

**REPORT OF THE VIRGINIA
DEPARTMENT OF SOCIAL SERVICES**

**Report on Penalty
Recommendations for
Individuals Operating a Child
Day Center or Family Day Home
Without a License
(Chapter 758, 2015)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 16

**COMMONWEALTH OF VIRGINIA
RICHMOND
2015**



COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

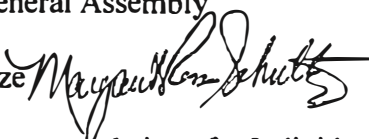
Margaret Ross Schultze
COMMISSIONER

December 1, 2015

MEMORANDUM

TO: The Honorable Terence R. McAuliffe
Governor of Virginia

Members, Virginia General Assembly

FROM: Margaret Ross Schultze 

SUBJECT: Report on Penalty Recommendations for Individuals Operating a Child Day Center or Family Day Home Without a License

I am pleased to submit the Department of Social Services' report on penalty recommendations pursuant to Chapter 758 of the 2015 Acts of Assembly. If you have questions or need additional information, please contact me.

MRS:kc

Attachment

Preface

This report is submitted pursuant to Chapter 758 of the 2015 Acts of Assembly, which directs the Department of Social Services to develop recommendations related to appropriate criminal and civil penalties for individuals who operate or engage in the conduct of a child day center or family day home without first obtaining a license or after such license has been revoked or has expired and not been renewed or who operate or engage in the conduct of a child day center or family day home serving more children than the maximum number stipulated in the license but shall not develop recommendations related to penalties for failure to comply with § 63.2-1704.1, as created by this act, and the Department shall report its recommendations to the Governor and the General Assembly by December 1, 2015.

This report was accomplished with input from a workgroup comprised of attorneys, child care advocates and a parent representative. Staff from the Virginia Department of Social Services' Division of Licensing-Children's Programs provided assistance and support to the workgroup.

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Executive Summary

This report is submitted pursuant to Chapter 758 of the 2015 Acts of Assembly, which directs the Department of Social Services to develop recommendations related to appropriate criminal and civil penalties for individuals who operate or engage in the conduct of a child day center or family day home without first obtaining a license or after such license has been revoked or has expired and not been renewed or who operate or engage in the conduct of a child day center or family day home serving more children than the maximum number stipulated in the license but shall not develop recommendations related to penalties for failure to comply with § 63.2-1704.1, as created by this act, and the Department shall report its recommendations to the Governor and the General Assembly by December 1, 2015.

Recommendations

1. A civil injunction, pursuant to § 63.2-1711 of the Code of Virginia (Code), should continue to be considered by the Virginia Department of Social Services (Department) in cases where child care providers are operating without a license, if the provider does not take steps to come into compliance with the law once the Division of Licensing–Children’s Programs has investigated and found the program to be subject to licensure. This injunction would require the provider to cease operations. The injunction would be at the suit of the Commissioner and pursued through the Office of the Attorney General.
2. The Division of Licensing–Children’s Programs will develop processes to refer completed substantiated cases of illegal child care operations to the Office of the Commonwealth’s Attorney for review for possible criminal prosecution for a Class 1 misdemeanor under § 63.2-1712 of the Code. These cases would include those where a child care program has been investigated, been found to be operating illegally, and has not complied with the law within ten days following being notified of the illegal operation; or when a provider is operating illegally due to a suspended or revoked license.
3. Pursuant to General Procedures and Information for Licensure (22VAC40-80-340) and §§ 63.2-1709.1 and 63.2-1709.2 of the Code, the Department currently has administrative sanctions and court proceedings available as penalties for child welfare agencies that fail to comply with the limitations and standards set forth in their license. These penalties may be imposed on child day centers or family day homes serving more children than the maximum number stipulated in their license. No further penalty for these providers operating over the threshold is recommended.
4. The Code should be amended to allow a felony charge for an illegally operating provider when a child dies or is injured, due to other than natural causes, while in that provider’s care. Some work group members felt that the health and safety of children far outweighs any financial impact that would be incurred.
5. The Code should be amended in Chapter 17 and Chapter 18 of Title 63.2 to reflect licensing thresholds, so that it can be easily determined when a child care program is required to be

licensed. Currently, the licensing threshold for family day homes and child day centers is only found in § 63.2-100 of the Code. Workgroup members indicated that the requirement was difficult to locate in the current placement.

