8VAC20-780-40 Operational responsibilities

A. Applications for licensure shall conform with Article 3 (§ 22.1-289.010 et seq.) and Article 4 (§ 22.1-289.030 et seq.) of Chapter 14.1, of Title 22.1 of the Code of Virginia and the regulation entitled General Procedures and Information for Licensure, 8VAC20-820.

B. Pursuant to § 22.1-289.034 of the Code of Virginia and the regulation entitled Background Checks for Child Day Programs and Family Day Systems, 8VAC20-770, the applicant and any agent at the time of application who is or will be involved in the day-to-day operations of the center or who is or will be alone with, in control of, or supervising one or more of the children, shall be of good character and reputation; shall not have been convicted of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia; and is not the subject of a founded complaint of child neglect or abuse within or outside the Commonwealth.

C. The sponsor shall afford the superintendent or his agents the right at all reasonable times to inspect facilities and to interview his agents, employees, and any child or other person within his custody or control, provided that no private interviews may be conducted with any child without prior notice to the parent of such child.

D. The license shall be posted in a place conspicuous to the public (§ 22.1-289.011 of the Code of Virginia).

E. The operational responsibilities of the licensee shall include ensuring that the center's activities, services, and facilities are maintained in compliance with these standards, the center's own policies and procedures that are required by these standards, and the terms of the current license issued by the department.

F. Every center shall ensure that advertising is not misleading or deceptive as required by § 22.1-289.027 of the Code of Virginia.

G. The center shall meet the proof of child identity and age requirements as stated in § 22.1-289.049 of the Code of Virginia.

H. The sponsor shall maintain public liability insurance for bodily injury for each center site with a minimum limit of at least $500,000 each occurrence and with a minimum limit of $500,000 aggregate.

1. A public sponsor may have equivalent self-insurance that is in compliance with the Code of Virginia.

2. Evidence of insurance coverage shall be made available to the department's representative upon request.

I. The center shall develop written procedures for injury prevention.

J. Injury prevention procedures shall be updated at least annually based on documentation of injuries and a review of the activities and services.

K. The center shall develop written procedures for prevention of shaken baby syndrome or abusive head trauma, including coping with crying babies, safe sleeping practices, and sudden infant death syndrome awareness.

L. The center shall inform all staff who work with children of children's allergies, sensitivities, and dietary restrictions.

M. The center shall maintain, in a way that is accessible to all staff who work with children, a current written list of all children's allergies, sensitivities, and dietary restrictions documented in the allergy plan required in 8VAC20-780-60 A 8. This list shall be dated and kept confidential in each room or area where children are present.

N. The center shall develop written playground safety procedures that shall include:

1. Provision for active supervision by staff to include positioning of staff in strategic locations, scanning play activities, and circulating among children; and

2. Method of maintaining resilient surface.

O. Hospital-operated centers may temporarily exceed their licensed capacity during a natural disaster or other catastrophe or emergency situation and shall develop a written plan for emergency operations, for submission to and approval by the Department of Education.

P. When children 13 years or older are enrolled in the program and receive supervision in the licensed program, they shall be counted in the number of children receiving care and the center shall comply with the standards for these children.

Q. The center shall implement policies for the possession and administration of undesignated or stock epinephrine pursuant to § 22.1-289.059 of the Code of Virginia that ensure:

1. Undesignated or stock epinephrine is only administered by a nurse at the center, an employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine, or staff at the center authorized by a prescriber and trained in the administration of epinephrine pursuant to 8VAC20-780-245 M to a child believed to be having an anaphylactic reaction**;**

2. At least one nurse at the center or an employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine, or staff at the center authorized by a prescriber and trained in the administration of epinephrine pursuant to 8VAC20-780-245 M has the means to access at all times during regular facility hours appropriate weight-based dosages of undesignated or stock epinephrine based on the children in care at the center; and

3.Undesignated or stock epinephrine is stored in a locked or inaccessible container or area in the center.

8VAC20-780-245. Ongoing training.

A. Staff shall complete annually a minimum of 16 hours of training appropriate to the age of children in care.

B. Training completed to meet the requirements of this section shall be in addition to completing orientation requirements in 8VAC20-780-240.

C. Staff who do not work with a group of children at the center shall only be required to complete annual training on emergency preparedness and response, child abuse and neglect, and mandated reporter requirements.

D. Staff who work with a group of children at the center and are employed at a short-term program shall only be required to obtain a minimum of 10 hours of staff training per year.

E. In a cooperative preschool center that is organized, administered, and maintained by parents of children in care, parent volunteers, or other persons who participate and volunteer in a cooperative preschool center on behalf of a child attending such cooperative preschool center, including such volunteers who are counted in the staff-to-child ratios required in 8VAC20-780-340, shall complete four hours of training per year and shall be exempt from training requirements applicable to staff of child day programs. This training exemption shall not apply to any parent volunteer or other person as referred to in this subsection if the cooperative preschool center has entered into a contract with the department or a local department to provide child care services funded by the Child Care and Development Block Grant.

F. Volunteers who work more than six hours per week shall be required to complete annual training on the center's emergency procedures.

G. For therapeutic child day programs and special needs child day programs, staff who work directly with children shall annually complete four additional hours of training. At least eight hours of annual training shall be on topics related to the care of children with special needs.

H. Annual training shall be relevant to staff's job responsibilities and the care of children, and include topics such as:

1. Child development including physical, cognitive, social, and emotional development;

2. Behavior management and positive guidance techniques;

3. Prevention and control of infectious diseases;

4. Prevention of sudden infant death syndrome and use of safe sleep practices;

5. Prevention of and response to emergencies due to food and other allergic reactions including:

a. Recognizing the symptoms of an allergic reaction;

b. Responding to allergic reactions;

c. Preventing exposure to the specific food and other substances to which the child is allergic; and

d. Preventing cross contamination;

6. The center's policies and procedures on the administration of medication;

7. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

8. Prevention of shaken baby syndrome and abusive head trauma including procedures to cope with crying babies or distraught children;

9. Signs and symptoms of child abuse and neglect and requirements for mandated reporters;

10. Emergency preparedness and response planning for emergencies resulting from a natural disaster or a human-caused event such as violence at a child care facility and the center's specific emergency preparedness plan as required 8VAC20-780-550 A through K;

11. Handling and storage of hazardous materials and the appropriate disposal of diapers and other items contaminated by body fluids;

12. CPR and first aid;

13. Precautions in transporting children if applicable; and

14. If applicable, the recommended care requirements related to the care and development of children with special needs.

I. Training on the center's emergency preparedness plan shall be completed annually and each time the plan is updated.

J. Medication administration:

1. To safely perform medication administration practices listed in 8VAC20-780-510, whenever the center has agreed to administer prescribed medications, the administration shall be performed by a staff member or independent contractor who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist pursuant to § 54.1-3408 of the Code of Virginia; or administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

b. Staff required to have the training specified in subdivision 1 of this subsection and subsection M of this section shall be retrained at three-year intervals.

2. To safely perform medication administration practices listed in 8VAC20-780-510, whenever the center has agreed to administer over-the-counter medications other than topical skin gel, cream, or ointment, the administration must be performed by a staff member or independent contractor who has satisfactorily completed a training course developed or approved by the Department of Education in consultation with the Department of Health and the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or administration shall be performed by a staff member or independent contractor who is licensed by the Commonwealth of Virginia to administer medications.

a. The course, which shall include competency guidelines, shall reflect currently accepted safe medication administration practices, including instruction and practice in topics such as reading and following manufacturer's instructions; observing relevant laws, policies, and regulations; and demonstrating knowledge of safe practices for medication storage and disposal, recording and reporting responsibilities, and side effects and emergency recognition and response.

b. The approved training curriculum and materials shall be reviewed by the department at least every three years and revised as necessary.

c. Staff required to have the training shall be retrained at three-year intervals.

3. Any child for whom emergency medications (such as albuterol, glucagon, and epinephrine auto injector) have been prescribed shall always be in the care of a staff member or independent contractor who meets the requirements in subdivision 1 of this subsection.

K. Daily health observation training shall include the following:

1. Components of daily health check for children;

2. Inclusion and exclusion of the child from the class when the child is exhibiting physical symptoms that indicate possible illness;

3. Descriptions of how diseases are spread and the procedures or methods for reducing the spread of disease;

4. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and

5. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's bloodborne pathogens regulation (29 CFR 1910.1030).

L. There shall always be at least one staff member on duty who has obtained within the last three years instruction in performing the daily health observation of children.

M. The administration of undesignated or stock epinephrine shall be performed by (i) a nurse at the center or employee of a local health department authorized by a prescriber and trained in the administration of epinephrine, (ii) staff at the center who is authorized by a prescriber and meets the requirements of 8VAC20-780-245 J, (iii) staff who has satisfactorily completed a training course developed or approved by the Department of Education in consultation with the Department of Health, or (iv) staff who has satisfactorily completed a course taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist that includes the following:

1. Recognizing signs and symptoms of anaphylaxis.

2. Emergency procedures for responding to anaphylaxis; and

3. Instructions and procedures for administering epinephrine.

~~M~~N. Documentation of training shall be kept by the center in a manner that allows for identification by individual staff member, is considered part of the staff member's record, and shall include:

1. Name of staff;

2. Training topic;

3. Evidence that training on each topic required in this section has been completed;

4. Training delivery method;

5. The entity or individual providing training;

6. The number of training hours or credit hours received; and

7. The date of training.

~~N~~ O. Medication administration training required in subsection J of this section and daily health observation training required in subsection K of this section may count toward the annual training hours required in this section.

8VAC20-780-510 Medication

A. The decision to administer medicines at a facility may be limited by center policy to administer:

1. Prescribed medications;

2. Over-the-counter or nonprescription medications; or

3. No medications except those required for emergencies or by law.

B. Prescription and nonprescription medication shall be given to a child:

1. According to the center's written medication policies; and

2. Only with written authorization from the parent.

C. Medication shall be administered by a staff member who is 18 years of age or older.

D. Nonprescription medication shall be administered by a staff member or independent contractor who meets the requirements in 8VAC20-780-245 J 1 or J 2.

