrative sanctions, or recommending petitions for injunction when, in the judgment of the Director, Office of Child Care Licensing, there is sufficient risk to persons in care to do so whether or not the steps available in the problem solving process have been exhausted.~~

Part VII

Complaint Investigation

8VAC20-820-280. Receipt of complaints. (Repealed.)

~~Complaints may be received in written or oral form and may be anonymous. The department maintains a toll-free telephone line to receive complaints on all licensed facilities.~~

8VAC20-820-290. Investigation of complaints. (Repealed.)

~~The department has the responsibility to investigate any complaints regarding alleged violations of the standards or statutes and complaints of the abuse and neglect of persons in care.~~

~~NOTE: In an investigation involving suspected child abuse, neglect, or exploitation in a licensed facility, the investigation will be conducted jointly with the local department of social services whenever possible in accordance with departmental policy.~~

~~8VAC20-820-300. Notification of findings. (Repealed.)~~

~~When the investigation is completed, the licensee will be notified of the findings of the investigation. Any necessary corrective action will be identified.~~

~~8VAC20-820-310. Licensee's responsibility. (Repealed.)~~

~~The licensee is responsible for correcting any areas of noncompliance found during a complaint investigation.~~

Part VIII

Sanctions

~~8VAC20-820-320. Violation of standards or statutes. (Repealed.)~~

~~A. The Superintendent of the Department of Education may impose such sanctions or take such actions as are appropriate for violation of any of the standards or statutes or for abuse or neglect of persons in care.~~

~~B. The following reasons may be considered by the department for the imposition of administrative sanctions:~~

- ~~1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;~~
- ~~2. Permitting, aiding, or abetting the commission of any illegal act in the licensed facility or agency;~~
- ~~3. Engaging in conduct or practices that are in violation of statutes and standards relating to abuse, neglect, or exploitation of children; or~~
- ~~4. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the department, or failure to correct such deviations within a specified time.~~

~~8VAC20-820-330. Administrative sanctions. (Repealed.)~~

~~The superintendent may impose administrative sanctions or initiate court proceedings, severally or jointly, when appropriate in order to ensure prompt correction of violations involving noncompliance with state law or regulation child day programs and family day systems as discovered through any inspection or investigation conducted by the Department of Education, the Virginia Department of Health, the Virginia Department of Behavioral Health and Developmental Services, or by state and local building or fire prevention officials. These administrative sanctions include:~~

- ~~1. Revoking or denying renewal of a license for any child day program or family day system that fails to comply with the limitations and standards set forth in its license;~~
- ~~2. Issuing a notice of summary suspension of the license to operate a child day program or family day system pursuant to proceedings set forth in § 22.1-289.022 C of the Code of Virginia or pursuant to proceedings set forth in § 22.1-289.024 of the Code of Virginia for child day programs or family day systems operated by an agency of the Commonwealth in conjunction with any proceedings for revocation, denial, or other action, when conditions or practices exist in the child day program or family day system that pose an immediate and substantial threat to the health, safety, and welfare of children receiving care; and~~
- ~~3. Imposing administrative sanctions through the issuance of a special order as provided in § 22.1-289.023 of the Code of Virginia. These include:~~
 - ~~a. Placing a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of children is at risk;~~

- ~~b. Reducing the licensed capacity or prohibiting new admissions when the superintendent has determined that the licensee cannot make necessary corrections to achieve compliance with the regulations except by a temporary restriction of its scope of service;~~
- ~~c. Mandating training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the superintendent has determined that the lack of such training has led directly to violations of regulations;~~
- ~~d. Assessing civil penalties of not more than \$500 per inspection upon finding that the licensee of a child day program or family day system is substantially out of compliance with the terms of its license and the health and safety of children is at risk;~~
- ~~e. Requiring licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and~~
- ~~f. Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.~~

8VAC20-820-340. Summary suspension procedures. (Repealed.)

~~A. In conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist that pose an immediate and substantial threat to the health, safety, and welfare of children, the Superintendent may issue a notice of summary suspension of the license to operate a child day program or family day system or of certain authority of the licensee to provide certain services or perform certain functions.~~

~~B. The hearing coordinator will select a hearing officer from a list prepared by the Executive Secretary of the Supreme Court of Virginia and will schedule the time, date, and location of the hearing to determine whether the suspension is appropriate as required by § 22.1-289.022 C or 22.1-289.024 C of the Code of Virginia.~~

~~C. Simultaneously with the issuance of a notice of revocation, denial, or other action, the superintendent will issue to the licensee a notice of summary suspension setting forth the following:~~

- ~~1. The procedures for the summary suspension;~~
- ~~2. The hearing and appeal rights as set forth in this subsection;~~
- ~~3. Facts and evidence that formed the basis for which the summary order of suspension is sought; and~~
- ~~4. The time, date, and location of the hearing.~~

~~D. Notice of the summary suspension shall be served on the licensee or the licensee's designee by personal service or by certified mail, return receipt requested, to the address of record of the licensee as soon as practicable after issuance thereof.~~

~~E. The hearing shall take place in the locality where the child day program or family day system operates unless the licensee or the licensee's designee expressly waives this venue provision.~~

- ~~1. The hearing shall be held no later than 15 business days after service of notice on the licensee. The hearing officer may grant a continuance upon written request and for good cause shown. In no event shall any continuance exceed 10 business days after the initial hearing date.~~
- ~~2. The hearing coordinator will forward a copy of the relevant licensing standards to the hearing officer.~~
- ~~3. The hearing will be conducted in accordance with the procedures set forth in 8VAC20-820-460, 8VAC20-820-470, and 8VAC20-820-480.~~

~~4. The department may be represented either by counsel or by agency staff authorized by § 2.2-509 of the Code of Virginia.~~

~~F. Within 10 days of the conclusion of the hearing, the hearing officer shall provide to the superintendent written findings and conclusions, together with a recommendation as to whether the license should be summarily suspended. The department shall have the burden of proof in any summary suspension hearing. The decision of the hearing officer shall be based on the preponderance of the evidence presented by the record and relevant to the basic law under which the agency is operating.~~

~~G. Within 10 business days of receipt of the hearing officer's findings, conclusions, and recommendation, the superintendent may issue a final order of summary suspension or an order that such summary suspension is not warranted by the facts and circumstances presented.~~

~~H. In issuing a final order of summary suspension, the superintendent may:~~

- ~~1. Suspend the license of the child day program or family day system; or~~
- ~~2. Suspend only certain authority of the child day program or family day system to provide certain services or perform certain functions that the Superintendent determines should be restricted or modified in order to protect the health, safety, and welfare of the children receiving care.~~

~~I. The superintendent shall adopt the hearing officer's recommended decision unless to do so would be an error of law or department policy.~~

~~J. In the event the superintendent rejects a hearing officer's findings, conclusions, or recommended decision, the superintendent shall state with particularity the basis for rejection.~~

~~K. A copy of any final order of summary suspension shall be prominently displayed at each public entrance of the facility as required in 8VAC20-820-120.~~

~~L. The signed, original case decision shall remain in the custody of the agency as a public record, subject to the agency's records retention policy.~~

8VAC20-820-350. Appeal process. (Repealed.)

