| **Virginia Board of Education Agenda Item** | **Seal of the Commonwealth of Virginia** |
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# Agenda Item: C

## Date: April 22, 2021

### Title: Final Review of Child Care Regulations Transferring from the Board of Social Services to the Board of Education (*Exempt Action*)

#### Presenter: Ms. Jenna Conway, Chief School Readiness Officer

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## Purpose of Presentation:

Action required by state or federal law or regulation.

Executive Summary:   
Effective July 1, 2021, the Board of Education is responsible for establishing a unified public-private system for early childhood care and education (ECCE) in the Commonwealth, to be implemented by the Virginia Department of Education (VDOE). Chapters [860](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0860) and [861](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0861) of the 2020 Acts of the General Assembly require regulations governing the implementation and oversight of ECCE programs to be transferred from the Board of Social Services to the Board of Education. These regulations are to be adopted as written, with minor modifications as needed to be incorporated into the Education administrative code section. The Board’s initial actions to adopt these regulations with “necessary amendments” are exempt from Article 2 ([§2.2-4006](https://law.lis.virginia.gov/vacode/2.2-4006/) et seq.) of Chapter 40 of Title 2.2 of the *Code of Virginia*. Necessary amendments for the purposes of such exempt action include:

* Renumbering;
* Changing references from the Board of Social Services to the Board of Education;
* Changing code references and descriptions;
* Striking regulations specific to adult care programs and child welfare programs; and
* Striking regulations related to child support enforcement pursuant to [§ 63.2-1911](https://law.lis.virginia.gov/vacode/title63.2/chapter19/section63.2-1911/).

VDOE will conduct a comprehensive review of these regulations in partnership with the new Early Childhood Advisory Council to identify and recommend substantive policy changes to the Board later this year.

This item supports Priority 1 of the Board’s Comprehensive Plan to provide high-quality learning environments for all students.

## Action Requested:

Final review: Action requested at this meeting.

## Superintendent’s Recommendation: The Superintendent of Public Instruction recommends the Board of Education approve the Child Care Regulations Transferring from the Board of Social Services to the Board of Education (*Exempt Action*) and authorizes VDOE staff to make technical edits to the regulations and forms, as needed.

## Rationale for Action:

Board action is required to adopt and transfer the child care regulations as required by Chapters [860](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0860) and [861](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0861) of the 2020 Acts of the General Assembly.

## Previous Review or Action:

Previous review and action. Specify date and action taken below:

**Action:** First Review

**Date:** March 17, 2021

Background Information and Statutory Authority:  
Pursuant to [§ 22.1-289.03 of the *Code of Virginia*](https://law.lis.virginia.gov/vacode/title22.1/chapter14.1/section22.1-289.03/), the Board of Education (Board) is responsible for establishing “a statewide unified public-private system for early childhood care and education system in the Commonwealth to ensure that every child has the opportunity to enter kindergarten healthy and ready to learn.” The system will be “implemented by the Board, the Superintendent [of Public Instruction] and the Department [of Education (VDOE)]” effective July 1, 2021. Funding and oversight of early childhood care and education (ECCE) programs and policies—including the Child Care Subsidy Program and child care licensing and monitoring—will transition to VDOE from the Virginia Department of Social Services on July 1 accordingly.

Chapters [860](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0860) and [861](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0861) of the 2020 Acts of the General Assembly require that the regulations governing the implementation and oversight of ECCE programs be transferred from the Board of Social Services to the Board and state that such transferred regulations “remain in full force and effect until altered, amended, or rescinded by the Board of Education.” The Board’s initial actions to adopt these regulations with “necessary amendments” are exempt from Article 2 (ง [2.2-4006 et seq](https://law.lis.virginia.gov/vacode/2.2-4006/).) of Chapter 40 of Title 2.2 of the Code of Virginia. Necessary amendments for the purposes of such exempt action include:

* Renumbering;
* Changing references from the Board of Social Services to the Board of Education;
* Changing code references and descriptions;
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VDOE will conduct a comprehensive review of these regulations in partnership with the new Early Childhood Advisory Council to identify and recommend substantive policy changes to the Board later this year.

The attachments includes partially marked-up copies of the following sections of Social Services code, which are set to transfer to the Board. Administrative code numbers that will change during the formal transfer process are highlighted in yellow.