E. The center's procedures for administering medication shall:

1. Include any general restrictions of the center.

2. For nonprescription medication, be consistent with the manufacturer's instructions for age, duration, and dosage.

3. Include duration of the parent's authorization for medication, provided that it shall expire or be renewed after 10 work days. Long-term prescription drug use and over-the-

counter medication may be allowed with written authorization from the child's physician and parent.

4. Include methods to prevent use of outdated medication.

F. The medication authorization shall be available to staff during the entire time it is effective.

G. Medication shall be labeled with the child's name, the name of the medication, the dosage amount, and the time or times to be given. Undesignated or stock epinephrine kept at the center pursuant to § 22.1-289.059 shall be labeled with the name of the medication and the dosage amount.

H. Nonprescription medication shall be in the original container with the direction label attached.

I. The center may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a staff member or an independent contractor who meets the requirements in 8VAC20-780-245 J;

2. The center has obtained written authorization from a parent or guardian;

3. The center administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

4. The center administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

J. When needed, medication shall be refrigerated.

K. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

L. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

M. If a key is used, the key shall not be accessible to the children.

N. Centers shall keep a record of medication given children, which shall include the following:

1. Child to whom medication was administered;

2. Amount and type of medication administered to the child;

3. The day and time the medication was administered to the child;

4. Staff member administering the medication;

5. Any adverse reactions; and

6. Any medication error.

O. Staff shall inform parents immediately of any adverse reactions to medication administered and any medication error.

P. When an authorization for medication expires, the parent shall be notified that the medication needs to be picked up within 14 days or the parent must renew the authorization. Medications that are not picked up by the parent within 14 days will be disposed of by the center by either dissolving the medication down the sink or flushing it down the toilet.

8VAC20-780
Revised Proposed Text
6/7/2024

Office of Regulatory Management

Economic Review Form

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-780
VAC Chapter title(s)	Standards for Licensed Child Day Centers
Action title	Amend regulation to require each child day center to implement policies for the possession and administration of epinephrine.
Date this document prepared	6/20/2024
Regulatory Stage (including Issuance of Guidance Documents)	Fast-Track

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<table>
<tr><td>(1) Direct & Indirect Costs & Benefits (Monetized)</td><td colspan="2">Direct costs: Describe the direct costs of this proposed change here.
2663 licensed child day center providers will incur direct costs to obtain epinephrine. Based upon cost information obtained from the Department of Planning and Budget 2023 Fiscal Impact Statement, VDOE estimates a direct cost to providers of approximately $30 to $750 per regulated provider per year or more often based on the use and expiration dates of the epinephrine.

Indirect Costs: Describe the indirect costs of the proposed change.
None known.

Direct Benefits: Describe the direct benefits of this proposed change here.
None known.

Indirect Benefits: Describe the indirect benefits of the proposed change.
None known.</td></tr>
<tr><td>(2) Present Monetized Values</td><td>Direct & Indirect Costs</td><td>Direct & Indirect Benefits</td></tr>
<tr><td></td><td>Stock epinephrine: $30 to $750 per provider per year or more often.</td><td>$0</td></tr>
<tr><td>(3) Net Monetized Benefit</td><td colspan="2">-$30 to $750 per provider per year.</td></tr>
<tr><td>(4) Other Costs & Benefits (Non-Monetized)</td><td colspan="2">The benefit of the change is that child care providers will have access to lifesaving medication for children who experience anaphylactic shock while in their care.</td></tr>
<tr><td>(5) Information Sources</td><td colspan="2">Department of Planning and Budget 2023 Fiscal Impact Statement. Consultation with Virginia Department of Health (the agency that coordinates the stock epinephrine program for the Commonwealth’s K-12 schools) regarding the cost of the epinephrine.</td></tr>
</table>

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None known. Indirect Costs: Describe the indirect costs of the proposed change.

	None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $0	(b) $0
(3) Net Monetized Benefit	$0	
(4) Other Costs & Benefits (Non-Monetized)	Maintaining the *status quo* means that a child with an undiagnosed allergy who experiences anaphylaxis could potentially lose their life while in the care of the regulated program. The majority of new cases of anaphylaxis are diagnosed in children under the age of 4, a primary population in the regulated programs.	
(5) Information Sources	National Institutes of Health Asthma & Allergy Foundation of America	

Table 1c: Costs and Benefits under Alternative Approach(es)

Table 1c is omitted as directed in the *ORM Regulatory Economic Analysis Manual* because the proposed action is mandated by state statute.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None known. Indirect Costs: Describe the indirect costs of the proposed change. None known.

	Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $0	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	It is unknown whether the supply of epinephrine can meet the demand of the change. The increase in demand could limit access to epinephrine. There is a potential for the procurement to happen at the state level, as demonstrated by the current K-12 process for epinephrine with Virginia Department of Health. However, that process is not currently in place for the regulated child care providers, and if another process was determined to be needed, such as regional coordination, local agencies may be impacted.	
(4) Assistance	To develop and implement a process for training and procurement, VDOE will require significant assistance from state or local partners.	
(5) Information Sources		

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None known. Indirect Costs: Describe the indirect costs of the proposed change. None known; however, regulated providers may respond to the regulation by increasing the cost of care for families. Direct Benefits: Describe the direct benefits of this proposed change here. None known.

	Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) unknown	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	The intended direct benefit of this legislation is to provide lifesaving medication when a child experiences anaphylactic shock while in the care of the regulated provider. Families of children may feel a sense of increased safety for their children when they are in the care of regulated programs.	
(4) Information Sources		

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Direct costs to small businesses which comprise most of the regulated providers. The providers' costs related to training staff will likely increase. While VDOE would intend to make training accessible at no-cost, the regulated providers must bear the cost of increased staff time for training. It is possible that regulated providers must purchase multiple doses of weight-based epinephrine per year at a cost of $30 to $750 to meet the requirements. Indirect Costs: Describe the indirect costs of the proposed change. None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $30 to $750 per provider per year or more often	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	The ability to potentially save a child's life if the child experiences anaphylactic shock while in care of the regulated program.	
(4) Alternatives	One alternative to having the direct costs fully borne by regulated providers is for the Virgina Department of Education to request appropriation funds to be allocated to procure epinephrine for child care providers impacted.	
(5) Information Sources	Department of Planning and Budget 2023 Fiscal Impact Statement; Virginia Department of Health	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Authority of Change	Initial Count	Additions	Subtractions	Net Change
8VAC20-780-40	**Statutory:**	**6**	6	0	+6
	Discretionary:	**22**	0	0	0
8VAC20-780-245	**Statutory:**	**0**	4		+4
	Discretionary:	**52**	0	0	0
8VAC20-780–510	**Statutory:**	**0**	2	0	+2
	Discretionary:	**33**	0	0	0

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
8VAC20-780-40	Requires the licensed child day center to implement policies for the possession and administration of epinephrine that meet the requirements of § 22.1-289.059 of the Code of Virginia.	$0	$30 to $750 per provider per year or more often based on use and expiration dates of epinephrine.	$30 to $750 per provider per year or more often.

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
8VAC20-780-40	Requires the licensed child day center to implement policies for the possession and administration of epinephrine that meet the requirements of § 22.1-289.059 of the Code of Virginia.	This change will impact every licensed child day center. This change will require extensive local or statewide partnerships, the development of new systems and processes for

		regulatory compliance for providers, and development of new regulatory oversight processes for the Department.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	**Original Length**	**New Length**	**Net Change in Length**
To be determined after regulatory change.			

Form: TH-04
August 2022

townhall.virginia.gov

Fast-Track Regulation
Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8 VAC 20 - 780
VAC Chapter title(s)	Standards for Licensed Child Day Centers
Action title	Amend regulation to require each child day center to implement policies for the possession and administration of epinephrine
Date this document prepared	6/20/2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

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.

The Standards for Licensed Child Day Centers (8VAC20-780) provides requirements for child day centers licensed by the Virginia Department of Education and responsible for the safety and well-being of children during the absence of a parent or guardian. Pursuant to Chapter 122 and

Chapter 123 of the 2023 Acts of Assembly and § 22.1-289.059 of the Code of Virginia, this action will amend the regulation to require each child day center to implement policies for the possession and administration of stockepinephrine.

The amendments will add requirements to implement policies for the possession and administration of epinephrine to be administered by any nurse at the center, employee at the center, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine to any child believed to be having an anaphylactic reaction. Amendments require that at least one nurse at the center, employee at the center, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine has the means to access at all timesduring regular facility hours any such appropriate weight-based dosage of epinephrine that is stored in a locked or otherwise generally inaccessible container or area.

An amendment to the Standards for Licensed Child Day Centers (8VAC20-780) is needed to implement the provisions of Chapter 122 and Chapter 123 of the 2023 Acts of Assembly.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the Virginia Board of Education

"VAC" means Virginia Administrative Code

"The Department" means the Virginia Department of Education

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.

On July 27, 2023, the State Board of Education authorized the Department of Education to proceed with the fast-track revision to Standards for Licensed Child Day Centers.

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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM

procedures, "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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Provisions in Chapter 122 and Chapter 123 of the 2023 Acts of Assembly impact § 22.1-289.059 of the Code of Virginia and directs the Virginia Department of Education to amend regulations to require child day centers to implement policies for the possession and administration of epinephrine. The Standards for Licensed Child Day Centers must be revised to reflect the new provisions that became effective July 1, 2023.

This rulemaking action is expected to be noncontroversial as it is required by § 22.1-289.059 of the Code of Virginia and therefore appropriate for the fast-track process. This action will mandate epinephrine to be in regulated child day centers and accessible to staff in the event of an anaphylactic emergency.

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 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 is found in § 22.1-289.046 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 [Chapter 14.1], 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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The action is essential to enhancing the health, safety, and welfare of children in care. The purpose of the amendment is to protect children with undiagnosed allergies in cases when exposure to the allergen may result in anaphylaxis which could be deadly, and to comply with the provisions of Chapter 122 and Chapter 123 of the 2023 General Assembly.

An amendment to regulation was determined by the agency as the most efficient and effective way to implement the provisions of the Code of Virginia.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The amendment will add requirements for training and policies to address the possession and administration of epinephrine. The amendment will also include technical edits to the regulation.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to t hat effect.

