

Protecting the Safety of Children In License-Exempt Child Care

January 2018



Issue in Brief: SB 539, introduced by Senator Hanger and HB 1480, introduced by Delegate Filler-Corn, would promote the safety of children in license-exempt child care by incorporating the recommendations made in a report to the General Assembly in 2016.

Currently, there are 14 categories of child care that are defined in Virginia law as “license-exempt.” Many of these license-exempt centers have classroom based settings, but are exempt from background checks, minimum training for staff who work in the centers, and are not subject to any oversight (i.e., inspections for child safety).

Parents have a tough time understanding Virginia’s child care laws. Often, they don’t find out a setting is license-exempt until a serious injury or death of a child occurs.

Protecting Children

SB 539 and HB 1480 sort through the list of license-exempt care and create two categories: those settings that are not child care such as soccer practice or piano lessons and those settings that are child care (e.g., they are a business engaged in providing child care for unrelated children).

The programs that fall under the non-child care setting will continue to be exempt with no rules. Those settings that are child care, which will continue to be exempt from licensing, would be subject to a few new rules designed to promote the safety of children.

What are the new requirements?

- License-exempt child care programs must file annually with the Commissioner of the Department of Social Services under the specific license-exempt category that applies (to know the number of these programs, what

type of program they are, and where they are located).

- Serious injuries and deaths of children that occur within these programs must be reported to the Commissioner.
- These license-exempt programs must post in a visible location that they are not licensed.

In addition, five of these license-exempt settings are also required to ensure they have:

- A staff person certified in CPR
- Daily attendance records
- An emergency preparedness plan in place
- Safe sleep practices for babies as recommended by the American Academy of Pediatrics
- Background checks as established by the Board of Social Services
- Compliance with all applicable laws and regulations governing the transportation of children

Recreational programs operated by local governments that serve school-age children would be subject to safety and supervisory standards established by local governments offering the program. Local schools operating child care for less than 4 hours a day for school-age children would be subject to safety and supervisory standards established by local school divisions.

Conforming changes to the above requirements would apply to religious license-exempt child care regulated under Section 63.2-1716 and certified preschools regulated under Section 63.2-1717.

The separate code sections regulating child care for these settings is retained since they address the needs of younger children (i.e., those who have not yet reached an age for mandatory school attendance). For example, many of the 1,000 religious license-exempt programs serve infants. If there were a fire in the facility, unlike school-age

children who could line up at the door and follow directions to safely evacuate the building, infants would need assistance and would not be expected to line up at the door for evacuation.

Dylan Cummings: Death in a Religious License-Exempt Child Care Program

One of the first things Betsy Cummings of Culpeper learned as a 22 year-old Navy boatswain mate and new mother was to never lay her son, Dylan, on his stomach to sleep. When she toured Little Eagles Day Care, run out of Bethel Temple Church of Deliverance, she was comforted in meeting the caring staff. She felt safe that this House of God would be a warm and loving place for her son.

Betsy was not a child care law expert. She didn't know that the Bethel Temple Church program was license-exempt. She was just a parent looking for safe, loving child care.

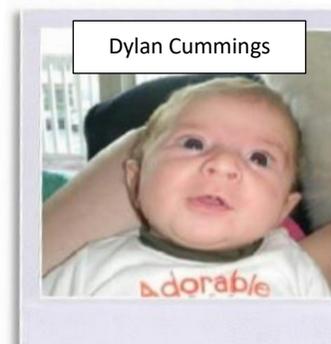
After returning to work for only one week, she received a phone call informing her that there had been an incident at the child care center. When she arrived at the church, a paramedic told her that Dylan had died.

There was an investigation. A report was released by the Virginia Department of Social Services that found that Dylan was one of 10 babies in the infant room for children one year old and younger. According to the Fire Marshal, they were supposed to have no more than 9 children under the age of two and a half, but on the day of Dylan's death, there were 24 children under the age of two and a half in attendance that day.

The infants were in cribs in a room that the Fire Marshal had labeled as an electrical store room. The room had poor ventilation and Dylan had been placed on his stomach to sleep. This happened even though she asked the staff to place him on his back to sleep as recommended by the National Academy of Pediatrics Back to Sleep Campaign.

Dylan was just 7 weeks old. He was too young to rollover or to lift his head. On the day that Dylan died, there were only 2 caregivers for the infant room. One of those two caregivers left the building to go to a doctor's appointment while the other caregiver, who was left to watch 10 infants by herself, went to the other side of the building to eat her lunch.

The medical examiner reported that Dylan was a healthy baby. The case went to court, but 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."*



2018 Child Care Aware of Virginia Recommendations:

Children should be safe in 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.

- ✓ Pass SB 539 and HB 1480 to promote the safety of children in license-exempt care.

The licensing status for these child care programs does not change, the bills only seek to better promote the safety of children in this type of care.