~~A. The applicant or licensee will receive a notice of the department's intent to impose an administrative sanction. This notice will describe the sanctions and the reasons for the imposition. Service of the notice of adverse action is achieved by certified mailing of the notice to the applicant or licensee, unless service is made by other means and acknowledged by the applicant or licensee. If the applicant or licensee wishes to appeal the notice of adverse action, he shall have 15 days after receipt of the notice to note his appeal.~~

~~B. Upon receipt of the notice to impose an administrative sanction, the applicant or licensee has the right to appeal the decision in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The procedures for filing an appeal will be outlined in the notice. The applicant or licensee shall submit any appeal of imposition of an administrative sanction in writing within 15 days of receipt of the notice.~~

~~C. If the applicant or licensee fails to appeal the notice of adverse action within 15 days of receipt of the notice, the final order will be entered. The decision will take effect 30 days after receipt of the notice.~~

~~D. The appeal process available is governed by law. Where the sanction is imposed by means of a special order as provided in § 22.1-289.023 of the Code of Virginia, the case decision is issued by the superintendent following findings and conclusions resulting from the informal conference. Other sanctions include a provision for an administrative hearing, which is described in § 2.2-4020 of the Code of Virginia, prior to the issuance of the case decision. For ease of reference, the process steps are displayed in the following chart:~~

List of Sanctions with Appeal Provisions			
	Informal Conference	Administrative Hearing	Circuit Court Review of Case Decision
ADMINISTRATIVE SANCTION			
Place licensee on probation	X		X
Reduce licensed capacity	X		X
Restrict admissions	X		X
Mandate training for licensee or staff	X		X
Assess civil penalty	X		X
Require written contact with responsible persons	X		X
Prevent receipt of public funds	X		X
Deny application for new or renewal license	X	X	X
Revoke license	X	X	X

~~E. A final order of summary suspension for a child day program or family day system not operated by an agency of the Commonwealth shall include notice that the licensee may appeal the superintendent's decision to the appropriate circuit court no later than 10 days following service of the order.~~

- ~~1. The sole issue before the court shall be whether the superintendent had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceedings.~~
- ~~2. The concurrent revocation, denial, or other proceedings shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.~~

~~8VAC20-820-360. Failure to pay civil penalty. (Repealed.)~~

~~A. If an outstanding civil penalty assessed after a case decision is not paid as required, the superintendent shall have the authority to:~~

- ~~1. Assess a late fee if the civil penalty payment is 60 days overdue, provided the total of the civil penalty and late fee do not exceed the penalty set forth in § 22.1-289.023 of the Code of Virginia;~~
- ~~2. Reduce the duration of the licensure period if the civil penalty payment is 60 days overdue; and~~
- ~~3. Deny renewal or revoke the license if the civil penalty payment is 90 days overdue.~~

~~B. The department will also institute legal collection procedures to collect unpaid penalties.~~

~~C. If a licensee appeals the imposition of a civil penalty, the provisions of this section shall not apply until the appeal is complete.~~

Part IX

Hearings Procedures

8VAC20-820-370. Scope. (Repealed.)

~~The appeal process as set forth in this part shall apply whenever the Department of Education takes adverse action on a license for a child day program or family day system. Therefore, whenever the department either revokes or refuses to issue or renew a license or imposes any other sanction for a child day program or family day system, the procedures specified in this part to produce a case decision shall be initiated.~~

8VAC20-820-380. Statutory basis for appeal process. (Repealed.)

~~The Department of Education is mandated by statute to enforce the standards adopted by the State Board of Education pursuant to § 22.1-289.046 of the Code of Virginia, regarding facilities required to be licensed under Chapter 14.1 (§ 22.1-289.010 et seq.) of Title 22.1 of the Code of Virginia. As part of this enforcement duty, § 22.1-289.024 of the Code of Virginia requires that the procedures under the Administrative Process Act (§ 2.2-4000 et seq., of the Code of Virginia) shall apply whenever the department takes adverse action.~~

8VAC20-820-390. Duties of the hearing coordinator. (Repealed.)

~~The hearing coordinator is the person designated by the Department of Education to perform certain administrative functions involved in setting up and carrying out the appeal process. The hearing coordinator's duties include the following:~~

- ~~1. Making a request to the Supreme Court for a hearing officer upon timely request for a formal administrative hearing.~~
- ~~2. Scheduling the date, time and location for the hearing.~~
- ~~3. Ensuring that a court reporter has been hired to record the hearing.~~
- ~~4. Preparing appropriate material for distribution to all participants. This includes the appointment of the hearing officer, preparing the notice of the hearing, and preparing the forms for the hearing officer to subpoena witnesses. It also includes submission of documents in the record, appropriate standards and any other pertinent information to all participants.~~
- ~~5. Monitoring the status of proceedings and the observance of timeframes throughout the appeal process.~~

8VAC20-820-400. Informal conference. (Repealed.)

~~A. Section 2.2-4019 of the Code of Virginia provides the aggrieved party the right to request an informal conference. In the case of administrative sanctions that include a provision for an administrative hearing, the named party and the agency may consent to waive such a conference to go directly to the hearing.~~

~~B. The informal conference is a fact-finding process. The purpose of an informal conference is to give the aggrieved party an opportunity to present information or evidence he believes indicates that the intended sanction was based on factual error or on misinterpretation of facts, or to determine if the dispute may be resolved by consent. The department will decide if the conference will be open to the public.~~

~~C. If the aggrieved party presents exhibits or other documents that contain facts previously unknown to the conference chair, the conference chair may determine that the new information requires verification. Upon making such a determination, the conference chair shall notify the aggrieved party that the information needs to be verified. The report on the informal conference shall be held open for 14 days to allow for the verification of the exhibits or other documents. The conference chair has the option to require the aggrieved party to provide such verification.~~

~~D. If the aggrieved party believes the matter can be resolved by consent, a written proposal must be submitted to the department-appointed chair of the conference no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the conference.~~

~~E. Following the informal conference, the chair will prepare a written report and recommended decision to the department that will include statutory authority or legal basis for the remaining steps in the administrative appeals process; a summary of the conference; the previous disposition as set out in the notice of adverse action, i.e., those issues on appeal; the findings of fact; the description of evidence; and the recommended decision or options. Within 90 days from the date of the informal conference, or from a later date agreed to by the aggrieved party and the agency, the department will issue its official decision in writing to the aggrieved party, including information concerning the named party's right to continue his appeal. The written report prepared by the chair will be attached to the letter and will be incorporated by reference.~~

~~F. When an informal conference is conducted following notification of an intent to issue a special order, the issuance of the special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. Service of the decision following the informal conference shall be achieved by mailing the decision to the licensee, unless service is made by other means and acknowledged in writing by the licensee. If the licensee wishes to appeal the decision, he shall have 30 days after service of the notice to make such a request. If service is accomplished by mail, three days shall be added to the 30-day period. Any appeal following an informal conference related to special orders shall be made to the circuit court. All other appeals shall follow procedures set forth in the Administrative Process Act.~~

8VAC20-820-410. Consent agreements. (Repealed.)