The advantage of this action is that the requirement for stock epinephrine to be available in centers increases protections for children and could potentially save the life of a child who experiences anaphylactic shock as a result of an allergic reaction. This action aligns requirements for stock epinephrine in child care centers with existing requirements for children who attend public schools in § 22.1-274.2 of the Code of Virginia.

There are no disadvantages to this regulatory action.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are currently no applicable federal requirements to address stock epinephrine in child day programs.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

Virginia Department of Health

Localities Particularly Affected

Local health departments

Other Entities Particularly Affected

Licensed child day centers

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	The Department does not require any additional staff to implement this change.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	Resources required from the Virginia Department of Health and Division of Pharmacy services to assist in the procurement of epinephrine for licensed child day centers. The Department regulates about 2663 licensed child day centers subject to these requirements.
For all agencies: Benefits the regulatory change is designed to produce.	This regulatory change will bring the Department into compliance with the Code of Virginia and add protections for

	children who may experience anaphylaxis.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no direct or indirect costs and benefits to local partners.
Benefits the regulatory change is designed to produce.	This regulatory change will add protections for children who may experience anaphylaxis.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	All licensed child day centers would be affected by this change.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	There are currently 2663 licensed child day centers that will be impacted, all of which are small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Based on the Department of Planning and Budget 2023 Fiscal Impact Statement, epinephrine is estimated to cost each provider between $30-$750 in initial costs with comparable ongoing costs which depends on the use and expiration dates of the epinephrine if a provider chooses to keep undesignated epinephrine on site. Training and administrative costs are likely but cannot be determined at this time.

Benefits the regulatory change is designed to produce.	This regulatory change will add protections for children who may experience anaphylaxis. The amendments to the regulations are designed to ensure all licensed child day centers are aware of and in compliance with the Code of Virginia.

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 since this regulatory action is required by § 22.1-289.059 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on s mall business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternatives to regulatory action since this regulatory action is required by § 22.1-289.59 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the in itial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The 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 and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's re gulatory flexibility analysis stated in this background document.

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 mail, email or fax to Tatanishia Armstrong, Legislative Consultant, Virginia Department of Education, PO Box 2120., Richmond, VA 23218, 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.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
780-40	NA	Requirements for operational responsibilities to include the following: Background check requirements pursuant	Adds a requirement for the center to implement policies for the possession and administration of epinephrine that meet the requirements of § 22.1-289.059 of the Code of Virginia.

		to § 22.1-289.034 of the Code of Virginia. Requirements for background checks pursuant to § 22.1-289.34 and Background Checks for Child Day Programs and Family Day Systems, 8VAC20-770. Requirements for inspections, advertising, postings, terms of the license and compliance with the policies required by the regulation. Requirements for proof of age and identity as required by § 22.1-289.049 of the Code of Virginia. Requirements for liability insurance and injury prevention. Requirements to inform staff of and maintain a list of children's allergies, sensitivities, and dietary restrictions. Requirements for the supervision of children.	The intent is for compliance with the Code of Virginia. The impact is added protections for children with severe allergies.

780-245	NA	Requirements for ongoing training for child day center staff. Requirements for ongoing training of volunteers. Requirements for medication administration training. Requirements for daily health observation training. Requirements related to training documentation.	Adds a requirement that allows individuals trained in the administration of epinephrine to administer emergency epinephrine pursuant to § 22.1-289.059. Technical edits added to correct cross reference
780-510	NA	Requirements for the administration of prescription and nonprescription medication. Requirements for the storage of medications. Requirements for medication documentation and notification.	Adds a requirement for labeling of stock epinephrine.

Part II Subsidy Program Vendor Requirements for Family Day Homes

8VAC20-790-250. Caregiver training and development.

A. Prior to approval as a subsidy vendor, the prospective vendor shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Education, which shall include the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or service all caregivers shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Education, which shall include training on the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

C. Orientation training for caregivers shall be completed on the following specific topics prior to the caregiver working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;

2. Responsibilities for reporting suspected child abuse or neglect;

3. Confidentiality;

4. Supervision of children, including arrival and dismissal procedures;

5. Procedures for action in the case of lost or missing children, ill or injured children, medical and general emergencies;

6. Medication administration procedures, if applicable;

7. Emergency preparedness plan as required in 8VAC20-790-420 B;
8. Procedures for response to natural and man-made disasters;

9. Prevention of shaken baby syndrome or abusive head trauma including coping with crying babies and fussy or distraught children;

10. Prevention of sudden infant death syndrome and use of safe sleeping practices;

11. Caregivers who work with children who have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination and recognizing and responding to any allergic reactions; and

12. Transportation.

D. All caregivers shall have within 90 days of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the ages of children in care. The training shall include an in-person competency demonstration; and

2. Current certification in first aid appropriate to the ages of children in care. However, a caregiver who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

E. CPR and first aid training may count toward the annual training hours required in subsection H of this section if documentation for training as required in subdivision 5 of 8VAC20-790-200 is maintained.

F. Caregivers who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training, to include the department's health and safety update course. This training shall be related to child safety, child development, health and safety in the family day home environment, and any required department sponsored training.

G. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a caregiver who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist or (ii) administration shall be performed by a caregiver who is licensed by the Commonwealth of Virginia to administer medications.

The vendor may determine by policy what medications, if any, will be administered at its family day home, including prescription medications or over-the-counter or nonprescription medications.

~~H. Caregivers required to have the training required in subsection I of this section shall be retrained at three-year intervals.~~

H. The administration of undesignated or stock epinephrine shall be performed by the vendor or a caregiver who (i) meets the requirements of 8VAC20-790-250 G, (ii) has satisfactorily completed a training course developed or approved by the Department of Education in consultation with the Department of Health, or (iii) completed a course taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist that includes the following:

1. Recognizing signs and symptoms of anaphylaxis.

2. Emergency procedures for responding to anaphylaxis; and
3. Instructions and procedures for administering epinephrine.

I. The vendor and caregivers required to have the training required in subsections G and H of this section shall be retrained at three-year intervals.

J. The vendor, or at least one other caregiver, shall receive training in the administration of epinephrine pursuant to subsections H and I of this section.

8VAC20-790-350. Parental involvement and notifications.

A. The caregiver shall notify the parent immediately if a child is lost, requires emergency medical treatment, sustains a serious injury, or dies.

B. The caregiver shall notify the parent by the end of the day of any known minor injuries.

C. The caregiver shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;

2. Name of injured child;

3. Type and circumstance of the injury;

4. Caregiver present and treatment;

5. Date and time when parents were notified; and

6. Caregiver and parent signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion of any food identified in the written care plan required in 8VAC20-790-190 B 12 even if a reaction did not occur.

E. Parents shall be informed of the vendor's emergency preparedness plan.

F. Caregivers shall promptly inform parents when persistent behavioral problems are observed and identified.

G. Caregivers shall provide information weekly to parents about the child's health, development, behavior, adjustment, or needs.

H. Parents shall be informed of the reason for a child's termination from care.

I. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the care of the vendor, pursuant to § 22.1-289.054 of the Code of Virginia.

J. When children at the family day home have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the vendor's having been informed unless forbidden by law. Children's exposure to life threatening diseases shall be reported to parents immediately.

K. Parents shall be notified in writing of whether the provider stores an appropriate weight-based dosage of undesignated or stock epinephrine in the residence or home in which the family day home operates as required by § 22.1-289.059 of the Code of Virginia.

8VAC20-790-400 General requirements for medication administration

A. Prescription and nonprescription medications shall be given to a child:

1. According to the home's written medication policies, and

2. Only with written authorization from the parent.

B. The vendor may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a caregiver who meets the requirements of 8VAC20-790-250~~ I and J~~ G and H;

2. The caregiver administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

3. The caregiver administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

C. The vendor may administer nonprescription medication provided the medication is:

1. Administered by a caregiver 18 years of age or older;

2. Labeled with the child's name;

3. In the original container with the manufacturer's direction label attached; and

4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

D. Nonprescription medication shall not be used beyond the expiration date of the product.

E. Medications for children in care shall be stored separately from medications for household members and caregivers.

F. When needed, medication shall be refrigerated.

G. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

H. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and medications for caregivers and household members, shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall be inaccessible to the children.

I. The vendor shall keep a record of prescription and nonprescription medication given children, which shall include the following:

1. Name of the child to whom medication was administered;

2. Amount and type of medication administered to the child;

3. The day and time the medication was administered to the child;

4. Name of the caregiver administering the medication;

5. Any adverse reactions; and

6. Any medication error.

Part III Subsidy Program Vendor Requirements for Child Day Centers

8VAC20-790-520 Operational responsibilities

A. The vendor shall ensure compliance with the standards in this part, the terms of the vendor agreement, and all relevant federal, state, or local laws and regulations.

B. Pursuant to § 22.1-289.040 of the Code of Virginia, the vendor shall ensure that the applicant and any staff who is or will be involved in the day-to-day operations of the center or is or will be alone with, in control of, or supervising one or more of the children (i) has not been convicted of any barrier crime as defined in § 19.2-392.02 of the Code of Virginia and (ii) is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

C. The vendor shall ensure that the center does not exceed the capacity of children cared for as allowed by law or regulation.

D. When at least one child receives care for compensation, all children who are in care and supervision count in the capacity of children being cared for. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care, and the vendor shall comply with the standards in this part for these children.

E. The vendor shall inform all staff who work with children of children's allergies, sensitivities, and dietary restrictions.

F. The vendor shall maintain, in a way that is accessible to all staff who work with children, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential in each room or area where children are present.

G. Religious exempt child day centers that are exempt from licensure in accordance with § 22.1-289.031 of the Code of Virginia shall be in compliance with all requirements of § 22.1-289.031.