6. The Code should be amended to allow the Department to develop and implement an escalating fine structure for unlicensed illegal child care providers who are found to have repeated offenses. The fine could increase with each repeated offense.

Criminal and Civil Penalties for Individuals Operating a Child Day Center or Family Day Home Without a License

Introduction

The Department of Social Services (Department) is tasked with protecting vulnerable populations, which includes investigating complaints of illegally operating child care centers and family day homes. To better ensure the safety of children receiving care in these settings, the Department responds to complaints of child day centers and family day home providers who are operating without a license; operating when their license is suspended, revoked, or has expired; or are caring for more children than allowed by their Department license. Differing opinions have existed in recent years on whether Virginia penalties for illegal operation of a child care facility or family day home are adequate. This report on recommended penalties was prepared pursuant to Chapter 758 of the 2015 Acts of Assembly (Appendix A). A workgroup was utilized in preparing this report (Appendix B).

Types of Child Day Programs

A child day program is defined in § 63.2-100 of the Code as a “regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.” Child day programs are either family day homes or child day centers. Specific definitions of these programs are found in § 63.2-100 of the Code. Licensed programs are licensed by the Department’s Division of Licensing-Children’s Programs. Regulated programs are approved or certified by the Division of Licensing-Children’s Programs and have a regulation and/or Code section that specifies program requirements.

Types of Family Day Homes

- **Licensed:** Licensed family day homes
- **Regulated (not licensed):** Voluntary registered family day homes
- **Approved:** Family day homes approved by a licensed family day system (these homes are not required to be licensed or registered)

Types of Child Day Centers

- **Licensed:** Licensed child day centers
- **Regulated (not licensed):** Religious exempt child day centers, requirements found in § 63.2-1716 of the Code, and certified preschools, requirements found in § 63.2-1717 of the Code.

TABLE 1.
Child Care Licensed and Regulated by the Virginia Department of Social Services, FY15

Child Care Licensed and Regulated by VDSS, FY15	Number	Capacity
Licensed Child Day Center	2,463	248,070
Licensed Child Day Center – short term camp	79	9,203
Licensed Family Day Home	1,246	12,829
Religious Exempt Child Day Center	988	80,803
Certified Pre-School	7	655
Voluntarily Registered Family Day Home	884	4,420
Licensed Family Day System	1	475
TOTAL	5,668	356,455

Additionally, there are an unknown number of child day programs that operate below the threshold for licensure. These exempt, non-regulated child day programs include small family day homes, serving fewer than six children, and exempt, non-regulated child day centers that meet a licensing exemption in § 63.2-1715 of the Code. These unlicensed, non-regulated child day programs are not subject to any requirements from the Division of Licensing-Children's Programs. The Department has no way of knowing how many of these providers exist, as there is no requirement for these providers to identify themselves or their location to any organization. Section 63.2-1701.1 was added to the Code, effective July 1, 2015, requiring localities to semiannually report to the Department contact information regarding child care providers who are issued a business license, in an attempt to identify unlicensed providers. The first report is due January 1, 2016.

Current Laws and Regulations Regarding Requirement for Licensure and Penalties for Individuals Operating a Child Day Center or Family Day Home Without a License

Requirements for Licensure

Section 63.2-1701 of the Code (Appendix C) requires that any child welfare agency, which includes child day centers and family day homes, shall obtain the appropriate license from the

Commissioner, which may be renewed. The length of the license or renewal is based on the judgment of the Commissioner regarding the compliance history of the facility and the extent to which it meets or exceeds state licensing standards. Licenses for family day homes may be issued for six months, one year, two years, or three years. Licenses for child day centers are issued for six months or two years. Each license indicates the number of children who may be cared for in the child welfare agency. Licenses shall be renewed prior to their expiration unless the license has been suspended or revoked. Some child day programs may meet an exemption in § 63.2-1715 of the Code that precludes that program from the requirement of being licensed by the Department. These exceptions are discussed in the Unlicensed Child Day Care in Virginia section of this report.

Complaint Investigations

Pursuant to General Procedures and Information for Licensure (22VAC40-80-30), the Department has a responsibility to investigate allegations of illegal operations and to initiate action to suppress illegal operations.

