



COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION
P.O. BOX 2120
RICHMOND, VA 23218-2120

DATE: June 20, 2023

TO: Licensed Child Day Centers

FROM: Jeff Williams, Director - Office of Child Care Health and Safety, Department of Education

SUBJECT: 2023 Legislative Implementation

This memo will inform you of legislation that passed in the 2023 Virginia General Assembly session that affects child day programs. The legislation will become effective July 1, 2023.

Background Checks for Accreditation by the Virginia Council for Private Education: House Bill (HB) 1701

[HB 1701](#) amends §§ 22.1-289.035 and 22.1-296.3 of the Code of Virginia (Code). This bill amends § 22.1-289.035 of the Code to allow the Virginia Council for Private Education (Council) or its authorized designee to review background check information for current employees of a child day center accredited by the Council for the purposes of seeking or maintaining accreditation by the Council as permitted by § 22.1-19. The bill also amends § 22.1-296.3 to permit the governing board or administrator of a private elementary or secondary school to disclose criminal history record information obtained through the Central Criminal Records Exchange indicating that the private school applicant meets or does not meet the criteria for employment based on whether the applicant has been convicted of a barrier crime as defined in § 19.2-392.02.

The Council oversees accreditation of private preschool, elementary and secondary schools in the Commonwealth of Virginia. The Council requires that private schools accredited pursuant to § 22.1-19 operating a child day program regulated by the Department meet the background requirements in § 22.1-289.035. The Council needs to ensure that the Code allows background check information to be reviewed by the Council for purposes of verifying the completion of required background checks. Therefore, this legislation permits programs to share the eligibility documentation received from the Office of Background Investigations.

Amendment to Exemptions; Private School Exemption: House Bill (HB) 1713/Senate Bill (SB) 964

[HB 1713](#)/ [SB 964](#) amends § 22.1-289.030 of the Code of Virginia. The legislation amends the exemption for private schools in § 22.1-289.030 B9 to remove the requirement that children enrolled in the exempt program be at least five years old and adds that school-age eligible children who are enrolled in the school may attend the program. This legislation expands the age of children

permitted to be enrolled in a private school exempt pursuant to § 22.1-289.030 to allow the private school's program to serve children who meet compulsory school attendance age requirements. Section 22.1-254 of the Code of Virginia, or the compulsory attendance law, requires children who turn five before September 30 of a given school year be enrolled in an educational program for that school year.

Additional provisions in this section require that an exempt program offered by a private school accredited by and in good standing with the Virginia Council for Private Education (VCPE), operates for no more than four hours per day, is staffed by the accredited private school's employees, and is subject to safety and supervisory standards established by VCPE.

No action is needed for programs currently exempt under § 22.1-289.030 B9 that have filed a Statement of Intent with the Superintendent within the last 12 months. Programs currently exempt under § 22.1-289.030 B9 that would like to operate under the revised statute and who have not filed a Statement of Exempt with the Superintendent within the last 12 months must file an exemption [here](#). Once the Department receives the exemption filing, it will be reviewed, and a confirmation email of the filing will be provided if information provided in the Statement of Intent demonstrates compliance with the exemption requirements.

Licensed programs that would like to request the exemption under § 22.1-289.030 B9 must first file for the exemption and receive confirmation from the Department that the filing was processed, then surrender the license to their assigned licensing inspector. Prior to deciding to surrender their license and operate under this exemption, private schools are reminded that programs operating under § 22.1-289.030 B9 are not eligible to participate in the subsidy program and are not eligible to obtain national fingerprint background checks as a regulated child day program through Fieldprint.

Amendment to Exemptions; Public School Exemption: House Bill (HB) 1698

[HB 1698](#) amends § 22.1-289.030 of the Code of Virginia. The legislation amends the exemption for programs offered by a local school division to allow operation for more than four hours per day on shortened instructional days and noninstructional days pursuant to the exemption in § 22.1-289.030 B7. However, these exempt programs are still limited to operating for four hours per day on full instructional days.

These exempt programs must be staffed by local school division employees, attended by children who are at least three years of age and are enrolled in public school or a preschool program within such school division, and subject to safety and supervisory standards established by the local school division offering the program.

No action is needed for programs currently exempt under § 22.1-289.030 B7 that have filed a Statement of Intent with the Superintendent within the last 12 months. Programs currently exempt under § 22.1-289.030 B7 that would like to operate under the revised statute must file an exemption [here](#). Once the Department receives the exemption filing, it will be reviewed, and a confirmation email of the filing will be provided if information provided in the Statement of Intent demonstrates compliance with the exemption requirements.