~~A. A consent agreement may be proposed by a licensee in lieu of adverse action. The proposed consent agreement shall be submitted no later than five work days prior to the conference unless different arrangements are agreed upon with the chair. In no case may a proposed consent agreement be submitted later than the day of the informal conference.~~

~~B. An acceptable consent agreement shall contain the following specific elements:~~

- ~~1. Dates of key actions, such as letter of sanction, timely appeal, the informal conference (if already held), and the names of the parties;~~
- ~~2. The assertion that all violations detailed in the letter of denial or revocation have been corrected or will be corrected by a time specified in the proposed agreement;~~
- ~~3. A description in detail of the case-specific systemic solution proposed that addresses the causes of the past history of violations, including the methods the licensee has in place to prevent violations and to monitor results;~~
- ~~4. A stipulation by the licensee to the validity of the violations enumerated in the specified correspondence and waiver of right to hearing under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) solely with respect to those violations;~~
- ~~5. The duration of the consent agreement, including the information that the period begins when the division director signs;~~
- ~~6. A statement that when the division director signs the agreement, signifying final acceptance, the division director is also agreeing to rescind the outstanding adverse action and that the licensee is agreeing to withdraw all appeals to that action; and~~
- ~~7. A statement outlining conditions for termination of the final agreement for cause and the nature of the licensee's appeal rights in that event.~~

~~C. Throughout the duration of the consent agreement, licensing staff will make frequent inspections to determine whether the terms of the consent agreement are being implemented and whether its intended results are being achieved.~~

8VAC20-820-420. Acknowledgment of request for an administrative hearing. (Repealed.)

~~Upon receipt of the written request from the aggrieved party for an administrative hearing pursuant to §§ 2.2-4020 and 2.2-4021 of the Code of Virginia, a hearing will be scheduled in the locality where the aggrieved party operates unless he expressly waives this venue provision (§ 8.01-261 of the Code of Virginia). The hearing coordinator will request appointment of a hearing officer from the list of qualified attorneys kept by the Supreme Court of Virginia. After a hearing officer is appointed and duly designated by the superintendent, a notice of hearing will be sent to the aggrieved party with a copy to the agency representative for the case. The department may be represented either by counsel or by agency staff authorized by § 2.2-509 of the Code of Virginia. After the hearing officer is appointed, the hearing coordinator will forward a copy of the relevant licensing standards and appeal procedures to the hearing officer. The hearing coordinator will not be directly involved in any investigation or litigation function in connection with the case.~~

8VAC20-820-430. Continuances. (Repealed.)

~~A request for continuance shall be made to the hearing officer at least five days prior to the time designated for the hearing, except in cases of emergency. No continuance of an administrative hearing shall be granted except at the discretion of the hearing officer, for good cause shown and with due consideration of the potential risks to children in the facility from extended exposure to conditions detailed in the agency's revocation or denial letter. All parties involved in a hearing shall avoid delay caused by unnecessary postponements or continuances so that a decision can be made expeditiously.~~

8VAC20-820-440. Recesses and postponements. (Repealed.)

~~The hearing officer has authority to grant recesses and postponements where necessary for the convenience and comfort of the parties, witnesses, and the court reporter.~~

8VAC20-820-450. Prehearing conferences. (Repealed.)

~~The hearing officer has the statutory power to hold conferences for the settlement or simplification of issues by the parties. The hearing officer may hold a prehearing conference for the stipulation of certain facts or for any other purposes that might be accomplished by such a preliminary process. It may be useful for the hearing officer to direct the parties to submit to him and exchange in advance of the conference: proposed statements of issues, proposed stipulations, requests for information, statements of position, proposed procedural data, and the exchange of exhibits. The notice for such a prehearing conference must be established by the hearing officer as to the date, time and place for such conference. It will not be necessary to provide a verbatim reporting of the prehearing conference. A report summarizing the results of this conference must be prepared, consisting of a list of appearances, agreements reached, the hearing officer's rulings, and other matters decided. A copy of this report shall be provided to all persons who entered appearances, which shall become part of the agency record.~~

8VAC20-820-460. Conduct of hearing. (Repealed.)

~~A. To initiate the proceedings, the hearing officer will call the hearing to order and make a brief statement giving the name of the proceeding, its case number, the names of all persons present and involved in the proceeding, and other appropriate introductory remarks such as the general rules of decorum and conduct. The parties shall be entitled to be accompanied by and represented by counsel. Before the formal presentation of evidence begins, the parties should be given an opportunity to bring up any preliminary matters or motions. If a hearing officer has questions or issues regarding the procedures in the hearing or his role in conducting the hearing, these questions shall be directed to the hearing coordinator. The parties at administrative hearings have the right to conduct cross-examination to obtain full and fair disclosure of the facts. The hearing officer will decide if the hearing will be open to the public.~~

~~B. The following shall be the order of proceedings at all hearings, subject to modification by the hearing officer before such hearing is commenced, for good cause:~~

- ~~1. Presentation, argument, and disposition of all preliminary matters and motions.~~
- ~~2. Presentation of opening statements. Such statements are not subject to cross-examination or an opportunity to present argumentative testimony.~~
- ~~3. Agency representative presents the case, calling witnesses in such order as is seen fit. Each witness should be subject to direct, cross, and redirect examination. Both the counsel for the adverse party and the hearing officer may direct questions to the witness.~~
- ~~4. The aggrieved party should present its case, using the same guidelines as established in subdivision 3 of this subsection.~~
- ~~5. Rebuttal evidence by the agency representative should be permitted.~~
- ~~6. At the close of the presentation of evidence, the parties may exercise their rights pursuant to §§ 2.2-4020 and 2.2-4021 of the Code of Virginia. The parties, on request, shall be given the opportunity for closing argument and may submit for the record, in writing, proposed findings and conclusions.~~

8VAC20-820-470. Rules of evidence. (Repealed.)

~~A. The burden of proof shall be upon the proponent. Therefore, if this is a situation where the department has revoked a license or imposed another administrative sanction subject to appeal by administrative hearing, the department is the proponent and has the burden of proof. However, in cases where the department has refused to grant an initial or renewal license, the proponent is the applicant and has the burden of proving that it should be granted a license.~~

~~B. The formal rules of evidence shall not apply. The hearing officer shall receive any probative evidence, and should strike, on objection or own motion, evidence that is irrelevant, immaterial, insubstantial, privileged, or repetitive, as required by §§ 2.2-4020 and 2.2-4021 of the Code of Virginia. If a question or answer at hearing is irrelevant, improper, or excludable, the hearing officer may strike it without waiting for an objection.~~

~~C. A party to the hearing may conduct examinations or cross-examinations without rigid adherence to formal rules of evidence, provided the examination or cross-examination does not become abusive or constitute harassment of the witness, and the examination can be shown to be necessary to result in full and fair disclosure of the facts bearing upon matters in issue. The hearing officer may examine all or any of the witnesses at the hearing.~~

8VAC20-820-480. The record at hearing. (Repealed.)

~~All testimony in the administrative hearing must be recorded either stenographically or by mechanical means. All documents or other evidence received are also part of the record and must be maintained. In addition, a record must be maintained of all evidence offered but excluded. See Rule 2A: 3 (c) of the Rules of the Supreme Court of Virginia. As a matter of practice, it would be appropriate for the hearing officer to conditionally receive evidence and thereafter, if it is excludable, to avoid considering it in making the decision. In this way, if it is determined on judicial review that the hearing officer erroneously decided that the evidence was excludable, the case can be remanded for reconsideration of the evidence submitted but rejected as exhibits.~~

8VAC20-820-490. Recommendations of the hearing officer. (Repealed.)

