

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 258

An Act to amend and reenact § 63.2-1716 of the Code of Virginia, relating to unlicensed child day centers and the staff-to-children ratio during designated rest and sleep periods.

[S 969]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1716 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1716. Child day center operated by religious institution exempt from licensure; annual statement and documentary evidence required; enforcement; injunctive relief.

A. Notwithstanding any other provisions of this chapter, a child day center, including a child day center that is a child welfare agency operated or conducted under the auspices of a religious institution shall be exempt from the licensure requirements of this subtitle, but shall comply with the provisions of this section unless it chooses to be licensed. If such religious institution chooses not to be licensed, it shall file with the Commissioner, prior to beginning operation of a child day center and thereafter annually, a statement of intent to operate a child day center, certification that the child day center has disclosed in writing to the parents or guardians of the children in the center the fact that it is exempt from licensure, the qualifications of the personnel employed therein and documentary evidence that:

1. Such religious institution has tax exempt status as a nonprofit religious institution in accordance with § 501 (c) of the Internal Revenue Code of 1954, as amended, or that the real property owned and exclusively occupied by the religious institution is exempt from local taxation.

2. Within the prior 90 days for the initial exemption and within the prior 180 days for exemptions thereafter, the local health department and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, have inspected the physical facilities of the child day center and have determined that the center is in compliance with applicable laws and regulations with regard to food service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code.

3. The child day center employs supervisory personnel according to the following ratio of staff to children:

- a. One staff member to four children from zero to twenty-four months.
- b. One staff member to ten children from ages twenty-four months to six years.
- c. One staff member to twenty-five children ages six years and older.

Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children. In each grouping of children, at least one adult staff member shall be regularly present. *However, during designated daily rest periods and designated sleep periods of evening and overnight care programs, for children ages 24 months to six years, only one staff member shall be required to be present with the children under supervision. In such cases, at least one staff member shall be physically present in the same space as the children under supervision at all times. Other staff members counted for purposes of the staff-to-child ratio need not be physically present in the same space as the resting or sleeping children, but shall be present on the same floor as the resting or sleeping children and shall have no barrier to their immediate access to the resting or sleeping children. The staff member who is physically present in the same space as the sleeping children shall be able to summon additional staff counted in the staff-to-child ratio without leaving the space in which the resting or sleeping children are located.*

Staff members shall be at least 16 years of age. Staff members under 18 years of age shall be under the supervision of an adult staff member. Adult staff members shall supervise no more than two staff members under 18 years of age at any given time.

4. Each person in a supervisory position has been certified by a practicing physician or physician assistant to be free from any disability which would prevent him from caring for children under his supervision.

5. The center is in compliance with the requirements of:

- a. This section.
- b. Section 63.2-1724 relating to background checks.
- c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.
- d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or commercial driver's license; of Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding vehicle inspections; ensuring that any vehicle used to transport children is an insured motor vehicle as defined in § 46.2-705; and Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child restraint devices.

6. The following aspects of the child day center's operations are described in a written statement provided to the parents or guardians of the children in the center and made available to the general public: physical facilities, enrollment capacity, food services, health requirements for the staff and public liability insurance.

B. The center shall establish and implement procedures for:

1. Hand washing by staff and children before eating and after toileting and diapering.
2. Appropriate supervision of all children in care, including daily intake and dismissal procedures to ensure safety of children.

3. A daily simple health screening and exclusion of sick children by a person trained to perform such screenings.

4. Ensuring that a person trained and certified in first aid is present at the center whenever children are present.

5. Ensuring that all children in the center are in compliance with the provisions of § 32.1-46 regarding the immunization of children against certain diseases.

6. Ensuring that all areas of the premises accessible to children are free of obvious injury hazards, including providing and maintaining sand or other cushioning material under playground equipment.

7. Ensuring that all staff are able to recognize the signs of child abuse and neglect.

C. The Commissioner may perform on-site inspections of religious institutions to confirm compliance with the provisions of this section and to investigate complaints that the religious institution is not in compliance with the provisions of this section. The Commissioner may revoke the exemption for any child day center in serious or persistent violation of the requirements of this section. If a religious institution operates a child day center and does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such religious institution of the nature of its noncompliance and may thereafter take such action as he determines appropriate, including a suit to enjoin the operation of the child day center.

D. Any person who has reason to believe that a child day center falling within the provisions of this section is not in compliance with the requirements of this section may report the same to the local department, the local health department or the local fire marshal, each of which may inspect the child day center for noncompliance, give reasonable notice to the religious institution, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the child day center.

E. Nothing in this section shall prohibit a child day center operated by or conducted under the auspices of a religious institution from obtaining a license pursuant to this chapter.