Pursuant to § 63.2-1728 of the Code (Appendix D), upon receipt of a complaint concerning the operation of a child welfare agency, regardless of whether the program is subject to licensure, an investigation is made, including on-site visits as deemed necessary, of the activities, services, records and facilities. Child welfare agencies are required to provide the Division of Licensing-Children's Programs inspectors the opportunity to inspect all of the operator's activities, services, records and facilities and to conduct interviews as necessary to complete the investigation. Whenever a child welfare agency is determined to be in noncompliance, reasonable notice shall be given to the child welfare agency of the nature of its noncompliance. The Department may then take appropriate action, including a civil injunction to require that the child welfare agency cease operations.

Current Criminal Penalty for Illegal Operations

Section 63.2-1712 of the Code (Appendix E) states that any person, and each officer and each member of the governing board of any child welfare agency, shall be guilty of a Class 1 misdemeanor if he: interferes with any representative of the Commissioner in their duties under § 63.2-1712; makes a knowingly false or untrue report; operates a child welfare agency without first obtaining a license or after the license has been revoked or has expired and has not been renewed; or operates a child welfare agency serving more children than the maximum stipulated in the license.

The authorized punishment for conviction of a Class 1 misdemeanor is confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both, pursuant to § 18.2-11 of the Code.

Penalty - Injunction

Section 63.2-1711 of the Code (Appendix F) allows the Department to seek an injunction against a child welfare operation without a license. The injunction is filed at the suit of the

Commissioner in the circuit court having jurisdiction in the county or city where the illegal child welfare agency is located and seeks to require the child welfare agency to cease operation.

Unlicensed Child Day Care in Virginia

There are an unknown number of child day programs that operate below the threshold for licensure, are not required to be licensed, and are not regulated by the Department. These exempt, non-regulated child day programs include small family day homes, serving fewer than six children. These unlicensed, non-regulated child day programs are not subject to any requirements (including background check requirements). The Department has no way of knowing how many of these providers exist, as there is no requirement for these providers to identify themselves or their location to any organization. One of the provisions in Chapter 758 of the 2015 Acts of Assembly (House Bill 1570/Senate Bill 1168) is that every unlicensed, unregistered family day home shall provide written notice to the parent of every child receiving care that the family day home is not regulated by the Department. This provision also requires that these unlicensed, unregistered providers refer parents to a website maintained by the Department for additional information regarding licensed, registered, and unlicensed, unregistered family day homes. This does not apply if all the children in care at the provider's home are related to the provider by blood or marriage.

A second category of exempt child day programs are child day centers that meet a licensing exemption in § 63.2-1715 of the Code (Appendix G). These child day programs are not required to be licensed. Some exemptions include child day centers operated by religious institutions, programs of instructional or recreational activities, programs provided by public schools, practice or competition in organized sport leagues, certified preschools or nursery schools, and local parks and recreation programs. For a complete list of exemptions found in § 63.2-1715 of the Code, see Appendix G.

Illegal Operations in Virginia

In calendar year 2014, the Department received 100 complaints of illegal operation of a child day program. These reports included 76 family day homes, 19 child day centers, three child day center exempt programs, and two short-term child day centers (centers that operate for only part of the year). Of the 100 complaints alleging illegal operations that were investigated by the Department, 21 investigations resulted in findings of "Subject to Licensure," which included 14 family day homes and seven child day centers.

Research – Other States

Information from other states was obtained through internet research and a review of published documents including, *Contemporary Issues in Licensing: Enforcement and Approaches with Illegally-Operating Providers* (Administration for Children and Families Office of Child Care, 2014).

Similar to Virginia, 23 other states impose misdemeanor charges for illegal operations of child care programs. Two states also have felony charges that can be imposed for more serious situations such as willful violation, serious injury or death of a child in care, and repeat violations. Thirty-four states impose fines ranging from five dollars per day to \$25,000 per violation. The method of assessing fees and the agency responsible for assessing the fees varied greatly among different states.

Recommendations

1. A civil injunction, pursuant to § 63.2-1711 of the Code of Virginia (Code), should continue to be considered by the Virginia Department of Social Services (Department) in cases where child care providers are operating without a license, if the provider does not take steps to come into compliance with the law once the Division of Licensing–Children’s Programs has investigated and found the program to be subject to licensure. This injunction would require the provider to cease operations. The injunction would be at the suit of the Commissioner and pursued through the Office of the Attorney General.

Pro: This penalty is currently in the Code and allows the Department to hold illegally operating child care providers accountable by requiring them to cease operations, which protects children in care.