H. The vendor shall implement policies for the possession and administration of undesignated or stock epinephrine pursuant to § 22.1-289.059 of the Code of Virginia that ensure:

1. Undesignated or stock epinephrine is only administered by a nurse at the center, an employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine, or staff at the center authorized by a prescriber and trained in the administration of epinephrine pursuant to 8VAC20-790-600 J to a child believed to be having an anaphylactic reaction**;**

2. At least one nurse at the center or an employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine, or staff at the center authorized by a prescriber and trained in the administration of epinephrine pursuant to 8VAC20-790-600 J has the means to access at all times during regular facility hours appropriate weight-based dosages of undesignated or stock epinephrine based on the children in care at the center; and

3.Undesignated or stock epinephrine is stored in a locked or inaccessible container or area in the center.

8VAC20-790-600. Staff training and development.

A. Prior to approval as a subsidy vendor, the vendor or designee shall complete the Virginia Preservice Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or subsidy vendor approval all staff who work directly with children shall complete Virginia Preservice Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

C. Orientation training for staff shall be completed on the following facility specific topics prior to the staff member working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;

2. Responsibilities for reporting suspected child abuse or neglect;

3. Confidentiality;

4. Supervision of children, including arrival and dismissal procedures;

5. Procedures for action in the case of lost or missing children, ill or injured children, and medical and general emergencies;

6. Medication administration procedures, if applicable;

7. Emergency preparedness plan as required in 8VAC20-790-790 B;

8. Prevention of shaken baby syndrome and abusive head trauma including coping with crying babies and fussy or distraught children;

9. Prevention of sudden infant death syndrome and use of safe sleeping practices;

10. Staff who work with children that have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination, and recognizing and responding to any allergic reactions; and

11. Transportation.

D. All staff who work directly with children shall have within 90 days of the date of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the ages of children in care. The training shall include an in-person competency demonstration; and

2. Current certification in first aid appropriate to the ages of children in care. However, staff who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the 90-day period, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

E. CPR and First Aid training may count toward the annual training hours required in subsection H of this section if documentation for training as required in subdivision 5 of 8VAC20-790-550 is maintained.

F. Staff who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training and staff development activities, to include the department's health and safety update course. Training shall be related to child safety, child development, the function of the center, and any required department sponsored training.

G. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a staff member who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or (ii) administration shall be performed by a staff member who is licensed by the Commonwealth of Virginia to administer medications.

The administration of medicines by a vendor may be limited by policy to:

1. Prescription medications;

2. Over-the-counter or nonprescription medications; or

3. No medications.

H. Staff required to have the training specified in ~~subsection~~ subsections G, I and J of this section shall be retrained at three-year intervals.

I. There shall be at least one staff on duty who has obtained within the last three years instruction in performing a daily health observation of children. Daily health observation training shall include:

1. Components of daily health check for children;

2. Inclusion and exclusion of a child when the child is exhibiting symptoms that indicate possible illness;

3. Description of how diseases are spread and procedures and methods for reducing the spread of disease;

4. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and

5. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's bloodborne pathogens regulation (29 CFR 1910.1030).

J. The administration of undesignated or stock epinephrine shall be performed by (i) a nurse at the center or employee of a local health department authorized by a prescriber and trained in the administration of epinephrine, (ii) staff at the center who is authorized by a prescriber and meets the requirements of 8VAC20-790-600 G, (iii) staff who has satisfactorily completed a training course developed or approved by the Department of Education in consultation with the Department of Health, or (iv) staff who has satisfactorily completed a course taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist that includes the following:

1. Recognizing signs and symptoms of anaphylaxis.

2. Emergency procedures for responding to anaphylaxis; and

3. Instructions and procedures for administering epinephrine.

8VAC20-790-770 Medication

A. The vendor may administer prescription medication to a child with written permission of the parent, provided:

1. The medication is administered by a staff who meets the requirements of 8VAC20-790-600 ~~I and J~~ G and H;

2. The staff administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

3. The staff administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

B. The vendor may administer over-the-counter or nonprescription medication to a child with written permission from the parent, provided the medication is:

1. Administered by a staff 18 years of age or older;

2. Labeled with the child's name;

3. In the original container with the manufacturer's direction label attached; and

4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

C. When needed, medication shall be refrigerated.

D. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

E. The vendor shall keep a record of prescription and nonprescription medication given to children, which shall include the following:

1. Name of the child to whom medication was administered;

2. Amount and name of medication administered to the child;

3. The day and time the medication was administered to the child;

4. Name of staff administering the medication;

5. Any adverse reaction; and

6. Any medication error.

Office of Regulatory Management

Economic Review Form

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC 20-790
VAC Chapter title(s)	Child Care Program
Action title	Amend regulation to require each child day center that participates in the Child Care Program to implement policies for the possession and administration of epinephrine and each family day home provider or caregiver to be trained in epinephrine administration; notification requirements to parents required.
Date this document prepared	6/20/2024
Regulatory Stage (including Issuance of Guidance Documents)	Fast-Track

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<table>
<tr><td>(1) Direct & Indirect Costs & Benefits (Monetized)</td><td colspan="2">Direct Costs: Describe the direct costs of this proposed change here.
531 number of regulated providers participating in the Child Care Program will incur direct costs to obtain epinephrine. Based upon cost information obtained from the Department of Planning and Budget 2023 Fiscal Impact Statement, VDOE estimates a direct cost to providers of approximately $30 to $750 per provider per year or more often based on the use and expiration dates of the epinephrine.

Indirect Costs: Describe the indirect costs of the proposed change.
None known.

Direct Benefits: Describe the direct benefits of this proposed change here.
None known.

Indirect Benefits: Describe the indirect benefits of the proposed change.
None known.</td></tr>
<tr><td>(2) Present Monetized Values</td><td>Direct & Indirect Costs</td><td>Direct & Indirect Benefits</td></tr>
<tr><td></td><td>Stock epinephrine: $30 to $750 per provider per year or more often.</td><td>$0</td></tr>
<tr><td>(3) Net Monetized Benefit</td><td colspan="2">-$30 to $750 per year per provider.</td></tr>
<tr><td>(4) Other Costs & Benefits (Non-Monetized)</td><td colspan="2">The benefit of the change is that regulated providers will have training in the administration of emergency epinephrine. Centers that are subsidy vendors will have access to lifesaving medication for children who experience anaphylactic shock while in their care. Some family day homes that are subsidy vendors may choose to stock epinephrine, and all parents will be informed about whether the provider stocks epinephrine.</td></tr>
<tr><td>(5) Information Sources</td><td colspan="2">Department of Planning and Budget 2023 Fiscal Impact Statement. Consultation with Virginia Department of Health (the agency that coordinates the stock epinephrine program for the Commonwealth’s K-12 schools) regarding the cost of the epinephrine.</td></tr>
</table>

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None known. Indirect Costs: Describe the indirect costs of the proposed change. None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $0	(b) $0
(3) Net Monetized Benefit	$0	
(4) Other Costs & Benefits (Non-Monetized)	Maintaining the *status quo* means that a child with an undiagnosed allergy who experiences anaphylaxis could potentially lose their life while in the care of the regulated program. The majority of new cases of anaphylaxis are diagnosed in children under the age of 4, a primary population in the regulated programs.	
(5) Information Sources	National Institutes of Health Asthma & Allergy Foundation of America	

Table 1c: Costs and Benefits under Alternative Approach(es)

Table 1c is omitted as directed in the *ORM Regulatory Economic Analysis Manual* because the proposed action is mandated by state statute.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs &	Direct Costs: Describe the direct costs of this proposed change here. None known.

Benefits (Monetized)	Indirect Costs: Describe the indirect costs of the proposed change. None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $0	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	It is unknown whether the supply of epinephrine can meet the demand of the change. The increase in demand could limit access to epinephrine. There is a potential for the procurement to happen at the state level, as demonstrated by the current K-12 process for epinephrine with Virginia Department of Health. However, that process is not currently in place for the regulated child care providers, and if another process was determined to be needed, such as regional coordination, local agencies may be impacted.	
(4) Assistance	To develop and implement a process for training and procurement, VDOE will require significant assistance from state or local partners.	
(5) Information Sources		

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None known. Indirect Costs: Describe the indirect costs of the proposed change. None known; however, regulated providers may respond to the regulation by increasing the cost of care for families. Additionally, a possible unintended outcome of this regulation

	change is a potential decrease in the supply of child care subsidy vendors. Regulated programs that are currently unlicensed but participating in the child care subsidy program may choose not to participate in the subsidy program so as not to be required to stock epinephrine. Any resulting decrease in access to child care may affect local economies. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) unknown	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	The intended direct benefit of this legislation is to provide lifesaving medication when a child experiences anaphylactic shock while in the care of the regulated provider. Families of children may feel a sense of increased safety for their children when they are in the care of regulated programs.	
(4) Information Sources		

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Direct costs to small businesses which comprise most of the regulated providers. The providers' costs related to training staff will likely increase. While VDOE would intend to make training accessible and no-cost to providers, the providers must bear the cost of increased staff time for training. It is possible that regulated providers must purchase multiple doses of weight-based epinephrine per year at a cost of $30 to $750 to meet the requirements.

	Indirect Costs: Describe the indirect costs of the proposed change. None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $30 to $750 per provider per year or more often	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	The main benefit of this regulation change is the ability to potentially save a child's life if the child experiences anaphylactic shock while in care of the regulated program.	
(4) Alternatives	One alternative to having the direct costs fully borne by regulated providers is for the Virgina Department of Education to request appropriation funds to be allocated to procure epinephrine for child care providers impacted.	
(5) Information Sources	Department of Planning and Budget 2023 Fiscal Impact Statement; Virginia Department of Health	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Authority of Change	Initial Count	Additions	Subtractions	Net Change
8VAC20-790-250	**Statutory:**	**0**	7	0	+7
	Discretionary:	**41**	0	0	0
8VAC20-790-350	**Statutory:**	**1**	1	0	+1
	Discretionary:	**31**	0	0	0
8VAC20-790-400	**Statutory:**	**0**	0	0	0
	Discretionary:	**36**	0	0	0
8VAC20-790-520	**Statutory:**	**3**	7	0	+7
	Discretionary:	**16**	0	0	0
8VAC20-790-600	**Statutory:**	**0**	4	0	+4
	Discretionary:	**45**	0	0	0
8VAC20-790-770	**Statutory:**	**0**	0	0	0
	Discretionary:	**29**	0	0	0

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
8VAC20-790-250	Requires provider to meet training requirements pursuant to the Code of Virginia.	$0	$30 to $750 per provider per year or more often based on use and expiration dates of epinephrine if the provider elects to offer stock epinephrine.	$30 to $750 per provider per year or more often if the provider elects to offer stock epinephrine.
8VAC20-790 520	Requires provider to meet training requirements	$0	$30 to $750 per provider per year or more often based on	$30 to $750 per provider per year or more often.

	and to stock epinephrine pursuant to the Code of Virginia.		use and expiration dates of epinephrine.	