* 22VAC40-80: General Procedures and Information for Licensure (Attachment A)
* 22VAC60-160: Fees (Attachment B)
* 22VAC40-191: Background Checks for Child Welfare Agencies (Attachment C)
* 22VAC40-185: Standards for Licensed Child Day Centers (Attachment D)
* 22VAC40-111: Standards for Licensed Family Day Homes (Attachment E)
* 22VAC40-180: Voluntary Registration of Family Day Homes—Requirements for Providers (Attachment F)
* 22VAC40-120: Minimum Standards for Family Day Systems (Attachment G)
* 22VAC40-665: Child Care Program (Attachment H)
* 22VAC40-690: Virginia Child Care Provider Scholarship Program (Attachment I)

Timetable for Further Review/Action:

Upon Board approval, VDOE staff will submit this Exempt Action pursuant to the requirements of the Administrative Process Act.

## Impact on Fiscal and Human Resources:

There is no fiscal impact of this action. Existing VDOE staff will facilitate the transfer process of the child care regulations.

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Exempt Action: Final Regulation

Agency Background Document

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| **Agency name** | Virginia Board of Education |
| **Virginia Administrative Code (VAC) Chapter citation(s)** | 22VAC40-80  22VAC60-160  22VAC40-191  22VAC40-185  22VAC40-111  22VAC40-180  22VAC40-120  22VAC40-665  22VAC40-690 |
| **VAC Chapter title(s)** | General Procedures and Information for Licensure  Fees  Background Checks for Child Welfare Agencies  Standards for Licensed Child Day Centers  Standards for Licensed Family Day Homes  Voluntary Registration of Family Day Homes—Requirements for Providers  Minimum Standards for Family Day Systems  Child Care Program  Virginia Child Care Provider Scholarship Program |
| **Action title** | Final Review of Child Care Regulations Transferring from the Board of Social Services to the Board of Education *(Exempt Action)* |
| **Final agency action date** | April 22, 2021 |
| **Date this document prepared** | April 8, 2021 |

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary  
[RIS1]

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Pursuant to [§ 22.1-289.03 of the Code of Virginia](https://law.lis.virginia.gov/vacode/title22.1/chapter14.1/section22.1-289.03/), the Board of Education (Board) is responsible for establishing “a statewide unified public-private system for early childhood care and education system in the Commonwealth to ensure that every child has the opportunity to enter kindergarten healthy and ready to learn.” The system will be “implemented by the Board, the Superintendent [of Public Instruction] and the Department [of Education (VDOE)]” effective July 1, 2021. Funding and oversight of early childhood care and education (ECCE) programs and policies—including the Child Care Subsidy Program and child care licensing and monitoring—will transition to VDOE from the Virginia Department of Social Services on July 1 accordingly.

Chapters [860](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0860) and [861](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0861) of the 2020 Acts of the General Assembly require that the regulations governing the implementation and oversight of ECCE programs be transferred from the Board of Social Services to the Board and state that such transferred regulations “remain in full force and effect until altered, amended, or rescinded by the Board of Education.” The Board’s initial actions to adopt these regulations with “necessary amendments” are exempt from Article 2 (ง [2.2-4006 et seq](https://law.lis.virginia.gov/vacode/2.2-4006/).) of Chapter 40 of Title 2.2 of the Code of Virginia. Necessary amendments for the purposes of such exempt action include:

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[RIS2]

Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). “Mandate” is defined as “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

Chapters [860](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0860) and [861](https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP0861) of the 2020 Acts of the General Assembly require that the regulations governing the implementation and oversight of ECCE programs be transferred from the Board of Social Services to the Board of Education. The Board must adopt these regulations with necessary amendments in order to comply with the law.

Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

The Virginia Board of Education provided final review and approval of the following regulations on April 22, 2021:

* 22VAC40-80: General Procedures and Information for Licensure
* 22VAC60-160: Fees
* 22VAC40-191: Background Checks for Child Welfare Agencies
* 22VAC40-185: Standards for Licensed Child Day Centers
* 22VAC40-111: Standards for Licensed Family Day Homes
* 22VAC40-180: Voluntary Registration of Family Day Homes—Requirements for Providers
* 22VAC40-120: Minimum Standards for Family Day Systems
* 22VAC40-665: Child Care Program
* 22VAC40-690: Virginia Child Care Provider Scholarship Program