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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-211
Regulation title(s)	Foster and Adoptive Home Approval Standards
Action title	Amend Resource, Foster and Adoptive Home Approval Regulation
Date this document prepared	August 17, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation addresses standards for foster and adoptive homes approved by local departments of social services (LDSS). Changes in the proposed action include clarifying that foster and adoptive parents are mandated reporters of child abuse and as such, must receive mandated reporter training. The definition of "caretaker" has been updated to match that in the Child Protective Services (CPS) regulations and guidance.

Training requirements for LDSS staff and other child welfare staff who prepare foster and adoptive mutual family assessments and procedures for maintaining foster and adoptive provider approval status have been updated based upon recommendations from regional resource family consultants and input from the regulation review workgroup.

Section 20 subsection B amends the term “provider” by adding relative” to clarify that the use of waivers are only for relatives.

Throughout the regulation, language regarding “resource families” has been changed to “foster” and “adoptive” families, the Code of Virginia does not address “resource families.” Approval standards for adoptive parents differ from those for foster parents only in the parent having a desire to adopt. Use of the term “resource parent” to mean a family who is approved both to foster and adopt in the regulation goes beyond what is contained in Code. Also, the term regarding “variances” has been changed to “waivers” to be consistent with Code.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- LDSS- local departments of social services
- VDSS- Virginia Department of Social Services
- CRAFFT-Consortium for Resource, Adoptive and Foster Family Training
- LCPA-Licensed Child Placing Agency
- MFA-Mutual Family Assessment

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The legal authority for this regulation can be found in §§ 63.2-217, and 63.2-901.1. These sections provide general authority to the State Board of Social Services for developing regulations for foster and adoptive home approval standards, and specific authority related to waivers for relative providers.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Proposed amendments to the regulation will address changes in Virginia law and improve consistency with federal law. Other changes clarifying procedures and requirements will benefit foster and adoptive families, LDSS staff and other child welfare staff, and children in foster care by ensuring that foster children are placed in safe and appropriate homes. Requiring training for LDSS staff and other child welfare staff who complete mutual family assessments of prospective foster and adoptive family homes and provide annual in-service training for foster and adoptive parents will protect the health, safety and welfare of Virginia’s foster care children by improving the quality of the approval process and contributing to the ongoing development of skills and knowledge of the families caring for children placed in their

homes. Certain changes are intended to ensure consistency between this regulation and the regulation found in 22VAC40-131 for foster homes approved by LCPAs; consistency in the approval process for both is a requirement to meet federal guidelines for accessing title IV-E funding.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.

Substantive proposed changes to the regulation include adding the definition of “kinship foster parent;” changing language to restrict waivers to relative/kinship foster homes; requiring that LDSS staff and other child welfare staff who complete mutual family assessments, previously referred to as home studies, receive training to do so; requiring foster and adoptive parents to report substantial changes to their home or circumstances; requiring that local departments of social services provide mandated reporter training to foster and adoptive parents; requiring that approved foster and adoptive parents complete in-service training annually.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

Training for LDSS staff, other child welfare staff completing mutual family assessments and foster and adoptive parents is currently provided by the Consortium for Resource, Adoptive and Foster Family Training (CRAFFT) regional coordinators. The CRAFFT program is funded by state and federal monies and administered by Virginia Department of Social Services (VDSS). Therefore, the provision of training will not pose a disadvantage to the LDSS. Because CRAFFT coordinators are regionally based, they are able to offer LDSS staff and other child welfare staff trainings both at the regional offices and also to travel to larger agencies or clusters of agencies to provide training. The training to be required is currently recommended. Before the regulation becomes effective, many LDSS staff will have already completed this training.

LDSS are currently required to make in-service training available to foster and adoptive families and ten hours of in-service training annually is recommended. CRAFFT coordinators provide in-service training on a regional basis for families to assist those LDSS that do not have their own trainers and to ensure that local training is available to families throughout the state. It is anticipated that CRAFFT in-service events will be better attended after the regulation goes into effect, but it will not be necessary to significantly expand either the CRAFFT program or the provision of foster and adoptive parent in-service trainings offered by the LDSS. The requirement that foster and adoptive families complete in-service training annually will require that LDSS staff track training hours and monitor foster and adoptive parent compliance, which may pose somewhat of a disadvantage to those LDSS not already doing so.