~~A. By statute, the hearing officer shall recommend findings of fact and a decision upon the preponderance of the evidence presented by the record and relevant to the basic law under which the agency is operating (§§ 2.2-4020 and 2.2-4021 of the Code of Virginia.). The recommended decision of the hearing officer shall be made upon consideration and review of the record as a whole or such portions of the record as may be cited by any party to the proceedings. The findings of fact shall be based exclusively on admissible evidence or matters that are officially noticed.~~

~~The recommendation shall be in writing and shall include specific findings on all the major facts in issue.~~

~~B. The hearing officer shall provide a recommendation within 90 days from the date the agency record is closed (that is, the date of the final hearing or the date by which the hearing officer prescribes that all evidence shall be submitted) or from a later date if agreed to by the aggrieved party and the agency (§ 2.2-4024 of the Code of Virginia). If the hearing officer does not render a recommended decision within 90 days, the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no recommended decision is made by the hearing officer within 30 days from receipt of the notice, then the Executive Secretary of the Supreme Court, pursuant to § 2.2-4024 of the Code of Virginia, shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause can be shown for the delay.~~

~~C. The available remedies offered by the hearing officer shall be to (i) uphold the decision of the department; (ii) recommend reversing the decision; or (iii) recommend issuance of a different sanction as provided in § 22.1-289.023 of the Code of Virginia.~~

~~D. The findings, conclusions and recommended decision shall be provided to the parties and thereafter either party has 10 days to submit any exceptions in writing to the hearing coordinator for review by the Superintendent regarding the recommended decision of the hearing officer. The hearing officer may incorporate the procedure for making exceptions to his recommended decision within the text of his report and recommendation.~~

~~E. The hearing officer shall forward the agency record, including the recommendation; all documents submitted by the parties; a listing of all exhibits presented, received and rejected; and the transcript of the hearing to the hearing coordinator.~~

8VAC20-820-500. Case decision. (Repealed.)

~~A. The superintendent, after review of the findings of fact and recommended decision of the hearing officer, shall make a case decision and issue an order in the case within 30 days from the date that the superintendent receives the hearing officer's recommendation (§§ 2.2-4020 and 2.2-4021 of the Code of Virginia). The superintendent shall provide notification to the aggrieved party of the decision within 30 days of receipt of the hearing officer's recommendation. If the superintendent does not render a decision within 30 days, the aggrieved party to the case decision may provide a written notice to the superintendent that a decision is due. If no decision is made within 30 days from the superintendent's receipt of the notice, the decision is deemed to be in favor of the aggrieved party. Service of the notice of the superintendent's decision is achieved by mailing the notice of the case decision to the licensee, unless service is made by other means and acknowledged in writing by the licensee. If service is accomplished by mail, three days shall be added to the 30-day period. If the licensee wishes to appeal the decision, the licensee shall have 30 days after service of the notice of case decision to make such request.~~

~~B. The signed original case decision shall remain in the custody of the agency as a public record, subject to the agency's records retention policy. The signed originals or facsimiles thereof, together with the full record or file of the case, shall be made available for public inspection or copying except as the agency may, in its discretion under § 2.2-4023 of the Code of Virginia, decide to withhold part or all of the records.~~

~~C. The provisions for appealing the Superintendent's order in accordance with the Administrative Process Act are found at §§ 2.2-4025 through 2.2-4030 of the Code of Virginia.~~

~~D. When issuance or renewal of a license for a child day program or family day system has been refused by the superintendent, the applicant shall not thereafter for a period of six months apply again for such license.~~

~~EXCEPTION: A child day program or family day system may apply again for such license before the end of the applicable specified period if the superintendent in his sole discretion believes that there has been such a change in the conditions on account of which he refused the prior application as to justify considering the new application.~~

Chapter 830

Fee Requirements For Processing Applications (REPEALED)

8VAC20-830-10. Fees. (Repealed.)

By act of the General Assembly and effective July 1, 2021, the Department of Education is authorized to charge fees for processing applications for licenses (§ 22.1-289.010 of the Code of Virginia).

Such fees are to be used for the development and delivery of training for operators and staff of facilities or agencies for children subject to licensure solely by the Department of Education.

Each license and renewal of it may be issued for a period of up to three successive years. The required fee for each licensed facility or agency will be based upon its licensed capacity and the length of the total licensure period. However, the fee will be collected annually and licensees will be billed each year by the Department of Education for the appropriate portion of the fee. (Example: A facility with a capacity of 55 participants is issued a license for a period of 24 months. The fee for that facility for the two-year period would be \$210. The facility will be charged \$105 at the beginning of the licensure period and billed again for \$105 at the beginning of the second year of licensure.) No fee will be charged directly following the issuance of a conditional license.

Some programs such as, but not limited to, parks and recreation programs and summer camps, which operate for less than four months in a 12-month period, will pay a reduced fee as indicated in the fee schedule below (short-term programs).

Applicants shall use the following schedule of fees to determine the correct fee to pay for processing all applications.

Schedule of Fees			
Capacity	1 year	2 years	3 years
1-12	\$14	\$28	\$42
13-25	\$35	\$70	\$105
26-50	\$70	\$140	\$210
51-75	\$105	\$210	\$315
76-200	\$140	\$280	\$420
201 & up	\$200	\$400	\$600
Short-term Programs			
1-50	\$25	\$50	\$75
51 & up	\$50	\$110	\$150
Flat Fees			
Family Day Care Systems	\$70	\$140	\$210

The fee shall be paid by personal check, money order, or certified check, made payable to "Treasurer of Virginia."

A fee that is incorrect in amount or is made payable other than to the Treasurer of Virginia will be returned to the applicant. Otherwise, no fee will be returned or refunded for any reason.

~~Failure to submit the appropriate fee within the time frame specified by the Department of Education may result in negative action against a facility's or agency's license.~~

~~A fee will be charged for checks that must be returned to the applicant because of insufficient funds.~~

Chapter 821

General Procedures for the Licensure of Child Day Programs and Family Day Systems

Part I

General

8VAC20-821-10. Definitions.

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

"Applicant" means any person that has applied for any license to operate or maintain a child day program or family day system.

"Background check" means (i) a sworn statement or affirmation, (ii) a fingerprint-based national criminal background check, (iii) a Virginia child protective services central registry check, and (iv) a check of the child abuse and neglect registry and criminal history record report for any state an individual has resided in within the past five years.

"Barrier crime" means a conviction defined as a barrier crime in § 19.2-392.02 of the Code of Virginia and shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth.

"Board" means the Virginia Board of Education.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or any of the children in care or (ii) 13 or more children at any location.

"Child day program" means 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 24-hour period.

"Conditional license" means a license that may be issued to a new facility to operate in order to permit the applicant to demonstrate compliance with licensing standards.

"Consent agreement" means a written agreement between an applicant or licensee and the department that the applicant or licensee will perform specific actions for the purpose of correcting violations to come into compliance with licensing standards or laws.

"Day" means a calendar day, unless otherwise specified.