Licensed programs that would like to request the exemption under § 22.1-289.030 B7 must first file for the exemption and receive confirmation from the Department that the filing was processed, then surrender the license to their assigned licensing inspector. Prior to deciding to surrender their license and operate under this exemption, school divisions are reminded that programs operating under § 22.1-289.030 B7 are not eligible to obtain national fingerprint background checks as a regulated child day program through Fieldprint. For Child Care Subsidy participants, a new vendor

agreement may be required. Please contact child care subsidy for more information at vendor.manager@dss.virginia.gov.

Penalty for Illegally Operating Providers: House Bill (HB) 1636

[HB 1636](#) is a technical amendment to § 18.2-371.1 (Abuse & neglect of children; penalty) of the Code of Virginia to include a reference to child day programs and family day systems. This amendment to the Code clarifies that child day programs or family day systems defined in § 22.1-289.02 are included in § 18.2-371.1 and individuals that operate a child day program or family day system without a license are guilty of a Class 4 felony if a child in care receives a serious injury and the program is knowingly operating without a required license.

The amendment to § 18.1-371.1 A also applies to any individual who causes or permits serious injury to the life or health of a child while knowingly operating a child day program or family day system without a required license. The amendment provides children and consumers increased protection in the form of criminal penalties if a child is seriously injured.

Commission on Early Childhood Care and Education: House Bill (HB) 1423/Senate Bill (SB) 1404

[HB 1423](#) / [SB 1404](#) amends § 2.2-208.1 of the Code of Virginia to establish the Commission on Early Childhood Care and Education, formerly the School Readiness Committee. The bill establishes membership composition, term lengths, and facilitation of the Commission; the body's powers and duties; a schedule for meetings; and required deliverables. The terms of existing School Readiness Committee members expire upon the effective date of the legislation.

The Commission on Early Childhood Care and Education is a guiding body, comprised of policymakers, practitioners, parents, and other experts in the early childhood care and educator (ECCE) sector, to set a vision and establish goals for the future of ECCE in the Commonwealth. The Commission's powers and duties include expanding access to ECCE across Virginia; analyzing opportunities for new financing; retaining, strengthening, and growing the early childhood workforce; gathering and analyzing data to assess outcomes; generating needs assessments and developing recommendations to support family choice, access, and affordability; and generating annual reports on access and outcomes.

The proposed Commission on Early Childhood Care and Education will have a robust membership—including representatives of private and public early childhood programs, Head Start programs, faith-based programs—as well as representatives of public school divisions, local governments, regional coordinating entities, and parents and guardians. Its powers and duties are also expanded to reflect Virginia's progress towards expanding choice, improving quality, and prioritizing affordability.

This information is being provided to keep providers informed of the activities regarding early childhood education in the Commonwealth. No action is required.

Epinephrine Amendment: House Bill (HB) 2140/Senate Bill (SB) 1146

[HB 2140](#) / [SB 1146](#) amends § 22.1-289.059 of the Code. This legislation requires the Board of Education to amend regulations to require each child day center to implement policies for the possession and administration of epinephrine. The bill requires the policy to require that a 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 have access to and administer epinephrine. The policy must require at least

one of the individuals described above has the means to access appropriate weight-based epinephrine that is stored in a locked or otherwise generally inaccessible container or area during regular facility hours.

This legislation also requires the Board of Education to amend regulations to 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.

The Virginia Department of Education will consider the requirements in §§ 22.1-274.2 and 54.1-3408 of the Code of Virginia in the development of regulations required by this legislation. Current regulations for some child care programs impacted by this legislation include provisions for children with emergency medication and severe allergies, and requires children with prescribed medications to be in the care of a staff member who is trained in medication administration training (MAT). There are several programs who have opted, as allowed by current regulations, not to administer any medication. In these cases, parents have a choice not to enroll their child in the program if medications are required. This legislation would require these programs to implement the policies as required by this legislation and be trained in the administration of epinephrine, notwithstanding the program's policy on medication administration to ensure that emergency epinephrine is available.

The Virginia Department of Education, in partnership with the Virginia Department of Health, is in the process of vetting resources to implement the provisions of this legislation, to include training and guidance on the procurement of stock epinephrine. In the coming months, providers affected by this legislation will receive communication from VDOE regarding resources for training and information on procuring stock epinephrine through a statewide standing order. A regulatory action is needed to implement this change and more information will be provided once the action is initiated. More details will be provided, and a provider webinar will take place in the coming months to review processes and procedures. Inspectors will not be determining compliance with these new requirements until the updated regulations have been implemented.

We understand that there is a lot of information provided in this memo. Please join the Office of Child Care Health and Safety for a webinar on June 22, 2023, to learn about new laws related to child day programs and family day systems. This webinar is relevant for licensees, owners, and directors who represent licensed programs, subsidy vendors, voluntarily registered homes, religious exempt centers, certified preschools, and license-exempt programs. More information and instructions for registration can be found in the [Readiness Connections](#) newsletters.

Please send questions to childcarelicensing@doe.virginia.gov.