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
8VAC20-790-250	Requires providers to take additional training related to administration of stock epinephrine pursuant to § 22.1-289.059 of the Code of Virginia.	This change will impact every subsidy approved family day home. This change will require extensive local or statewide partnerships, the development of new systems and processes for regulatory compliance for providers, and development of new regulatory oversight processes for the Department.
8VAC20-790-350	Requires providers to notify families whether the provider stores stock epinephrine, pursuant to § 22.1-289.059 of the Code of Virginia.	This change will impact every subsidy approved family day home. This change will require that homes update the information shared with parents of children in care.
8VAC20-790-520	Requires providers to take additional training, to provide additional training to staff, and to stock appropriate weight-based doses of epinephrine, pursuant to § 22.1-289.059 of the Code of Virginia.	This change will impact every subsidy approved child day center. This change will require extensive local or statewide partnerships, the development of new systems and processes for regulatory compliance for providers, and development of new regulatory oversight processes for the Department.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length
To be determined after regulatory change.			

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Fast-Track Regulation
Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	__8__VAC_20__-__790__
VAC Chapter title(s)	Child Care Program
Action title	Amend regulation to require each child day center that participates in the Child Care Subsidy Program to implement policies for the possession and administration of epinephrine and each family day home provider that participates in the Child Care Subsidy Program or at least one other caregiver employed by such provider in the family day home to be trained in the administration of epinephrine and provide notification to parents.
Date this document prepared	June 20, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

The Child Care Subsidy Program regulation (8VAC20-790) provides requirements for child day programs that receive funding from Child Care and Development Fund to provide access to childcare for working families and to be responsible for the safety and well-being of children during the absence of a parent or guardian. Pursuant to Chapter 122 and Chapter 123 of the 2023 Acts of Assembly and § 22.1-289.059 of the Code of Virginia, this action will amend the regulation to require each child day center that participates in the Child Care Subsidy Program to implement policies for the possession and administration of stock epinephrine; and each family day home provider or at least one other caregiver to be trained in the administration of epinephrine, and to notify the parents of each child who receives care whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates.

The amendments will add requirements for center-based programs that participate in the Child Care Subsidy Program to implement policies for the possession and administration of epinephrine to be administered by any nurse at the center, employee at the center, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine to any child believed to be having an anaphylactic reaction. Amendments require that at least one nurse at the center, employee at the center, or employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine has the means to access at all times during regular facility hours any such appropriate weight-based dosage of epinephrine that is stored in a locked or otherwise generally inaccessible container or area.

Amendments will also require each family day home provider or at least one other caregiver employed by such provider in the family day home to be trained in the administration of epinephrine and to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates.

An amendment to the Child Care Subsidy Program regulation (8VAC20-790) is needed to implement the provisions of Chapter 122 and Chapter 123 of the 2023 Acts of Assembly.

[RIS2]

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the Virginia Board of Education

"VAC" means Virginia Administrative Code

"The Department" means the Virginia Department of Education

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.

On July 27, 2023, the State Board of Education authorized the Department of Education to proceed with the fast-track revision to the Child Care Program.

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 the ORM procedures, "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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Provisions in Chapter 122 and Chapter 123 of the 2023 Acts of Assembly impact § 22.1-289.059 of the Code of Virginia and directs the Department to amend regulations to require child day centers to implement policies for the possession and administration of epinephrine; and each family day home provider or at least one other caregiver to be trained in the administration of epinephrine, and to notify the parents of each child who receives care whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the

family day home operates. The Child Care Subsidy Program must be revised to reflect the new provisions that became effective July 1, 2023.

This rulemaking action is expected to be noncontroversial as it is required by § 22.1-289.059 of the Code of Virginia and therefore appropriate for the fast-track process. This action will mandate epinephrine to be in regulated child day centers and accessible to staff in the event of an anaphylactic emergency; and for providers or other caregivers in family day homes to be trained in the administration of epinephrine and notify parents of the availability of epinephrine.

[RIS4]
Legal Basis
[RIS5]

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 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 is found in § 22.1-289.046 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 [Chapter 14.1], 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."

[RIS6]
Purpose
[RIS7]

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The action is essential to enhancing the health, safety, and welfare of children in care. The purpose of the amendment is to protect children with undiagnosed allergies in cases when exposure to the allergen may result in anaphylaxis which could be deadly, and to comply with the provisions of Chapter 122 and Chapter 123 of the 2023 General Assembly.

An amendment to regulation was determined by the agency as the most efficient and effective way to implement the provisions of the Code of Virginia.

[RIS8]
Substance
[RIS9]

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The amendment will add requirements for training and policies to address the possession and administration of epinephrine at subsidy vendor child day centers. Requirements are added for family day home providers to be trained in the administration of epinephrine and provide notification to parents. The amendments also include technical edits to the regulation.

[RIS10]
Issues
[RIS11]

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantage of this action is that the requirement for stock epinephrine to be available in centers increases protections for children and could potentially save the life of a child who experiences anaphylactic shock as a result of an allergic reaction. This action aligns requirements for stock epinephrine in subsidy vendor child day programs with existing requirements for children who attend public schools in § 22.1-274.2 of the Code of Virginia.

There are no disadvantages to this regulatory action.

[RIS12]
Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale

for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are currently no applicable federal requirements to address stock epinephrine in child day programs.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

Virginia Department of Health

Localities Particularly Affected

Local health departments

Other Entities Particularly Affected

Chid day centers and family day homes participating in the Child Care Program

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	VDOE does not require any additional staff to implement this change.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	Resources required from the Virginia Department of Health, Division of Pharmacy services to assist in the procurement of epinephrine for child day programs. VDOE regulates about 531 child day programs subject to these requirements.
For all agencies: Benefits the regulatory change is designed to produce.	This regulatory change will bring VDOE into compliance with the Code of Virginia and add protections for children who may experience anaphylaxis.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no direct or indirect costs and benefits to local partners.
Benefits the regulatory change is designed to produce.	This regulatory change will add protections for children who may experience anaphylaxis.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	All regulated child day programs who participate in the Child Care Program would be affected by this change.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	Approximately 531 child day programs who participate in the Child Care Program that will be impacted, most of which are small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Based on the Department of Planning and Budget 2023 Fiscal Impact Statement, epinephrine is estimated to cost each provider between $30-$750 in initial costs with comparable ongoing costs which depends on the use and expiration dates of the epinephrine if a provider chooses to keep undesignated epinephrine on site. Training and administration costs are likely but cannot be determined at this time.
Benefits the regulatory change is designed to produce.	This regulatory change will add protections for children who may experience anaphylaxis. The amendments to the regulations are designed to ensure all child day programs who participate in the

	Child Care Program are aware of and in compliance with the Code of Virginia.

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 since this regulatory action is required by § 22.1-289.059 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternatives to regulatory action since this regulatory action is required by § 22.1-289.059 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The 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 and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 mail, email or fax to Tatanishia Armstrong, Legislative Consultant, Virginia Department of Education, PO Box 2120, Richmond, VA 23218, 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.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or

agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
790-250	NA	Training requirements for caregivers at family day home subsidy vendors.	Adds requirements for: caregivers to obtain training in recognizing and responding to anaphylaxis; the components that the training must include; and the frequency of training. The intent is for compliance with § 22.1-289.059 of the Code of Virginia.
790-350	NA	Parental notifications and involvement for family day home subsidy vendors.	Adds a requirement for the provider to share in writing with the parents whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates as required by § 22.1-289.059 of the Code of Virginia. The intent is to inform families and enable them to make informed child care choices.

790-400	NA	Requirements for the administration of medication for home vendors. Requirements for the storage of medications. Requirements for medication documentation.	Adds a requirement that allows individuals trained in the administration of epinephrine to administer emergency epinephrine pursuant to § 22.1-289.059. Technical edits added to correct cross reference.
790-520	NA	Requirements for child day center subsidy vendors to comply with vendor agreement and federal state, and local laws and regulations. Requirements for background checks pursuant to § 22.1- 289.040. Requirements for capacity and supervision of children. Requirements to inform staff of and maintain a list of caregivers of children's allergies, sensitivities, and dietary restrictions.	Adds a requirement for the center to implement policies for the possession and administration of epinephrine that meet the requirements of § 22.1-289.059 of the Code of Virginia. Adds requirement for safe storage of and access to undesignated stock epinephrine. The intent is for compliance with the Code of Virginia. The impact is added protections for children with severe allergies.

		Requirements for religiously exempt child day centers.	
790-600	NA	Training requirements for caregivers at center based subsidy vendors.	Adds requirement related to which individuals may administer undesignated stock epinephrine. Technical edits added to correct cross reference.
790-770	NA	Requirements for the administration of prescription and nonprescription medication for home vendors. Requirements for the storage of medications. Requirements for medication documentation.	Adds a requirement that allows individuals trained in the administration of epinephrine to administer emergency epinephrine pursuant to § 22.1-289.059. Technical edits added to correct cross reference.

