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| **Virginia Board of Education Agenda Item** | **Seal of the Commonwealth of Virginia** |

# Agenda Item: G

## Date: November 18, 2021

### Title: Final Review of Notice of Intended Regulatory Action (NOIRA) to the *General Procedures and Information for Licensure* (8VAC20-820).

#### Presenter: Ms. Jenna Conway, Deputy Superintendent, Division of Early Childhood Care and Education

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## Purpose of Presentation:

Action required by Board of Education regulation.

**Executive Summary:**
Chapter [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 Acts of Assembly (2020) transferred oversight of child care programs and regulations to the Virginia Board of Education (Board). Initial actions of the Board to adopt, with necessary amendments, this regulation were exempt from Article 2 of the Administrative Process Act (§ 2.2-4006 et seq. of the *Code of Virginia*). Additional amendments to the regulation are necessary to enable implementation of the programs in accordance with the Act and to incorporate substantive policy changes to align with the *Code* and revised program policy and procedures.

The chapter, *General Procedures and Information for Licensure* (8VAC20-820), describes the process for licensure for all child day programs licensed by the Virginia Department of Education (VDOE), including family day systems. The regulation describes the licensure process; terms of licenses issued; the application process; inspections; and enforcement practices as implemented according to the Administrative Process Act.

This regulatory action will provide a comprehensive review and update of the regulation and include input from the Early Childhood Advisory Committee.

Chapter 860 and 861 of the Acts of Assembly (2020) established the Early Childhood Advisory Committee to advise the Board on programs, systems, and regulations. This regulatory action provides an opportunity for Committee members to review and make recommendations which will inform the comprehensive review.

VDOE will provide constituents and provider groups an opportunity to provide public comment on this proposed regulatory action and will engage constituent groups and stakeholders throughout the development of the regulation.

The request for the Board to approve the Notice for Intended Regulatory Action (NOIRA) on the *General Procedures and Information for Licensure* (8VAC20-820) regulation is time sensitive as the child care sector continues to face challenges in response to the COVID-19 pandemic. The child care sector has continued serving children in person throughout the pandemic, and there is a need to review all regulations expeditiously in order to streamline processes while ensuring the safety of infants, toddlers, preschoolers and school age children.

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 that the Board of Education approve the NOIRA for *General Procedures and Information for Licensure* (8VAC20-820).

## Rationale for Action:

## Board action is required to initiate the regulatory process to adopt new standards for General Procedures and Information for Licensure.

## Previous Review or Action:

No previous review or action.

**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 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 transitioned to VDOE from the Virginia Department of Social Services on July 1, 2021.

Pursuant to 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 the regulations governing the implementation and oversight of ECCE programs were transferred from the Board of Social Services to the Board. This regulatory action seeks to amend the General Procedures and Information for Licensure regulation in accordance with the authority described in Chapters 860 and 861.

VDOE will conduct a comprehensive review of these regulations in partnership with the new Early Childhood Advisory Committee to identify and recommend substantive policy changes to the Board under the authority prescribed in 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. Amendments to the regulation will include the following:

* A complete list of license types and description of when each may be issued;
* New information on the Performance Standardization Guidance for Licensure performance levels for license issuance;
* New information on the risk assessment process used to assess likely or actual harm or injury from critical violations of standards related to health, safety, and well-being
* Provisions regarding who and what will be included in character and reputation investigations; and
* Clarification that if a licensee fails to comply with a special order the Department shall have the authority to impose an enforcement action deemed appropriate by the Superintendent.

**Timetable for Further Review/Action:**
Upon Board approval, VDOE staff will submit this NOIRA to Town Hall 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 NOIRA process and initiate the process to begin promulgating the new standards for General Procedures and Information for Licensure.

# Attachment A C:\Users\puv36694\Pictures\townhalllogo609.bmp

 **townhall.virginia.gov**

**Notice of Intended Regulatory Action (NOIRA)**

**Agency Background Document**

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| **Agency name** | Virginia Board of Education  |
| **Virginia Administrative Code (VAC) Chapter citation(s)**  | 8VAC20-821 [new chapter];8VAC20-820 [repeal] |
| **VAC Chapter title(s)** | General Procedures and Information for Licensure |
| **Action title** | Adopt New Standards for the *General Procedures and Information for Licensure* |
| **Date this document prepared** | November 17, 2021 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (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 the subject matter, intent, and goals of this this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation.*

This regulatory action will repeal 8VAC20-820, “General Procedures and Information for Licensure,” and establish a comprehensive new regulation, 8VAC20-821.

The *General Procedures and Information for Licensure* was originally promulgated by the Virginia Department of Social Services in 1984 and adopted by the Virginia Board of Education (”Board”) in 2021. The Board intends to repeal the current chapter and promulgate a new chapter in its place in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures.

**[RIS2]**
**Acronyms and Definitions**

*Define all acronyms or technical definitions used in this form.*

None

**Mandate and Impetus
[RIS3]**

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

The Board has determined that significant revisions to the current chapter are necessary in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures. The Board will repeal the current chapter and promulgate a new chapter in its place.

**[RIS4]
Legal Basis**

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

The Board’s overall regulatory authority is found in § [22.1-16](https://law.lis.virginia.gov/vacode/title22.1/chapter2/section22.1-16/) of the *Code of Virginia*, which states that “[t]he 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.”

The Board’s regulatory authority over child day programs and family day systems is found in § [22.1-289.046](https://law.lis.virginia.gov/vacode/title22.1/chapter14.1/section22.1-289.046/) of the *Code of Virginia*, 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.”

**Purpose**

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

The *General Procedures and Information for Licensure* establishes minimum levels for the care of children and adults that is provided by child day centers, family day homes, and family day systems. The Board has determined that a comprehensive revision of the chapter is necessary in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures. The current chapter was first promulgated almost three decades ago under the Virginia Department of Social Services. A comprehensive review of the regulations will provide clear, understandable, and updated requirements for licensees and ensure the sufficiency of care provided to children and adults receiving services.

**Substance**

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

This regulatory action will repeal the current chapter and replace it with a new chapter. The Board will perform a comprehensive review of the chapter in order to implement statutory requirements, clarify existing regulatory requirements, and update practices and procedures.

**Alternatives to Regulation**

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

There are no alternatives to regulatory action, as the *General Procedures and Information for Licensure* are necessary for program implementation.

The Board considered amending the *General Procedures and Information for Licensure* in its current structure and format. However, due to the number of updates and revisions, the Board has determined that promulgation of a new chapter will be more expedient.

**Periodic Review and**

**Small Business Impact Review Announcement**

**[RIS5]**

This NOIRA is not being used to announce a periodic review or a small business impact review.

**[RIS6]
Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

The Virginia Department of Education is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: https://townhall.virginia.gov. Comments may also be submitted by email to Tatanishia Armstrong, Legislative Consultant, Virginia Department of Education, 101 N. 14th St., Richmond, VA 23219, 804-382-5047, tatanishia.armstrong@doe.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.