"Denial" means the act of refusing to approve an initial application for license or a license renewal application for violations of any provision of Chapter 14.1 of Title 22.1 of the Code of Virginia or failure to comply with the limitations and licensing standards set forth in a license.

"Department" means the Virginia Department of Education.

"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 under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving five through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the

children in care are all related to the provider by blood or marriage shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangements, may provide central administrative functions including training of operators of family day homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Functional design" means the design features of buildings and grounds not regulated by the building code that are subject to licensing standards.

"Good character and reputation" or "good moral character and reputation" means a determination by the superintendent that an individual (i) maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability; and (ii) able to transact business in the Commonwealth and suitable to administer a program for the care, supervision, and protection of children.

"License" means a license that is issued pursuant to § 22.1-289.011 of the Code of Virginia to any person who constitutes, or who operates or maintains, a child day program or family day system.

"Licensee" means any person to whom a conditional license, a license, or a provisional license has been issued and who is legally responsible for compliance with the licensing standards related to the operation or maintenance of the child day program or family day system.

"Licensing standards" or "standards" means the standards of care and safety for operation of a child day program or family day system as set forth in this chapter, Chapter 14.1 of Title 22.1 of the Code of Virginia, the Standards for Licensed Child Day Centers (8VAC20-780), the Standards for Licensed Family Day Homes (8VAC20-800), or the Minimum Standards for Licensed Family Day Systems (8VAC20-810).

"Living in" means staying at a child day center or family day home for more than 30 days out of a 45-day period.

"Person" means any individual; corporation; partnership; association; limited liability company; local government; state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operates or maintains a child day program or family day system.

"Provisional license" means a license that may be issued when a licensee is temporarily unable to comply substantially with all of the requirements of the licensing standards.

"Registered" means a family day home that has met the standards for voluntary registration set forth in Voluntary Registration of Family Day Homes (8VAC20-850).

"Revocation" means the act of terminating a license during its effective dates for violations of any provision of Chapter 14.1 of Title 22.1 of the Code of Virginia or failure to comply with the limitations and standards set forth in a license.

"Superintendent" means the Superintendent of Public Instruction at the Department of Education and, except when prohibited by law, includes the Superintendent's representatives.

"Sworn statement or affirmation" means a signed statement completed by a person attesting to whether he or she has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or an equivalent offense outside the Commonwealth or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

"Variance" means a written determination by the superintendent that (i) a licensee or applicant for licensure as a child day program or family day system has demonstrated that implementation

of a regulation promulgated by the board would impose a substantial financial or programmatic hardship and (ii) the suspension or modified implementation of such regulation would not adversely affect the safety and well-being of children in care.

Part II

Licensure Requirements

8VAC20-821-20. Necessity for license.

Every person who constitutes, or who operates or maintains, a child day program or family day system shall obtain the appropriate license from the superintendent, which may be renewed.

8VAC20-821-30. License.

A. A license is issued to a specific person. A license is not transferable from one person to another.

B. A license issued under this chapter shall expire two years from the effective date of the license. The superintendent may extend or shorten the duration of licensure periods for a child day program or family day system whenever, at the superintendent's sole discretion, it is administratively necessary to redistribute the workload for greater efficiency in staff utilization.

C. A license shall be issued on a form prescribed by the superintendent.

D. The license and any other documents required by the superintendent shall be posted in a conspicuous place on the licensed premises.

E. A license shall be issued with the following terms:

1. The name of the person to whom the license is issued;
2. The date the license is effective and the date the license expires;
3. The name in which the licensee is doing business;
4. The physical location of the facility;
5. The maximum number of children who may be in care at any time;
6. The age range of children for whom care may be provided;

7. Any other stipulations or conditions that the superintendent may prescribe within the context of the licensing standards or laws.

F. Any administrative sanction imposed by a special order or any sanction imposed by a final order shall be considered a term of the license.

8VAC20-821-40. Qualifications for licensure.

A. Each application for licensure shall be made to the superintendent, in such form as the superintendent may prescribe, and shall include the following information:

1. The name and address of the applicant;
2. If the applicant is an association, partnership, limited liability company, or corporation, the names and addresses of its partners, members, officers, directors, or agents;
3. A description of the activities proposed to be engaged in;
4. A description of the facilities and services to be employed; and
5. Additional information as required by the superintendent.

B. The applicant shall submit a completed application, including all required documentation, and fee to the superintendent. An applicant may not begin operations for which a license is required prior to being issued a license or a conditional license by the superintendent.

C. Every applicant for licensure as a child day program, family day home, or family day system shall have the following qualifications:

1. The applicant and any of the applicant's partners, members, officers, directors, or agents shall be of good character and reputation.

2. The applicant and any of the applicant's partners, members, officers, directors, or agents shall submit to a background check in accordance with licensing standards.

3. The applicant shall disclose whether the applicant or any of the applicant's partners, members, officers, directors, or agents has ever had a license issued by any local, state, or national regulatory body that has been revoked, suspended, denied, or surrendered in lieu of an adverse action.

4. The applicant and any of the applicant's partners, members, officers, directors, or agents shall be at least 18 years old.

5. The applicant shall demonstrate financial responsibility.

6. The applicant shall have completed a prelicensure orientation offered through or approved by the superintendent that focuses on health and safety standards, application processes, background check requirements, and general licensure requirements.

a. The superintendent may, at the superintendent's discretion, waive the prelicensure orientation requirement or issue a license conditioned upon the applicant's completion of the prelicensure orientation program.

b. Applicants who have previously completed the prelicensure orientation program training and have not been subject to a license denial or revocation shall not be required to complete the prelicensure orientation program a second time.

7. The applicant shall demonstrate compliance with all applicable licensing standards.

D. Applicants for licensure as a child day center shall meet the requirements of 8VAC20-821-50 regarding buildings and functional design.

E. The applicant shall at all times allow the superintendent reasonable access and opportunity to make on-site inspection of the facility in order to determine compliance with applicable licensing standards.

F. The applicant shall allow the superintendent reasonable opportunity to inspect the applicant's records. Records that contain confidential proprietary information furnished to the department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5 of the Code of Virginia.

G. The applicant shall allow the superintendent to interview the applicant's agents and employees and any person living or participating in their facilities, or under the applicant's custody, control, direction, or supervision in accordance with subsection A of § 22.1-289.018 of the Code of Virginia.

H. It is the responsibility of the applicant to demonstrate qualifications for licensure and compliance with licensing standards. All such determinations of qualification and compliance shall be at the discretion of the superintendent. Failure to demonstrate qualifications and compliance for licensure may constitute grounds for denying a license.

I. A license shall not be issued to an applicant who does not constitute a child day program or family day system.

8VAC20-821-50. Buildings and functional design.

A. Buildings for applicants as child day programs or family day systems shall be classified by and meet the specifications for the proper Use Group as required by the Virginia Uniform Statewide Building Code.

B. An applicant for licensure as a child day center shall submit inspection reports from state or local fire authorities, as applicable, to determine compliance of the building with the Virginia Statewide Fire Prevention Code (13VAC5-51).

C. An applicant for licensure as a child day center shall submit inspection reports from state or local health authorities that shall include approval of general sanitation and, if applicable, water supply, sewage disposal systems, and food service operations for the building in which the facility is operated.