Con: There often is not sufficient evidence for the Office of the Attorney General to proceed with an injunction, and therefore this penalty is not utilized frequently by the Department.

2. The Division of Licensing–Children’s Programs will develop processes to refer completed substantiated cases of illegal child care operations to the Office of the Commonwealth’s Attorney for review for possible criminal prosecution for a Class 1 misdemeanor under § 63.2-1712 of the Code. These cases would include those where a child care program has been investigated, been found to be operating illegally, and has not complied with the law within ten days following being notified of the illegal operation; or when a provider is operating illegally due to a suspended or revoked license.

Pro: Developing streamlined internal processes will establish the expectation that all licensing field offices refer appropriate cases for criminal prosecution under § 63.2-1712 of the Code and hold more illegally operating programs accountable.

Con: Commonwealth’s Attorney’s offices across the state may have different thresholds for moving forward with a misdemeanor criminal prosecution, and therefore outcomes of these cases could vary greatly across the Commonwealth. While the prosecutors that participated in this workgroup were supportive of this recommendation, it is unknown if other Commonwealth Attorneys in the state would be amenable to reviewing these cases in their jurisdictions. Some licensing field offices already make these referrals, with varying outcomes.

3. Pursuant to General Procedures and Information for Licensure (22VAC40-80-340) and §§ 63.2-1709.1 and 63.2-1709.2 of the Code, the Department currently has administrative

sanctions and court proceedings available as penalties for child welfare agencies that fail to comply with the limitations and standards set forth in their license. These penalties may be imposed on child day centers or family day homes serving more children than the maximum number stipulated in their license. No further penalty for these providers operating over the threshold is recommended.

Pro: Programs that are licensed already have a range of administrative sanctions that can be applied, such as a civil penalty, mandated training, or reducing capacity. These sanctions are already used regularly by the Department.

Con: The Department needs to ensure that these sanctions are applied consistently across the state.

4. The Code should be amended to allow a felony charge for an illegally operating provider when a child dies or is injured, due to other than natural causes, while in that provider's care. Some work group members felt that the health and safety of children far outweighs any financial impact that would be incurred.

Pro: This Code change would impose a stricter penalty for illegally operating providers when a child is harmed or dies, which allows for greater accountability and could deter providers from operating illegally.

Con: Only two other states have such strict penalties. There would be a larger financial impact to the state and localities due to increased incarceration and court costs for felony prosecutions.

5. The Code should be amended in Chapter 17 and Chapter 18 of Title 63.2 to reflect licensing thresholds, so that it can be easily determined when a child care program is required to be licensed. Currently, the licensing threshold for family day homes and child day centers is only found in § 63.2-100 of the Code. Workgroup members indicated that the requirement was difficult to locate in the current placement.

Pro: Moving licensing threshold information to a separate section in the Code could make it easier to locate these requirements.

Con: The location of licensing threshold information in the definitions or in different sections of the Code is more of a personal preference and could be remedied by training and public education. The issue is not where the requirement is found in the Code, but educating the public, parents, and providers that licensure matters and choosing licensed care offers more safety and protection for children.

6. The Code should be amended to allow the Department to develop and implement an escalating fine structure for unlicensed illegal child care providers who are found to have repeated offenses. The fine could increase with each repeated offense.

Pro: Offers more options to the Department to fine an illegally operating child day program, and allows the Department more opportunities to hold these providers accountable, particularly if the evidence does not meet the burden of proof for an injunction or a criminal conviction under § 63.2-1712 of the Code.

Con: The Department has not imposed administrative penalties for unlicensed programs in the past, and would need to develop processes and protocols to implement this fining system fairly. If there is evidence to meet the burden of proof, there are already adequate penalties for unlicensed programs with injunctions and fines (up to \$2,500) and jail time (up to 12 months) upon conviction of § 63.2-1712 of the Code.

Other Considerations

The workgroup suggested that injunctions against illegal operations be filed by the city or county attorney in the jurisdiction where the provider is located, rather than by the Office of the Attorney General to improve the efficiency of the injunction process. After further research, it was determined that a Code change would be required to implement this suggestion. Injunctions must be filed in the circuit court in a suit of the Commissioner (see § 63.2-1711 of the Code). This suggestion would be problematic, as the Office of the Attorney General represents the Commissioner and the Department (see § 2.2-507 of the Code) and the local county or city attorneys do not have the authority to represent the Commissioner or the Department.