The regulatory action poses no disadvantage to the public or the Commonwealth; proposed changes will benefit foster and adoptive families, LDSS staff and other child welfare staff, and children in foster care by ensuring that foster children are placed in safe and appropriate homes.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in this proposal which are more restrictive than federal requirements. Proposed changes will bring these regulations into compliance with federal requirements in regards to the issuance of waivers.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality is particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the VDSS is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Bragail Williams-Brown, VDSS 801 E. Main St. Richmond, VA 23219, (p) 804- 726-7500, (f) 804-819-7173, Bragail.Williams-Brown@dss.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

A work group was utilized to obtain input on the regulation. The workgroup members are Flora Harris (Eastern Regional Resource Family Consultant); Sandra Bell (Northern Regional Resource Family Consultant); Lavinia Hopkins (Central Regional Resource Family Consultant); Lana Mullins (Western Regional Resource Family Consultant); Chasity Fitzpatrick (Piedmont Regional Resource Family Consultant); Gardenella Green (CRAFFT Program Manager); Bridget S Diehl (CRAFFT Coordinator); Janine M Tondrowski (CRAFFT Coordinator); Joni Baldwin (VDSS Licensing); Phyl Parrish (VDSS Family Services); Abby Schreiner (Extra Special Parents); Rebecca Tavenner (LDSS); Denise Dickerson (VDSS ICPC); Linda Currence (People Places); Melissa Blinn (People Places); Carolyn Battle (VDSS CIP); Rebecca Ricardo (Coordinators2); Kim Bonham (LDSS); Kim McGaughey (VDSS Permanency Policy Consultant); Shirley Bowie (LDSS); Kathy Sauter (foster/adoptive parent); Jeanette Troyer

(foster/adoptive parent); Cate Newbanks (FACES); Garrett Jones (LDSS); Amy Woolard (Voices for Virginia’s Children); Christie Marra (Virginia Poverty Law Center); Tonya Christian (LDSS); Rebecca Morgan (LDSS); Deborah Fitzgerald (LDSS); Shelby Stewart (LDSS); Jennifer Albertson, (LDSS); Georgia Phillips, (LDSS); Brittany Gray (LDSS); and Kathy McElroy (LDSS).

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There is no additional cost to the state to implement and enforce this regulation. The development of additional regulatory and policy guidance documents and the monitoring of adherence to the regulations is a current responsibility of VDSS staff.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There will be minimal additional cost to localities for the changes in the regulations related to LDSS staff training. For those LDSS whose staff have not completed recommended staff training, the requirement that staff attend will be an additional cost. The staff training that will be required is currently being offered through a contract that is in place. This contract employs regional trainers who are able to offer training in areas where training is needed; staff time away from the office can be minimized if training is offered nearby.</p> <p>There would be minimal, if any, additional cost to the localities for the change to the regulation requiring that approved foster and adoptive parents attend in-service training. There is currently a contract in place to provide the recommended amount of in-service training for foster and adoptive parents. It is anticipated that by the time the regulation goes into effect, in-service training will also be available via webinars for which the cost of development is already included in the contract. The rate of participation in in-service events provided through the contract will increase, but the LDSS will not be required to invest in the provision of additional in-service training.</p> <p>Proposed changes which clarify existing requirements will not result in any additional cost to the localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>This regulation will impact local departments of social services and those individuals seeking to be approved as foster and adoptive parents.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an</p>	<p>This will impact 120 local departments of social services</p>

<p>estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>There will be minimal cost in terms of time to foster and adoptive families who are not currently participating in recommended in-service training. There is a contract in place to provide in-service training at no cost to foster and adoptive families. Efforts will continue to be made to make in-service training as beneficial and convenient as possible, including the use of creative web-based alternatives as well as regionally based traditional trainings.</p> <p>There will be no additional cost to businesses as a result of this regulation. There are no costs related to the development of real estate.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed changes will bring the regulation into compliance with existing state and federal laws; improve the quality of the approval process; and facilitate continued development of foster and adoptive parents' skills and knowledge.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No alternatives were considered, as some of the actions in this proposal are necessary to ensure compliance with Code changes that took effect July 1, 2012 and 2016. Other proposed changes require regulatory authority to enact. This action has no impact on small businesses.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods for implementing this change. This action does not change the frequency of existing reporting requirements for approving or reapproving foster and adoptive family homes. The reporting requirements for the mandated training addressed in this proposal for child welfare

staff and for foster and adoptive parents in-service training will be addressed in VDSS guidance which permits flexibility in regards to the process. This action has no impact on small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

There was no public comment received in response to the NOIRA.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This action will not impact the authority and rights of parents in the education, nurturing and supervision of children. It will not discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse or one’s children and/or elderly parents. This action will not erode the marital commitment. There is no relationship between this action and disposable family income.

Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
Title		Current title is “Resource, Foster and Adoptive Home Approval Standards.”	Changes title to “Foster and Adoptive Home Approval Standards for Local Departments of Social Services” to clarify that LDSS approve foster and adoptive homes. Throughout the regulation, the term “home study” has been removed and replaced with the term “mutual family assessment.”

			Throughout the regulation, the term “resource family” has been removed and other adjustments to language have been made to ensure consistency with Code definitions of foster and adoptive parents.
10	N/A		<p>Adds definitions for: foster care placement and kinship foster parent. Definition of “background checks” amended to be consistent with 22VAC40-131. Clarifies that dual approval means that a home is approved to both foster and adopt. Clarifies that “provider” means an approved foster or adoptive, or kinship foster family or an individual approved to provide respite services. Clarifies that respite services shall not exceed 14 consecutive days.</p> <p>Definition of “fully approved,” “resource parent,” and “respite parent” deleted to improve clarity and increase consistency with Code. The definition of “caretaker” is amended to be consistent with changes to CPS regulations and guidance.</p>
20	N/A	<p>Variance provision applies to all providers.</p> <p>Current section uses the term “variance.”</p> <p>Standards apply until final order of adoption is entered.</p> <p>Approved respite care providers cannot serve as foster or adoptive parents without completing all</p>	<p>Section 20 of subsection B adds the term “relative provider” which limits the use of waivers to relatives to be consistent with state and federal laws.</p> <p>The term “variance” has been replaced with the term “waiver” to be consistent with state and federal laws.</p> <p>Clarifies that if the provider wishes to continue to be an approved foster care provider for other children, the standards continue to apply.</p> <p>Exceptions to the standards for respite care providers are now addressed in section 65 of the regulation.</p>

		<p>requirements for approval as a foster or adoptive parent.</p> <p>The applicant must indicate their understanding of the confidentiality of the information related to the child.</p>	<p>The applicant must sign an agreement indicating their understanding of the confidential nature of information related to the child placed with them and their responsibility to maintain that confidentiality and to verify that it was explained to them.</p>
30	N/A	<p>Tuberculosis screening required.</p> <p>Applicants must have a physical within 12 months of being approved as a resource parent/family.</p>	<p>Changes terminology to be consistent with Department of Health terminology regarding TB assessment.</p> <p>Changes time period to 13 months to avoid issues with health insurance declining to pay for physicals more frequently than once in a 12-month period.</p> <p>Moves from section 80 (continued approval), the requirement that applicants have automobile liability insurance and that any vehicle used to transport foster care children has a valid registration and inspection sticker to this section of the regulation.</p>
40	N/A	<p>LDSS must conduct a minimum of three face-to-face interviews with applicants.</p>	<p>Clarifies that the face-to-face interviews must take place on three separate days.</p> <p>Clarifies that marriage and divorce verifications must be provided as part of the mutual family assessment process.</p> <p>Adds that LDSS staff completing mutual family assessments must receive appropriate training to do so. This includes knowledge of policy and skills for developing a mutual family assessments and approving a foster or adoptive home.</p>
50	N/A	<p>The mutual family assessment must be amended to reflect significant changes.</p>	<p>Adds language requiring providers to report significant changes in their circumstances.</p> <p>Adds language regarding the certificate of approval to increase</p>

			<p>consistency with LCPA home approval regulation.</p> <p>Adds documentation verifying that background checks were received and the date received must be contained in the file.</p>
60	N/A	<p>The LDSS is required to provide in-service training to foster and adoptive family providers.</p>	<p>Adds the requirement that foster and adoptive family providers be trained on mandated child abuse and neglect reporting consistent with changes to Code which went into effect on July 1, 2012.</p> <p>Adds language specifying that each foster and adoptive parent shall complete in-service training.</p>
80	N/A	<p>The provider shall respond to mental health or medical needs of the child.</p> <p>The provider shall have a valid driver's license and the vehicle used to transport the child shall have a valid registration sticker.</p>	<p>The provider shall respond to mental health and medical needs of the child.</p> <p>Adds language to ensure that LDSS verify that the requirements for approval are still being met by the provider at the time of reapproval.</p> <p>This section was moved to section 30.</p>
90	N/A	<p>Current section uses the term "variance."</p>	<p>The term "variance" has been replaced with the term "waiver" to be consistent with state and federal laws.</p>
100	N/A	<p>Tuberculosis screening required at re-approval.</p>	<p>Changes terminology to be consistent with Department of Health terminology regarding TB assessment.</p>