D. The building used by an applicant as a child day center shall meet all functional design requirements.

E. Applicants are encouraged to consult as early as possible with the department regarding building plans and licensing standards in order to avoid noncompliance.

8VAC20-821-60. Modification of the terms of the license.

A. A licensee may submit a written request to the superintendent for a modification of the terms of the license at any time during the license period.

B. If the superintendent grants a modification, the department will issue a modified license reflecting the changes.

C. A modification shall not be granted to modify the person to whom the license was granted.

8VAC20-821-70. Variances.

A. Any request for a variance shall be made to the superintendent and shall be in writing on a form prescribed by the superintendent. The request for a variance shall include the following:

1. The specific requirements for which the applicant or licensee is requesting a variance;

2. A detailed description of the substantial programmatic or financial hardship that will be caused by the applicant or licensee's compliance with the requirements for which the variance is requested; and

3. The proposed alternative to the requirement that will protect the safety and well-being of the children in care.

B. When requested by the superintendent, the applicant or licensee requesting the variance shall obtain additional information to substantiate either (i) that compliance with the requirements will cause substantial programmatic or financial hardship or (ii) that the proposed alternative to the requirement will protect the safety and well-being of the children in care. Such additional information may include the opinions of professionals in the field, research, or studies.

C. The superintendent may attach conditions to a variance upon approval.

D. A variance may be rescinded or modified upon a change in the facts upon which the superintendent relied in granting the variance.

E. A variance is not transferable between persons.

F. The superintendent shall review each approved variance at least annually.

G. An applicant or licensee shall not make the programmatic change for which the variance was requested prior to receiving written approval from the superintendent. Initiating the programmatic change prior to receiving approval for the variance shall be grounds for denying the request for the variance and may constitute grounds for adverse action.

8VAC20-821-80. Conditional license.

A. The superintendent may issue a conditional license to an applicant in order to permit the applicant to demonstrate compliance with the requirements for licensure. A conditional license may be issued for a term not to exceed six months. A conditional license may be renewed, but a conditional license may not be held for longer than six months from the original issuance of the conditional license.

B. If, at the end of the conditional license, the applicant is still unable to demonstrate compliance with all of the licensure requirements, the application for initial licensure shall be denied.

C. A conditional license may be voided and a license issued if the superintendent determines that the applicant meets the qualifications for licensure.

8VAC20-821-90. Refusal of license issuance.

When issuance of a license for a child day program or family day system has been refused by the superintendent, the applicant shall not thereafter for a period of six months apply again for such license unless the superintendent in the superintendent's sole discretion believes that there has been such a change in the conditions on account of which the license was refused as to justify considering a new application. When an appeal is taken by the applicant pursuant to subsection A of § 22.1-289.024, the six-month period shall be extended until a final decision has been rendered on appeal.

Part III

Renewal

8VAC20-821-100. Renewal required.

Every person issued a license that has not been suspended or revoked shall renew such license prior to its expiration.

8VAC20-821-110. Qualifications for renewal.

A. Prior to the expiration date shown on the license, a licensee desiring to renew a license shall return to the superintendent a completed renewal application and appropriate fee. Failure to receive notices from the superintendent regarding license renewal does not relieve the licensee of the obligation to renew.

B. The renewal applicant shall have met the requirements of 8VAC20-821-50 regarding the approval of buildings and functional design.

C. The renewal applicant shall demonstrate compliance with licensing standards.

D. As required by Chapter 14.1 of Title 22.1 of the Code of Virginia, the renewal applicant and any of the applicant's partners, members, officers, directors, or agents shall submit to a background check in accordance with licensing standards.

E. The renewal applicant shall at all times allow the superintendent reasonable access and opportunity to make on-site inspection of the proposed facility in order to determine compliance with licensing standards. Such on-site inspections may occur at any time during the license term and may be unannounced.

F. The renewal applicant shall at all times allow the superintendent reasonable opportunity to inspect the renewal applicant's records. Records that contain confidential proprietary information furnished to the department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5 of the Code of Virginia.

G. The renewal applicant shall at all times allow the superintendent to interview any person under the renewal applicant's custody, control, direction, or supervision. Interviews shall be (i) authorized by the person to be interviewed or the person's legally authorized representative and (ii) limited to discussion of issues related to the applicant's compliance with applicable laws and licensing standards.

H. It is the responsibility of the renewal applicant to demonstrate that the licensee meets all qualifications for renewal. All determinations of qualifications shall be at the discretion of the superintendent. Failure to demonstrate qualifications for licensure shall constitute grounds for denying a license renewal.

I. A license will not be renewed for a licensee who does not constitute a child day program or family day system during the licensure period immediately preceding renewal.

8VAC20-821-120. Refusal of renewal.

A. The superintendent may refuse a renewal application for (i) failure to meet the qualifications for renewal or violation of licensing standards or (ii) failure to comply with the terms of an order by the superintendent.

B. When renewal of a license for a child day program or family day system has been refused by the superintendent, the applicant shall not thereafter for a period of six months apply again for such license unless the superintendent in the superintendent's sole discretion believes that there has been such a change in the conditions on account of which the license was refused as to justify considering a new application. When an appeal is taken by the applicant pursuant to subsection A of § 22.1-289.024, the six-month period shall be extended until a final decision has been rendered on appeal.

8VAC20-821-130. Provisional license.

A. The superintendent may issue a provisional license to a renewal applicant when the applicant is temporarily unable to comply with all of the licensure requirements. A provisional license may be issued for a term not to exceed six months. A provisional license may be renewed, but a provisional license may not be held for longer than six months from the original issuance of the provisional license.

B. If, at the end of the provisional license, the renewal applicant is still unable to comply with all of the licensure requirements, the application for renewal shall be denied.

C. A provisional license may be voided and the license renewed if the superintendent determines that the renewal applicant meets the qualifications for renewal.

Part IV

Application Fees

8VAC20-821-140. Application fees nonrefundable; application date.

A. All application fees for licenses are nonrefundable.

B. The date that the application fee is received by the superintendent shall be the date that the application was received.

C. An applicant for initial licensure shall submit a completed application to the superintendent within six months of the date that the application was received. Applications that remain incomplete after six months of the date the application was received will be closed, and the applicant will be required to submit a new application with a new fee.

D. An applicant for license renewal shall submit a completed renewal application prior to the date the applicant's license expires.

E. Application fees shall not be applicable to facilities, centers, or agencies operated by federal entities.

8VAC20-821-150. Application fees.

A. The fee required for each child day program will be based upon its licensed capacity. The following fee schedule applies to child day programs that operate at least 12 weeks of a 12-month period:

Capacity	Two-year licensing fee
1-12	\$28
13-25	\$70
26-50	\$140

51-75	\$210
76-200	\$280
201 and up	\$400

B. The following fee schedule applies to child day programs that operate less than 12 weeks of a 12-month period:

Capacity	Two-year licensing fee
1-50	\$50
51 and up	\$110

C. Family day systems will be subject to a license fee of \$140.

D. A fee will be charged for checks that must be returned to the applicant because of insufficient funds.

Part V

Background Checks

8VAC20-821-160. Scope of background check regulations.

This part applies to any person required to have a background check by Chapter 14.1 of Title 22.1 of the Code of Virginia.

