

License-Exempt Child Care Report: Are children safe? Time to Act on Recommendations



January 2017

Issue in Brief: In 2015, the General Assembly passed legislation to require a review of Virginia's 14 categories of license-exempt care. A study was published in December of 2016, which reviewed each category and recommended policies to promote child safety.

Child Care Aware of Virginia's Recommendations:

Statutory revisions should be made to conform with the study recommendations.

- ✓ License-exempt programs should be required to register with the Department of Social Services.
- ✓ License-exempt programs should be required to post signage on the premises indicating that they are not licensed, not inspected, and self-certify basic health and safety requirements.
- ✓ License-exempt programs should be required to have some minimum protections for children (e.g., at least one staff member with CPR certification, staff background checks, attendance records, an emergency evacuation plan, safe sleep practices for infants, and follow current Virginia laws on the transportation of children - if applicable).

What does License-Exempt Mean?

Virginia has 14 categories of care that the General Assembly has exempted from child care licensing requirements. These categories of care are related to group settings where children are cared for on a regular basis, often every day, every week. Providers are not required to have a background check, minimum training such as CPR, safe sleep practices for infants, and are not subject to safety inspections to recommend ways to pre-empt accidents or close them down if warranted.

Parent Confusion

Many parents assume that classroom-based settings have minimum protections in place for children. They don't know about the 14 categories of care that are exempt from licensing requirements. It is logical that out-of-home care, in a group setting, has some type of oversight. However, in Virginia, that is not always the case. That's why the General Assembly required a study to review these categories. Many have been in Virginia statute for decades.

A new federal child care law (the Child Care and Development Block Grant Act of 2014; PL 113-186) asks states to review unlicensed care and determine whether the health, safety, or development of children may be endangered. States are now required to explain how children are protected in these settings in child care state plans submitted to the U.S. Department of Health and Human Services.

Dylan Cummings: Death in License-Exempt Care

One of the first things Betsy Cummings of Culpeper learned as a 22 year-old Navy boatswain new mother was to never lay her son, Dylan, on his stomach to sleep. After her six weeks of maternity



leave ended, she placed 7 week-old Dylan in a child care program located at a church. She did not know that child care programs affiliated with churches are not required to be licensed or comply with health and safety protections for children in Virginia.

After returning to work for only one week, she received a phone call informing her that there had been an incident at the child care center. When she arrived at the church, a paramedic told her that Dylan had died. The medical examiner reported that Dylan was a healthy baby. The Department of Social Services released a report on the incident and Cummings learned that because the child care center was located in a church, it was exempt from licensing requirements. The program had too few staff, insufficient training, and engaged in unsafe practices (e.g., Dylan was one of 10 babies who were in cribs in a room that fire marshals had labeled as a utility storage closet). Because the program was “license-exempt,” there was no oversight to protect children.

A judge dismissed felony charges against the owner and staff, *“while the Court is certainly sympathetic... the remedy for this situation lies in the sound discretion of the General Assembly, not with the Judiciary.”*

The 2015 General Assembly Required License-Exempt Report

Pursuant to Senate Joint Resolution No. 63, the 2015 General Assembly required a study of license-exempt care. A comprehensive review was undertaken and a study with recommendations was published in December of 2015.

Of the 14 categories of license-exempt care, the study recommended that 8 categories be removed from the statute entirely because these settings are not child care.

The study recommends minimum health and safety requirements for the remaining six categories of child care. This means that these categories of care would not be required to meet licensing standards, but they would have to register with the Department of Social Services and be subject to a minimum set of health and safety requirements.

The study also recommended that the Department of Social Services should:

- Begin inspecting religious exempt child day centers for compliance with health and safety requirements;
- Develop a system for tracking aggregate data on child injuries and deaths at licensed, regulated, and exempt child day programs; and
- Clarify the categories of child day programs and revise descriptions about exemptions and licensure so that parents and the general public are better informed about the different categories of care and which programs have Department oversight.



Child Care Aware of Virginia Recommendations:

Child Care Aware of Virginia supports the recommendations in the license-exempt review report.

Children should be safe in child care. Parents have enough to worry about in balancing work and family without also having to understand the different laws that may apply to classroom-based settings used for child care. Too often, parents only learn about the safety of child care settings after a serious injury or tragic incident. Our laws in Virginia should promote child safety.

- ✓ Statutory revisions should be made to conform with the study recommendations.