In addition to the above recommendations, the Department will continue with a plan to educate unlicensed and unregistered family day homes regarding requirements of § 63.2-1704.1 of the Code, to provide written notice to parents stating that they are not regulated by the Department. Furthermore, the Department is increasing efforts to educate the community about the differences between licensed, regulated and unlicensed child care. An educational campaign is underway and has been initiated with informative material that is posted on the VDSS website at <http://www.dss.virginia.gov/family/cc/index.cgi>. Ultimately, parents and the public need to be educated to understand that licensure matters, and licensure provides health and safety requirements that protect children in care. Parents and the public also need to know how to report illegal operations to the Department, so the Department can continue to hold these programs accountable and enforce appropriate penalties.

References

Administration for Children and Families Office of Child Care. (2014). *Contemporary issues in licensing: enforcement and approaches with illegally-operating providers* (National Center on Child Care Quality Improvement, A Service of the Office of Child Care), Fairfax, VA. Retrieved from https://childcareta.acf.hhs.gov/sites/default/files/public/1408_illegally_operating_providers_final.pdf.

Appendix A

Report Mandate

Chapter 758 of the 2015 Acts of Assembly (House Bill 1570/Senate Bill 1168)

5. That the Department of Social Services shall develop recommendations related to appropriate criminal and civil penalties for individuals who operate or engage in the conduct of a child day center or family day home without first obtaining a license or after such license has been revoked or has expired and not been renewed or who operate or engage in the conduct a child day center or family day home serving more children than the maximum stipulated in the license but shall not develop recommendations related to penalties for failure to comply with § 63.2-1704.1, as created by this act, and the Department shall report its recommendations to the Governor and the General Assembly by December 1, 2015.

Appendix B

Workgroup Members

Duncan Minton, Deputy Commonwealth's Attorney, Chesterfield, Virginia
Mike Doucette, Commonwealth's Attorney, City of Lynchburg
Emily Griffey, Voices for Virginia's Children
Sharon Veatch, Executive Director, Child Care Aware of Virginia
Herman Allen, Parent Representative

Virginia Department of Social Services' staff from the following divisions provided assistance and support to the workgroup: Division of Licensing- Children's Programs, Commissioner's Office.

Appendix C

Code of Virginia § 63.2-1701

§ 63.2-1701. Licenses required; issuance, expiration and renewal; maximum number of residents, participants or children; posting of licenses.

- A. Every person who constitutes, or who operates or maintains, an assisted living facility, adult day care center or child welfare agency shall obtain the appropriate license from the Commissioner, which may be renewed. The Commissioner, upon request, shall consult with, advise, and assist any person interested in securing and maintaining any such license. Each application for a license shall be made to the Commissioner, in such form as he may prescribe. It shall contain the name and address of the applicant, and, if the applicant is an association, partnership, limited liability company or corporation, the names and addresses of its officers and agents. The application shall also contain a description of the activities proposed to be engaged in and the facilities and services to be employed, together with other pertinent information as the Commissioner may require.
- B. The licenses shall be issued on forms prescribed by the Commissioner. Any two or more licenses may be issued for concurrent operation of more than one assisted living facility, adult day care center or child welfare agency, but each license shall be issued upon a separate form. Each license and renewals thereof for an assisted living facility, adult day care center or child welfare agency may be issued for periods of up to three successive years, unless sooner revoked or surrendered. Licenses issued to child day centers under this chapter shall have a duration of two years from date of issuance.
- C. The length of each license or renewal thereof for an assisted living facility shall be based on the judgment of the Commissioner regarding the compliance history of the facility and the extent to which it meets or exceeds state licensing standards. Based on this judgment, the Commissioner may issue licenses or renewals thereof for periods of six months, one year, two years, or three years.
- D. The Commissioner may extend or shorten the duration of licensure periods for a child welfare agency whenever, in his sole discretion, it is administratively necessary to redistribute the workload for greater efficiency in staff utilization.
- E. Each license shall indicate the maximum number of persons who may be cared for in the assisted living facility, adult day care center or child welfare agency for which it is issued.
- F. The license and any other documents required by the Commissioner shall be posted in a conspicuous place on the licensed premises.
- G. Every person issued a license that has not been suspended or revoked shall renew such license prior to its expiration.