8VAC20-821-170. Background checks required.

A. Any person required to have a background check shall follow the provisions of Chapter 14.1 of Title 22.1 of the Code of Virginia regarding background checks.

B. Any person 14 years of age or older living in the home of a licensed or registered family day home shall request a Virginia child protective services central registry check within seven days of becoming 14 or beginning to live in the home.

8VAC20-821-180. Disqualifying background checks; prohibitions.

A. No child day center, family day home, or family day system licensed in accordance with the provisions of this chapter, child day center exempt from licensure pursuant to § 22.1-289.031, registered family day home, family day home approved by a family day system, or child day center, family day home, or child day program that enters into a contract with the Department or its agents or designees to provide child care services funded by the Child Care and Development Block Grant shall hire for compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with, in control of, or supervising children any person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

B. Notwithstanding the provisions of subsection A, a child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

C. If any person specified in subsection A § 22.1-289.036 of the Code of Virginia (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Superintendent pursuant to § 22.1-289.038, no license as a child day center, family day home, or family day system or registration as a family day home shall

be granted by the Superintendent and no approval as a family day home shall be granted by the family day system.

D. No person specified in subsection A of § 22.1-289.036 of the Code of Virginia shall be involved in the day-to-day operations of the child day center, family day home, or family day system, or shall be alone with, in control of, or supervising one or more children, without first having completed any required background check.

E. Dissemination of background check information is prohibited other than to the superintendent or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

8VAC20-821-190. Out-of-state child abuse and neglect registry and criminal history record searches.

A. If any individual required to get a background check has lived in another state in the past five years and the results of the request to search the child abuse and neglect registry or criminal history record maintained by that state has not been returned, the individual shall obtain the following before the background check may be considered complete:

1. Documentation of the refusal from the state if no search was performed; or
2. Documentation showing that the individual contacted the state in writing to obtain the results of the child abuse and neglect registry or criminal record history at least 45 days after the initial request.

B. Any documentation obtained pursuant to subsection A shall be maintained as part of the background check record.

8VAC20-821-200. New background checks.

The child day program or family day system, the department, or the registering or approving authority may require a new background check if there is reason to suspect that a person required to have a background check has a disqualifying background.

8VAC20-821-210. Maintenance of background check records.

A. A child day program or family day system shall keep background check records at its place of business for at least two years after the background check is required, unless federal or state law or regulation requires the records to be kept for longer. If multiple child day programs are owned by the same entity, such records may be kept at a single location and shall be made available to the superintendent upon request.

B. Background check records shall be kept in locked files or a secure electronic file, and access to such files should be restricted according to a principle of least privilege.

C. Family day systems shall keep background check records for family day homes approved by the system.

8VAC20-821-220. Waiver of criminal convictions.

A. Any person who seeks to operate, volunteer, or work at a child day program or family day system and who is disqualified because of a criminal conviction or a criminal conviction in the background check of any other adult living in a family day home regulated by the Department, pursuant to § 22.1-289.035, 22.1-289.036, or 22.1-289.039, may apply in writing for a waiver from the Superintendent. The Superintendent may grant a waiver if the Superintendent determines that (i) the person is of good moral character and reputation and (ii) the waiver would not adversely affect the safety and well-being of children in the person's care.

B. The Superintendent shall not grant a waiver to any person who has been convicted of any barrier crime.

C. The Superintendent may grant a waiver to a family day home licensed or registered by the Department if any other adult living in the home of the applicant or provider has been convicted

of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, provided that (a) five years have elapsed following the conviction and (b) the Department has conducted a home study that includes, but is not limited to, (1) an assessment of the safety of children placed in the home and (2) a determination that the offender is now a person of good moral character and reputation. The waiver shall not be granted if the adult living in the home is an assistant or substitute provider or if such adult has been convicted of a misdemeanor offense under both §§ 18.2-57 and 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction.

D. The request for a waiver shall be submitted on a form prescribed by the superintendent.

E. Waivers are granted at the discretion of the superintendent and are not subject to appeal.

F. A waiver is granted to a specific person and shall include the following:

1. The name of the individual who is the subject of the waiver;
2. The name and location of the child day program or family day system;
3. The effective date of the waiver;
4. Any stipulations or conditions upon which the waiver is granted;
5. The criminal conviction for which the waiver is granted;
6. The date of the criminal conviction; and
7. The signature of the superintendent.

G. A person to whom a waiver is granted shall notify the superintendent if any of the terms, stipulations, or conditions upon which the waiver was granted have changed and shall request a modification from the superintendent if appropriate.

H. The superintendent may rescind a waiver if the superintendent determines that (i) the waiver application contained materially false or misleading information; (ii) the stipulations or conditions upon which the waiver was granted have been violated; or (iii) the person no longer meets the criteria for a waiver.

I. A waiver automatically expires when the individual who is the subject of the waiver no longer lives in the home.

8VAC20-821-230. Public notification of waivers.

A. The child day program or family day system shall post any waiver granted by the superintendent in a conspicuous place at the location listed on the waiver.

B. Any waiver granted under this section shall be available for inspection by the public. The child day program or family day system shall notify in writing every parent of the children in its care of any waiver granted by the superintendent, as well as notify in writing the parent of any child subsequently enrolled for as long as the waiver remains effective.

Part VI

Standards of Conduct

8VAC20-821-240. Determination of continued compliance.

A. In order to determine continued compliance with licensing standards during the effective dates of the license, the superintendent will perform inspections in accordance with § 22.1-289.018 of the Code of Virginia.

B. The licensee is responsible for correcting any areas of noncompliance found during any inspection.

8VAC20-821-250. Maintenance of license.

A. An applicant or licensee shall at all times keep the superintendent informed of its current mailing address, telephone number, and email address.

B. An applicant or licensee shall notify the superintendent immediately of any change of ownership or business formation.

8VAC20-821-260. Provision of records to the superintendent.

An applicant or licensee shall produce any records to the superintendent during an inspection or within the timeframe specified by the superintendent if an extension is granted. Records produced for the superintendent pursuant to this section that contain confidential or proprietary information shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5 of the Code of Virginia.

8VAC20-821-270. Prohibited acts.

The following are prohibited acts by an applicant or licensee and may be subject to enforcement and sanctions:

A. Furnishing substantially inaccurate or incomplete information to the superintendent in obtaining, renewing, reinstating, or maintaining a license;

B. Making any materially false or misleading statement to the superintendent with respect to the operation of any child day program or family day system;

C. Failure to operate within the terms of a license or variance;

E. Failure to obtain from the superintendent a modification pursuant to 8VAC20-821-60 or variance pursuant to 8VAC20-821-70 prior to making programmatic or operational changes for which a modification or variance is required;

F. Failure to obtain a background check in accordance with Chapter 14.1 of Title 22.1 of the Code of Virginia;

F. Failure to post the following documents in a conspicuous location on the premises of each facility:

1. The most recently issued license. Any conditional or provisional license shall be posted at each public entrance of the facility and a notice shall be prominently displayed next to the license that states that a description of specific violations of licensing standards to be corrected and the deadline for completion of such corrections is available for inspection at the facility or on the facility's website, if applicable;

2. Notice of the superintendent's intent to revoke or deny renewal of the license of a child day program or family day system. Such notice will be provided by the department and shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations;