8VAC20-800-70 Written information for parents

A. Before the child's first day of attendance, parents shall be provided in writing the following information:

1. Operating information including the hours and days of operation, holidays or other times closed, and the telephone number where a message can be left for a caregiver;

2. Schedule of fees and payment plans;

3. Check in and check out procedures;

4. Policies for the administration of medications;

5. Whether or not there is liability insurance of at least $100,000 per occurrence and $300,000 aggregate in force on the family day home operation as required by § 22.1-289.050 of the Code of Virginia;

6. Requirement for the family day home to notify the parent when the child becomes ill and for the parent to arrange to have the child picked up as soon as possible if so requested by the home;

7. Requirement for the parent to inform the family day home within 24 hours or the next business day after his child or any member of the immediate household has developed any reportable communicable disease, as defined by the State Board of Health, except for life-threatening diseases, which must be reported immediately;

8. Requirement for the child to be adequately immunized as required by 8VAC20-800-90;

9. Requirement for paid caregivers to report suspected child abuse or neglect according to § 63.2-1509 of the Code of Virginia;

10. Custodial parent's right to be admitted to the family day home any time the child is in care as required by § 22.1-289.054 of the Code of Virginia;

11. General daily schedule that is appropriate for the age of the enrolling child;

12. Policies for the provision of food;

13. Presence of a pet or animal in the home;

14. Discipline policies including acceptable and unacceptable discipline measures;

15. Amount of time per week that an adult assistant or substitute provider instead of the provider is scheduled to care for the child and the name of the adult assistant or substitute provider;

16. Provisions of the family day home's emergency preparedness and response plan;

17. Parental notifications required in 8VAC20-800-650;

18. Policies for termination of care; ~~and~~

19. Whether the provider stores an appropriate weight-based dosage of undesignated or stock epinephrine in the residence or home in which the family day home operates as required by § 22.1-289.059 of the Code of Virginia; and

~~19.~~ 20. Address of the website of the department, with a note that a copy of this chapter and additional information about the family day home may be obtained from the website, including compliance history that includes information after July 1, 2003.

B. The provider shall obtain the parent's written acknowledgement of the receipt of the information in this section.

8VAC20-800-220. Medication administration training.

A. To safely perform medication administration practices listed in 8VAC20-800-710 and 8VAC20-800-720 whenever the family day home has agreed to administer prescription medications or nonprescription medications, the administration shall be performed by a caregiver who:

1. Has satisfactorily completed a training program for this purpose developed or approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; or

2. Is licensed by the Commonwealth of Virginia to administer medications.

~~B.Caregivers required to have the training in subdivision A 1 of this section shall be retrained at three-year intervals.~~

B. The administration of undesignated or stock epinephrine shall be performed by the provider or a caregiver who (i) meets the requirements of 8VAC20-800-220 A, (ii) has satisfactorily completed a training course developed or approved by the Department of Education in consultation with the Department of Health, or (iii) completed a course taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist that includes the following:

1. Recognizing signs and symptoms of anaphylaxis.

2. Emergency procedures for responding to anaphylaxis; and

3. Instructions and procedures for administering epinephrine.

C. The provider and caregivers required to have the training in subdivision A 1, and subsection B this section shall be retrained at three-year intervals.

D. The provider or at least one other caregiver shall receive training in the administration of epinephrine pursuant to subsections B and C of this section.

Office of Regulatory Management

Economic Review Form

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-800
VAC Chapter title(s)	Standards for Licensed Family Day Homes
Action title	Amend regulation to require each family day home provider or at least one caregiver to be trained in epinephrine administration; notification requirements to parents required.
Date this document prepared	6/20/2024
Regulatory Stage (including Issuance of Guidance Documents)	Fast-Track

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. 1338 number of licensed family day home providers will incur direct costs to obtain epinephrine if they choose to obtain undesignated epinephrine. Based upon cost information obtained from the Department of Planning and Budget 2023 Fiscal Impact Statement, VDOE estimates a direct cost to providers of approximately $30 to $750 per regulated provider per year or more often based on the use and expiration dates of the epinephrine. Indirect Costs: Describe the indirect costs of the proposed change. None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	Stock epinephrine: $30 to $750 per provider per year or more often.	(b) $0
(3) Net Monetized Benefit	-$30 to $750 per provider per year.	
(4) Other Costs & Benefits (Non-Monetized)	The benefit of the change is that regulated providers will have training in the administration of emergency epinephrine, which will be a lifesaving measure in an emergency. Some licensed family day home providers may choose to stock epinephrine, and all parents/consumers will be informed about whether the provider stocks epinephrine.	
(5) Information Sources	Department of Planning and Budget 2023 Fiscal Impact Statement. Consultation with Virginia Department of Health (the agency that coordinates the stock epinephrine program for the Commonwealth's K-12 schools) regarding the cost of the epinephrine.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs &	Direct Costs: Describe the direct costs of this proposed change here. None known.

Benefits (Monetized)	Indirect Costs: Describe the indirect costs of the proposed change. None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $0	(b) $0
(3) Net Monetized Benefit	$0	
(4) Other Costs & Benefits (Non-Monetized)	Maintaining the *status quo* means that a child with an undiagnosed allergy who experiences anaphylaxis could potentially be at risk to lose their life while in the care of the regulated program. The majority of new cases of anaphylaxis are diagnosed in children under the age of 4, a primary population in the regulated programs.	
(5) Information Sources	National Institutes of Health Asthma & Allergy Foundation of America	

Table 1c: Costs and Benefits under Alternative Approach(es)

Table 1c is omitted as directed in the *ORM Regulatory Economic Analysis Manual* because the proposed action is mandated by state statute.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None known. Indirect Costs: Describe the indirect costs of the proposed change. None known.

	Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $0	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	It is unknown whether the supply of epinephrine can meet the demand of the change. The increase in demand could limit access to epinephrine. There is a potential for the procurement to happen at the state level, as demonstrated by the current K-12 process for epinephrine with Virginia Department of Health. However, that process is not currently in place for the regulated child care providers, and if another process was determined to be needed, such as regional coordination, local agencies may be impacted.	
(4) Assistance	To develop and implement a process for training and procurement, VDOE will require significant assistance from state or local partners.	
(5) Information Sources		

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None known. Indirect Costs: Describe the indirect costs of the proposed change. None known; however, regulated providers may respond to the regulation by increasing the cost of care for families. Direct Benefits: Describe the direct benefits of this proposed change here. None known.

	Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) unknown	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	The intended direct benefit of this legislation is to provide lifesaving medication when a child experiences anaphylactic shock while in the care of the regulated provider. Families of children may feel a sense of increased safety for their children when they are in the care of regulated programs.	
(4) Information Sources		

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. All licensed family day homes are small businesses, and this will have a direct cost for them. The providers' costs related to training staff will likely increase. While VDOE would intend to make training accessible at no-cost to providers, the providers must bear the cost of increased staff time for training. It is possible that regulated providers that choose to obtain undesignated stock epinephrine will have to purchase multiple doses of weight-based epinephrine per year at a cost of $30 to $750 to meet the requirements. Indirect Costs: Describe the indirect costs of the proposed change. None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $30 to $750 per provider per year or more often	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	The main benefit of this regulation change is the ability to potentially save a child's life if the child experiences anaphylactic shock while in care of the regulated program.	
(4) Alternatives	One alternative to having the direct costs fully borne by regulated providers is for the Virginia Department of Education to request appropriation funds to be allocated to procure epinephrine for child care providers impacted.	
(5) Information Sources	Department of Planning and Budget 2023 Fiscal Impact Statement; Virginia Department of Health	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Authority of Change	Initial Count	Additions	Subtractions	Net Change
8VAC20-800-70	**Statutory:**	**4**	1	0	+1
	Discretionary:	**31**	0	0	0
8VAC20-800-220	**Statutory:**	**0**	6	0	+6
	Discretionary:	**2**	0	0	0

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
8VAC20-800-220	Requires provider to meet training requirements pursuant to the Code of Virginia.	$0	$30 to $750 per provider per year or more often based on use and expiration dates of epinephrine if the provider elects to offer stock epinephrine.	$30 to $750 per provider per year or more often if the provider elects to offer stock epinephrine.

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
8VAC20-800-70 8VAC20-800-220	Requires providers to take additional training related to administration of stock epinephrine, and to notify families whether the provider stores stock epinephrine, pursuant to § 22.1-289.059 of the Code of Virginia.	This change will impact every licensed family day home. This change will require extensive local or statewide partnerships, the development of new systems and processes for regulatory compliance for providers, and development of

		new regulatory oversight processes for the Department.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	**Original Length**	**New Length**	**Net Change in Length**
To be determined after regulatory change.			

8VAC20-850-20 Provider eligibility

A. A family day provider and substitute provider shall be 18 years of age or older.

B. A family day assistant shall be 14 years of age or older.

C. A family day provider, assistant or assistants and substitute provider shall be able to read, write, understand and carry out the responsibilities in the Requirements for Providers.

D. A family day provider and substitute provider shall live in a county, city, or town that does not have a local ordinance for the regulation or licensure of family day homes.

E. A family day provider that is voluntarily registered pursuant to § 22.1-289.015 of the Code of Virginia shall not be required by law to be licensed. Family day homes serving five through 12 children younger than the age of 13 years, exclusive of the provider's own children and any children who reside in the home, shall be licensed.

F. The administration of undesignated or stock epinephrine may be performed by a caregiver who (i) meets the requirements in 8VAC20-850-110 C, (ii) has satisfactorily completed a training course developed or approved by the Department of Education in consultation with the Department of Health or (iii) has satisfactorily completed a course taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist that includes the following:

1. Recognizing signs and symptoms of anaphylaxis;

2. Emergency procedures for responding to anaphylaxis; and

3. Instructions and procedures for the administration of epinephrine.

G. When medication is administered pursuant to § 22.1-289.059 of the Code of Virginia, the requirements in 8VAC20-850-90 C 9, and 8VAC20-850-110 C, shall not apply.

H. The provider or at least one other caregiver shall receive training in the administration of epinephrine pursuant to subsection F of this section at three-year intervals.

8VAC20-850-90. Provider record requirements.

A. The provider's records shall be open for inspection by authorized representatives of the contracting organizations and the department.

B. The provider shall maintain on file a signed statement from each parent, affirming receipt of the information to parents statement.