Appendix D

Code of Virginia § 63.2-1728

§ 63.2-1728. Establishment of toll-free telephone line for complaints; investigation on receipt of complaints.

With such funds as are appropriated for this purpose, the Commissioner shall establish a toll-free telephone line to respond to complaints regarding operations of assisted living facilities, adult day care centers and child welfare agencies. Upon receipt of a complaint concerning the operation of an assisted living facility, adult day care center or child welfare agency, regardless of whether the program is subject to licensure, the Commissioner shall, for good cause shown, cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, records and facilities. The assisted living facility, adult day care center or child welfare agency shall afford the Commissioner reasonable opportunity to inspect all of the operator's activities, services, records and facilities and to interview its agents and employees and any child or other person within its custody or control. Whenever an assisted living facility, adult day care center or child welfare agency subject to inspection under this section is determined by the Commissioner to be in noncompliance with the provisions of this subtitle or with regulations adopted pursuant to this subtitle, the Commissioner shall give reasonable notice to the assisted living facility, adult day care center or child welfare agency of the nature of its noncompliance and may thereafter take appropriate action as provided by law, including a suit to enjoin the operation of the assisted living facility, adult day care center or child welfare agency. An incident report filed by an assisted living facility, pursuant to regulations adopted by the Board, for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of the facility shall not be considered a complaint for purposes of this section and shall not be posted by the Department on a website maintained by the Department. However, upon receipt of an incident report for any major incident that negatively affects or threatens the life, health, safety, or welfare of any resident of an assisted living facility, the Commissioner may initiate an investigation including an on-site visit to the facility if the Commissioner finds, for good cause shown based upon the seriousness of the incident and the nature of any response to the incident, including any implementation of a plan of correction to address the situation giving rise to the incident, that an investigation is required to protect the life, health, safety, or welfare of a resident of the assisted living facility.

Appendix E

Code of Virginia § 63.2-1712

§ 63.2-1712. Offenses; penalty.

Any person, and each officer and each member of the governing board of any association or corporation that operates an assisted living facility, adult day care center or child welfare agency, shall be guilty of a Class 1 misdemeanor if he:

1. Interferes with any representative of the Commissioner in the discharge of his duties under this subtitle;
2. Makes to the Commissioner or any representative of the Commissioner any report or statement, with respect to the operation of any assisted living facility, adult day care center or child welfare agency, that is known by such person to be false or untrue;
3. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency without first obtaining a license as required by this subtitle or after such license has been revoked or has expired and not been renewed. No violation shall occur if the facility, center or agency has applied to the Department for renewal prior to the expiration date of the license. Every day's violation of this subdivision shall constitute a separate offense; or
4. Operates or engages in the conduct of an assisted living facility, adult day care center or child welfare agency serving more persons than the maximum stipulated in the license.

Appendix F

Code of Virginia § 63.2-1711

§ 63.2-1711. Injunction against operation without license.

Any circuit court having jurisdiction in the county or city where the principal office of any assisted living facility, adult day care center or child welfare agency is located shall, at the suit of the Commissioner, have jurisdiction to enjoin its operation without a license required by this subtitle.

Appendix G

Code of Virginia § 63.2-1715

§ 63.2-1715. Exemptions from licensure.

- A. The following child day programs shall not be required to be licensed:
1. A child day center that has obtained an exemption pursuant to § 63.2-1716.
 2. A program where, by written policy given to and signed by a parent or guardian, school-aged children are free to enter and leave the premises without permission or supervision, regardless of (i) such program's location or the number of days per week of its operation; (ii) the provision of transportation services, including drop-off and pick-up times; or (iii) the scheduling of breaks for snacks, homework, or other activities. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.
 3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period.
 4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation.
 5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.
 6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.
 7. Education and care programs provided by public schools that are not exempt pursuant to subdivision A 6 shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the Commissioner.

8. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per week.
 9. Practice or competition in organized competitive sports leagues.
 10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services.
 11. Child-minding services that are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part-time employees working less than two hours per day, (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes, and (iii) is receiving or providing services or participating in activities offered by the establishment.
 12. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717.
 13. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by local governments.
 14. A program of instructional or athletic experience operated during the summer months by, and as an extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-19 and administered by the Virginia Council for Private Education.
- B. Family day homes that are members of a licensed family day system shall not be required to obtain a license from the Commissioner.
- C. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be required to be licensed.