3. A copy of any final order of summary suspension of all or part of a license for a child day program or family day system operated by an agency of the Commonwealth shall be prominently displayed by the provider at each public entrance of the facility, or the provider may display a written statement summarizing the terms of the order, printed in clear and legible size and typeface, in a prominent location and identifying the location within the facility where the final order of summary suspension may be reviewed;

4. Any notice of the superintendent's intent to take any of the actions enumerated in subdivisions B 1 through B 6 of § 22.1-289.023 of the Code of Virginia. Such notice will be provided by the department, and a copy of the notice shall be posted in a prominent place at each public entrance of the facility to advise consumers of serious or persistent violations;

5. A copy of any special order issued by the department shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations;

6. Any other documents required by the superintendent;

G. Failure to correct any area of noncompliance found during any inspection;

H. Permitting, aiding, or abetting the commission of any illegal act in the licensed facility or agency;

I. Hiring for compensated employment, continuing, to employ, or permitting to serve as a volunteer who will be alone with, in control of, or supervising children any person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 of the Code of Virginia or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

J. Failure to notify the superintendent that the licensee has been convicted of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia or is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

K. Engaging in conduct or practices that are in violation of laws or regulations relating to abuse, neglect, or exploitation of children;

L. Interfering with the superintendent in the discharge of the superintendent's licensing duties, which includes forbidding the superintendent access to a location when at least one child is in care; and

M. Failure to comply with the terms of an order issued by the Superintendent.

Part VII

Violation Review

8VAC20-821-280. Review process.

A. If an applicant or licensee believes that a licensing standard has been applied or interpreted in a manner that is arbitrary or capricious, the applicant or licensee may request a review by program supervisory personnel.

B. A request for review shall be in writing and shall be made within 5 business days of receiving a notice of violation. The request shall contain the following information:

1. The date that the application of the licensing standard that is being challenged was made;

2. The reasons why the applicant or licensee believes that the application of the licensing standard was arbitrary or capricious;

3. All relevant documentation supporting the rationale of the applicant or licensee that the application of the licensing standard was arbitrary or capricious.

C. Nothing in this section shall be construed to prohibit the superintendent from exercising the superintendent's responsibility and authority, including proceeding directly to the imposition of administrative sanctions, summary suspension, or recommending petitions for injunction.

Part VIII

Sanctions

8VAC20-821-290. Administrative sanctions.

A. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019 of the Code of Virginia, the superintendent may issue a special order (i) for violation of any of the provisions or any regulation adopted under the provisions of Chapter 14.1 of Title 22.1 of the Code of Virginia or § 54.1-3408 of the Code of Virginia for which violation adversely affects,

or is an imminent and substantial threat to, the health, safety, or welfare of the person cared for therein, or (ii) for permitting, aiding, or abetting the commission of any illegal act in a child day program or family day system. Notice of the superintendent's intent to take any of the actions enumerated in subdivisions B 1 through 6 shall be provided by the department, and a copy of such notice shall be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001 of the Code of Virginia. Actions set forth in subsection B may be appealed by (a) a child day program or family day system operated by an agency of the Commonwealth in accordance with § 22.1-289.025 of the Code of Virginia or (b) any other child day program or family day system in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The superintendent shall not delegate the superintendent's authority to impose civil penalties in conjunction with the issuance of special orders.

B. The superintendent may take the following actions regarding child day programs and family day systems through the issuance of a special order and may require a copy of the special order provided by the department to be posted in a prominent place at each public entrance of the licensed premises to advise consumers of serious or persistent violations:

1. Place a licensee on probation upon finding that the licensee is substantially out of compliance with the terms of the license and that the health and safety of children is at risk;
2. Reduce the licensed capacity or prohibit new admissions when the superintendent concludes that the licensee cannot make necessary corrections to achieve compliance with regulations except by a temporary restriction of its scope of service;
3. Mandate training for the licensee or licensee's employees, with any costs to be borne by the licensee, when the superintendent concludes that the lack of such training has led directly to violations of regulations;
4. Assess civil penalties of not more than \$500 per inspection upon finding that the child day program or family day system is substantially out of compliance with the terms of its license and the health and safety of children is at risk; however, no civil penalty shall be imposed pursuant to this subdivision on any child day program or family day system operated by an agency of the Commonwealth;
5. Require licensees to contact parents, guardians, or other responsible persons in writing regarding health and safety violations; and
6. Preventing licensees who are substantially out of compliance with the licensure terms or in violation of the regulations from receiving public funds.

8VAC20-821-300. Revocation.

The superintendent may revoke the license of any child day program or family day system that violates any provision of this chapter, Chapter 14.1 of Title 22.1 of the Code of Virginia, or fails to comply with the limitations and standards set forth in its license.

8VAC20-821-310. Summary suspension.

The superintendent may, in accordance with the provisions of § 22.1-289.022 of the Code of Virginia, issue a notice of summary suspension of the license of any child day program or family day system, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the child day program or family day system that pose an immediate and substantial threat to the health, safety, and welfare of the children receiving care, and the superintendent believes the operation of the child day program or family day system should be suspended during the pendency of such proceeding.

8VAC20-821-320. Consent agreements.

A. Instead of an adverse action, an applicant or licensee may enter into a consent agreement with the superintendent.

B. A consent agreement between an applicant or licensee and the superintendent shall include the following:

1. Dates of key actions and events and the names of the parties;
2. An assertion that all violations detailed in the notice of intent have been corrected;
3. A description in detail of the case-specific systemic solution proposed that addresses the causes of the past history of violations, including the methods the licensee has in place to prevent violations and to monitor results;
4. A stipulation by the licensee to the validity of the violations enumerated in the specified correspondence and a waiver of all rights to an informal conference or hearing under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) related to those violations;
5. A statement by the licensee that all determinations as to whether the terms of the agreement are being implemented and the intended results achieved are at the sole discretion of the superintendent;
6. The duration of the consent agreement. The consent agreement will be effective once signed by both parties;
7. A statement that when the superintendent signs the agreement, signifying final acceptance, the superintendent is also agreeing to rescind the outstanding adverse action and that the licensee is agreeing to withdraw all appeals to that action; and
8. A statement outlining conditions for termination of the consent agreement and the nature of the licensee's appeal rights in that event.

C. Throughout the duration of the consent agreement, licensing staff will make frequent inspections to determine (i) whether the terms of the consent agreement are being implemented and (ii) whether its intended results are being achieved.

Part IX

Appeals

8VAC20-821-330. Appeal from renewal, denial of renewal, or revocation of license.

A. Whenever the superintendent refuses to issue a license or to renew a license or revokes a license for a child day program or family day system operated by an agency of the Commonwealth, the provisions of § 22.1-289.025 the Code of Virginia shall apply.

B. Whenever the superintendent refuses to issue a license or to renew a license or revokes a license for any child day program or family day system other than a child day program or family day system operated by an agency of the Commonwealth, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply, except that all appeals from notice of the superintendent's intent to refuse to issue or renew, or revoke a license shall be received in writing from the child day program or family day system operator within 15 days of the date of receipt of the notice. Judicial review of a final review agency decision shall be in accordance with the provisions of the Administrative Process Act.