C. The provider shall maintain an individual record for each child enrolled in care. This record shall include:

1. The child's full name (including nicknames, if any), address and birth date;

2. Name, address and telephone number of each parent or other responsible person or persons;

3. Name, address and telephone number of each parent's place of employment and his or her work hours;

4. Name, address and telephone number of one or more persons designated by the parent or parents to be called in case of emergency when a parent cannot be reached during the hours the child is in care;

5. Name, address and telephone number of the child's physician;

6. Any known or suspected allergies and any chronic or recurrent diseases or disabilities;

7. The child's allergies to medication or drugs, if applicable, and directions for providing medicines to the child;

8. The name of the parent's hospitalization plan and number or medical assistance plan, if applicable;

9. The parent's signed authorization for the child's emergency medical treatment and written consent for giving of medications to the child;

10. Whether the provider stores an appropriate weight-based dosage of undesignated or stock epinephrine in the residence or home in which the family day home operates as required by § 22.1-289.059 of the Code of Virginia; and

~~10~~11. The child's date of enrollment in and date of withdrawal from the family day home, when applicable;

~~11~~12. Results of the health examination and up-to-date immunization records of each child unless there is record of a medical or religious exemption;

~~12~~13. Names of persons authorized to visit or call for the child, as well as those who are not to visit or call for the child;

~~13~~14. A record of any accidents and injuries sustained by a child;

~~14~~15. The parent's signed authorization to use a substitute provider and his or her name, address, and phone number;

~~15~~16. The parent's signed authorization to transport children and to take trips out of the immediate community;

~~16~~17. Any written agreement made between the family day provider and the natural parent, guardian, or other responsible person for each child in care. The agreement may cover hours of care per day, week, or month; cost of care per day, week, or month; frequency and amount of payment per day, week, or month; and any special services to be provided by either party to the agreement.

D. The emergency contact information listed in subdivisions C 2 through C 5 of this section shall be made available to a physician, hospital or emergency care unit in the event of a child's illness or injury.

E. Whenever the provider leaves the home with the child or children, the provider shall have the emergency contact information and medical information required by subdivisions C 1 through C 9 of this section in the caregiver's possession.

F. The family day provider shall not disclose or permit the use of information pertaining to an individual child or family unless the parent or parents or guardian or guardians of the child has granted written permission to do so, except in the course of performance of official duties and to employees or representatives of the contracting organization or the department.

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Fast-Track Regulation
Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	__8__VAC_20_-__800__
VAC Chapter title(s)	Standards for Licensed Family Day Homes
Action title	Amend regulation to require each family day home provider or other caregiver to be trained in epinephrine administration; notification requirements to parents required.
Date this document prepared	June 20, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

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.

The Standards for Licensed Family Day Homes (8VAC20-800) provides requirements for family day homes licensed by the Virginia Department of Education and responsible for the safety and well-being of children during the absence of a parent or guardian. Pursuant to Chapter 122 and Chapter 123 of the 2023 Acts of Assembly and § 22.1-289.059 of the Code of Virginia, this

action will amend the regulation to require each family day home provider or at least one other caregiver employed by such provider to be trained in epinephrine administration and to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates.

An amendment to the Standards for Licensed Family Day Homes (8VAC20-800) is needed to implement the provisions of Chapter 122 and Chapter 123 of the 2023 Acts of Assembly.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the Virginia Board of Education

"VAC" means Virginia Administrative Code

"The Department" means the Virginia Department of Education

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.

On July 27, 2023, the State Board of Education authorized the Department of Education to proceed with the fast-track revision to the Standards for Licensed Family Day Homes.

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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Provisions in Chapter 122 and Chapter 123 of the 2023 Acts of Assembly impact § 22.1-289.059 of the Code of Virginia and directs the Virginia Department of Education to amend regulations to require each family day home provider or at least one other caregiver employed by such provider to be trained in epinephrine administration and to notify the parents of each child who

receives care whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates. The Standards for Licensed Family Day Homes must be revised to reflect the new provisions that became effective July 1, 2023.

This rulemaking action is expected to be noncontroversial as it is required by § 22.1-289.059 of the Code of Virginia and therefore appropriate for the fast-track process. This action will mandate epinephrine administration training in regulated family day homes and notifying parents of whether epinephrine is available in the event of an anaphylactic emergency.

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 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 is found in § 22.1-289.046 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 14.1], 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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The action is essential to enhancing the health, safety, and welfare of children in care. The purpose of the amendment is to protect children with undiagnosed allergies in cases when exposure to the allergen may result in anaphylaxis which could be deadly, and to comply with the provisions of Chapter 122 and Chapter 123 of the 2023 General Assembly.

An amendment to regulation was determined by the agency as the most efficient and effective way to implement the provisions of the Code of Virginia.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The amendment will add requirements for each family day home provider or at least one other caregiver employed by such provider to be trained in epinephrine administration and to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates. The amendments include technical edits to the regulation.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantage of this action is that the requirement that each family day home provider or at least one other caregiver employed by such provider to be trained in epinephrine administration increases protections for children by ensuring that caregivers are trained to respond to anaphylaxis and could potentially save the life of a child who experiences anaphylactic shock as a result of an allergic reaction. The requirement that family day homes notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates supports parental choice by allowing parents to make informed decisions related to child care placement based on the availability of undesignated epinephrine in a family day home.

There are no disadvantages to this regulatory action.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are currently no applicable federal requirements to address stock epinephrine in child day programs.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

Virginia Department of Health

Localities Particularly Affected

Local health departments

Other Entities Particularly Affected

Licensed family day homes

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	The Department does not require any additional staff to implement this change.
For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	Resources required from the Virginia Department of Health, Division of Pharmacy services to assist in the procurement of epinephrine for licensed family day homes. The Department regulates about 1338 licensed family day homes subject to these requirements.
For all agencies: Benefits the regulatory change is designed to produce.	This regulatory change will bring the Department into compliance with the Code of Virginia and add protections for

	children who may experience anaphylaxis.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no direct or indirect costs and benefits to local partners.
Benefits the regulatory change is designed to produce.	This regulatory change will add protections for children who may experience anaphylaxis.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	All licensed family day homes would be affected by this change.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	There are currently 1338 licensed family day homes that will be impacted, all of which are small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Based on the Department of Planning and Budget 2023 Fiscal Impact Statement, epinephrine is estimated to cost each provider between $30-$750 in initial costs with comparable ongoing costs which depends on the use and expiration dates of the epinephrine if a provider chooses to keep undesignated epinephrine on site. Training and administrative costs are likely but cannot be determined at this time.

Benefits the regulatory change is designed to produce.	This regulatory change will add protections for children who may experience anaphylaxis. The amendments to the regulations are designed to ensure all licensed family day homes are aware of and in compliance with the Code of Virginia.

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 since this regulatory action is required by § 22.1-289.059 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternatives to regulatory action since this regulatory action is required by § 22.1-289.059 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The 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 and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 mail, email or fax to Tatanishia Armstrong, Legislative Consultant, Virginia Department of Education, PO Box 2120, Richmond, VA 23218, 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.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
800-70	NA	Written information for parents.	Adds a requirement for the provider to share in writing with the parents whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates as required by § 22.1-289.059 of the Code of Virginia.

			The intent is for compliance with the Code of Virginia. The impact supports parent choice by sharing information with parents so they can make informed decisions about child care placement.
800-220	NA	Requirements for staff training to administer medications to children in care.	Adds requirements for: caregivers to obtain training in recognizing and responding to anaphylaxis; the components that the training must include; and the frequency of training as required by § 22.1-289.059 of the Code of Virginia.

Office of Regulatory Management

Economic Review Form

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	8VAC20-850
VAC Chapter title(s)	Voluntary Registration of Family Day Homes-Requirements for Providers
Action title	Amend regulation to require each family day home provider or at least one caregiver to be trained in epinephrine administration; notification requirements to parents required.
Date this document prepared	6/20/2024
Regulatory Stage (including Issuance of Guidance Documents)	Fast-Track

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<table>
<tr><td>(1) Direct & Indirect Costs & Benefits (Monetized)</td><td colspan="2">Direct Costs: Describe the direct costs of this proposed change here.
209 number of voluntarily registered family day homes will incur direct costs to obtain epinephrine if they choose to obtain undesignated epinephrine. Based upon cost information obtained from the Department of Planning and Budget 2023 Fiscal Impact Statement, VDOE estimates a direct cost to these providers of approximately $30 to $750 per provider per year or more often based on the use and expiration dates of the epinephrine.

Indirect Costs: Describe the indirect costs of the proposed change.
None known.

Direct Benefits: Describe the direct benefits of this proposed change here.
None known.

Indirect Benefits: Describe the indirect benefits of the proposed change.
None known.</td></tr>
<tr><td>(2) Present Monetized Values</td><td>Direct & Indirect Costs</td><td>Direct & Indirect Benefits</td></tr>
<tr><td></td><td>Stock epinephrine: $30 to $750 per provider per year or more often.</td><td>(b) $0</td></tr>
<tr><td>(3) Net Monetized Benefit</td><td colspan="2">-$30 to $750 per provider per year.</td></tr>
<tr><td>(4) Other Costs & Benefits (Non-Monetized)</td><td colspan="2">The benefit of the change is that regulated providers will have training in the administration of emergency epinephrine, which will be a lifesaving measure in an emergency. Some voluntarily registered providers may choose to stock epinephrine, and all parents/consumers will be informed about whether the provider stocks epinephrine.</td></tr>
<tr><td>(5) Information Sources</td><td colspan="2">Department of Planning and Budget 2023 Fiscal Impact Statement. Consultation with Virginia Department of Health (the agency that coordinates the stock epinephrine program for the Commonwealth’s K-12 schools) regarding the cost of the epinephrine.</td></tr>
</table>

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs &	Direct Costs: Describe the direct costs of this proposed change here. None known.

Benefits (Monetized)	Indirect Costs: Describe the indirect costs of the proposed change. None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $0	(b) $0
(3) Net Monetized Benefit	$0	
(4) Other Costs & Benefits (Non-Monetized)	Maintaining the *status quo* means that a child with an undiagnosed allergy who experiences anaphylaxis could potentially be at risk to lose their life while in the care of the regulated program. The majority of new cases of anaphylaxis are diagnosed in children under the age of 4, a primary population in the regulated programs.	
(5) Information Sources	National Institutes of Health Asthma & Allergy Foundation of America	

Table 1c: Costs and Benefits under Alternative Approach(es)

Table 1c is omitted as directed in the *ORM Regulatory Economic Analysis Manual* because the proposed action is mandated by state statute.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None known. Indirect Costs: Describe the indirect costs of the proposed change. None known.

	Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $0	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	It is unknown whether the supply of epinephrine can meet the demand of the change. The increase in demand could limit access to epinephrine. There is a potential for the procurement to happen at the state level, as demonstrated by the current K-12 process for epinephrine with Virginia Department of Health. However, that process is not currently in place for the regulated child care providers, and if another process was determined to be needed, such as regional coordination, local agencies may be impacted.	
(4) Assistance	To develop and implement a process for procurement, VDOE will require significant assistance from state or local partners.	
(5) Information Sources		

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None known. Indirect Costs: Describe the indirect costs of the proposed change. None known; however, regulated providers may respond to the regulation by increasing the cost of care for families or by ceasing to be voluntarily registered, potentially causing a negative impact on the safety of care for young children.

	Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change. None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) unknown	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	The intended direct benefit of this legislation is to provide lifesaving medication when a child experiences anaphylactic shock while in the care of the regulated provider. Families of children may feel a sense of increased safety for their children when they are in the care of regulated programs.	
(4) Information Sources		

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. All voluntarily registered family day homes are small businesses, and this will have a direct cost for them. The providers' costs related to training staff will likely increase. While VDOE would intend to make training accessible at no-cost to providers, the providers must bear the cost of increased staff time for training. It is possible that regulated providers that choose to obtain undesignated stock epinephrine will have to purchase multiple doses of weight-based epinephrine per year at a cost of $30 to $750 to meet the requirements. Indirect Costs: Describe the indirect costs of the proposed change. None known. Direct Benefits: Describe the direct benefits of this proposed change here. None known. Indirect Benefits: Describe the indirect benefits of the proposed change.

	None known.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) $30 to $750 per provider per year or more often	(b) $0
(3) Other Costs & Benefits (Non-Monetized)	The main benefit of this regulation change is the ability to potentially save a child's life if the child experiences anaphylactic shock while in care of the regulated program.	
(4) Alternatives	One alternative to having the direct costs fully borne by regulated providers is for the Virgina Department of Education to request appropriation funds to be allocated to procure epinephrine for child care providers impacted.	
(5) Information Sources	Department of Planning and Budget 2023 Fiscal Impact Statement; Virginia Department of Health	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Authority of Change	Initial Count	Additions	Subtractions	Net Change
8VAC20-850-20	**Statutory:**	**0**	3	0	+3
	Discretionary:	**9**	0	0	0
8VAC20-850-90	**Statutory:**	**0**	1		+1
	Discretionary:	**65**	0	0	0

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
8VAC20-850 20	Requires provider to meet training requirements pursuant to the Code of Virginia.	$0	$30 to $750 per provider per year or more often based on use and expiration dates of epinephrine if the provider elects to offer stock epinephrine.	$30 to $750 per provider per year or more often if the provider elects to offer stock epinephrine.

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
8VAC20-850-20 8VAC20-850-90	Requires providers to take additional training related to administration of stock epinephrine, and to notify families whether the provider stores stock epinephrine, pursuant to § 22.1-289.059 of the Code of Virginia.	This change will impact every voluntarily registered family day home. This change will require local or statewide partnerships, the development of new systems and processes for regulatory compliance for providers, and development of

		new regulatory oversight processes for the Department.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	**Original Length**	**New Length**	**Net Change in Length**
To be determined after regulation change.			

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Fast-Track Regulation
Agency Background Document

Agency name	Virginia Department of Education
Virginia Administrative Code (VAC) Chapter citation(s)	__8 VAC_20_-_850_
VAC Chapter title(s)	Voluntary Registration of Family Day Homes-Requirements for Providers
Action title	Amend regulation to require each voluntarily registered family day home provider or other caregiver to be trained in epinephrine administration; notification requirements to parents required
Date this document prepared	June 20, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

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.

The Voluntary Registration of Family Day Homes-Requirements for Providers (8VAC20-850) provides requirements for family day homes registered with the Virginia Department of Education and responsible for the safety and well-being of children during the absence of a

parent or guardian. Pursuant to Chapter 122 and Chapter 123 of the 2023 Acts of Assembly and § 22.1-289.059 of the Code of Virginia, this action will amend the regulation to require each voluntarily registered family day home provider or at least one other caregiver employed by such provider to be trained in epinephrine administration and to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Board" means the Virginia Board of Education

"VAC" means Virginia Administrative Code

"The Department" means the Virginia Department of Education

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.

On July 27, 2023, the State Board of Education authorized the Department of Education to proceed with the fast-track revision to Voluntary Registration of Family Day Homes-Requirements for Providers.

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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Provisions in Chapter 122 and Chapter 123 of the 2023 Acts of Assembly impact § 22.1-289.059 of the Code of Virginia and directs the Virginia Department of Education to amend regulations to require each family day home provider or at least one other caregiver employed by such provider to be trained in the administration of epinephrine and to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates.

The Voluntary Registration of Family Day Homes- Requirements for Providers (8VAC20-850) must be revised to reflect the new provisions that became effective July 1, 2023.

This rulemaking action is expected to be noncontroversial as it is required by § 22.1-289.059 of the Code of Virginia and therefore appropriate for the fast-track process. This action will mandate training in the administration of epinephrine for all regulated family day homes and notifying parents of whether epinephrine is available in the event of an anaphylactic emergency.

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 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 voluntarily registered family day homes is found in § 22.1-289.015 of the Code of Virginia, which states in part that "[t]he Board shall adopt regulations for voluntarily registered family day homes that include but are not limited to: 1. The criteria and process for the approval of the certificate of registration; 2. Requirements for a self-administered health and safety guidelines evaluation checklist; 3. A schedule for fees to be paid by the providers to the contract organization or to the Department if it implements the provisions of this section for processing applications for the voluntary registration of family day homes. The charges collected shall be maintained for the purpose of recovering administrative costs incurred in processing applications and certifying such homes as eligible or registered; 4. The criteria and process for the renewal of the certificate of registration; and 5. The requirement that upon receipt of a complaint concerning a registered family day home, the Superintendent shall cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, and facilities. The person who maintains such home shall afford the Superintendent reasonable opportunity to inspect the operator's facilities and records and to interview any employees and any child or other person within his custody or control. Whenever a registered family day home is determined by the Superintendent to be in noncompliance with the regulations for voluntarily registered family day homes, the Superintendent shall give reasonable notice to the operator of the nature of the noncompliance and may thereafter revoke or suspend the registration."

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The action is essential to enhancing the health, safety, and welfare of children in care. The purpose of the amendment is to protect children with undiagnosed allergies in cases when exposure to the allergen may result in anaphylaxis which could be deadly, and to comply with the provisions of Chapter 122 and Chapter 123 of the 2023 General Assembly.

An amendment to regulation was determined by the agency as the most efficient and effective way to implement the provisions of the Code of Virginia.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The amendment will add requirements for each family day home provider or at least one other caregiver employed by such provider to be trained in epinephrine administration and to notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates. The amendments include technical edits to the regulation.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantage of this action is that the requirement that each family day home provider or at least one other caregiver employed by such provider to be trained in epinephrine administration increases protections for children by ensuring that caregivers are trained to respond to anaphylaxis and could potentially save the life of a child who experiences anaphylactic shock as a result of an allergic reaction. The requirement that family day homes notify the parents of each child who receives care in such family day home whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or home in which the family day home operates supports parental choice by allowing parents to make informed decisions related to child care placement based on the availability of undesignated epinephrine in a family day home.

There are no disadvantages to this regulatory action.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are currently no applicable federal requirements to address stock epinephrine in child day programs.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

Virginia Department of Health

Localities Particularly Affected

Local health departments

Other Entities Particularly Affected

Voluntarily registered family day homes

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

For your agency: projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	The Department does not require any additional staff to implement this change.

For other state agencies: projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	Resources required from the Virginia Department of Health, Division of Pharmacy services to assist in the procurement of epinephrine for voluntarily registered family day homes. The Department regulates about 209 voluntarily registered family day homes subject to these requirements.
For all agencies: Benefits the regulatory change is designed to produce.	This regulatory change will bring Department into compliance with the Code of Virginia and add protections for children who may experience anaphylaxis.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no direct or indirect costs and benefits to local partners.
Benefits the regulatory change is designed to produce.	This regulatory change will add protections for children who may experience anaphylaxis.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	All voluntarily registered family day homes would be affected by this change.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.	There are currently 209 voluntarily registered family day homes that will be impacted, all of which are small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the	Based on the Department of Planning and Budget 2023 Fiscal Impact Statement,

regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	epinephrine is estimated to cost each provider between $30-$750 in initial costs with comparable ongoing costs which depends on the use and expiration dates of the epinephrine if a provider chooses to keep undesignated epinephrine on site. Training and administrative costs are likely but cannot be determined at this time.
Benefits the regulatory change is designed to produce.	This regulatory change will add protections for children who may experience anaphylaxis. The amendments to the regulations are designed to ensure all voluntarily registered family day homes are aware of and in compliance with the Code of Virginia.

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 since this regulatory action is required by § 22.1-289.059 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

There are no alternatives to regulatory action since this regulatory action is required by § 22.1-289.059 of the Code of Virginia.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The 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 and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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 mail, email or fax to Tatanishia Armstrong, Legislative Consultant, Virginia Department of Education, PO Box 2120, Richmond, VA 23218, 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.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
850-20 Provider eligibility	NA	Requirements for provider eligibility. Qualification requirements of caregivers and the program.	Adds a requirement for the provider or at least one other caregiver employed by the provider completes training in the administration of epinephrine. Adds a requirement that allows individuals trained in the administration of epinephrine to administer emergency epinephrine pursuant to § 22.1-289.059. Technical edits added to correct cross reference and to exempt the administration of emergency epinephrine from certain requirements. The intent is for compliance with the Code of Virginia. The impact is added protections for children with severe allergies.
850-90	NA	Record requirements	Adds a requirement for the provider to notify parents whether the provider stores an appropriate weight-based dosage of epinephrine in the residence or the home in which the family day home operates. Technical edits to align numbering. The intent is for compliance with the Code of Virginia.

			The impact is added protections for children with severe allergies and support of parent choice by sharing information with parents so they can make informed decisions about child care placement.