



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

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| Agency Name: | State Board of Social Services |
| VAC Chapter Number: | 22 VAC 40-771 |
| Regulation Title: | Local Department Approved Provider Standards |
| Action Title: | Conform to Federal and State Law |
| Date: | June 18, 2003 |

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The regulation addresses standards for local departments of social services to approve and regulate service providers including adult service providers, child care providers, and adoptive and foster providers. The purpose of the proposed action is to repeal the existing regulation, 22 VAC 40-770 *et seq.*, and replace it with a new regulation. During the Notice of Intended Regulatory Action period, the Department of Social Services examined the current regulation and found, in light of changes to federal and state laws and regulations, the regulation is no longer easily understood by the individuals and entities affected. The current regulation includes generic provisions that apply to all providers and because of the uniqueness of each type of provider; such a format is no longer effective. A new regulation was created in an effort to make the regulation less confusing and easily understood. The new regulation is divided into

appropriate sections for adult services, child care, adoptive and foster providers, and is updated to comply with changes to federal and state laws and regulations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Pursuant to § 63.2-217 of the Code of Virginia, (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-217>), the State Board of Social Services has authority to promulgate rules and regulations necessary for the operation of public assistance and social services programs. The regulation does not exceed the scope of the mandate. The Office of the Attorney General certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable federal and state law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The regulation is necessary to protect the health, safety, and welfare of citizens by setting a base of quality in purchasing care and making placements for vulnerable children and adults. Because of these standards, assurances can be made that the care purchased or arranged meets health and safety standards and supports care which is conducive to the health, safety and well-being of individuals, children and families. The goal of the new regulation is to maintain these assurances, while also ensuring conformity with all current federal and state laws and regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The purpose of the proposed action is to repeal the existing regulation and replace it with a new regulation. Specifically, the new regulation is divided into appropriate sections for adult services, child care, adoptive and foster providers, and is updated to comply with changes to federal and state laws and regulations. The regulation is divided into the following six sections: the first section provides definitions that govern the entire regulation; the second section outlines the agency approved providers for which the regulation is applicable; the third section outlines standards for adult service providers; the fourth section outlines standards for child care providers; the fifth section outlines standards for adoption providers; and the sixth section outlines standards for foster providers.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The public benefits by being assured that service providers approved through local departments of social services meet standards and are qualified to care for children and adults. The Department of Social Services and the Commonwealth benefit by having clear procedures aligned with current applicable federal and state laws and regulations. There are no disadvantages to the public or Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Implementation of the new regulation does not produce a fiscal impact on the Commonwealth. The Department of Social Services, local departments of social services, and social service clients will be affected by promulgation of the new regulation.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Section 10 includes definitions for the regulation.

Section 20 outlines the agency approved providers for which the regulation is applicable. This section clarifies that the regulation applies to adoptive parents before the final order of adoption is entered and specifies providers to whom the regulation does not apply by identifying those exempt.

Section 30 provides standards for adult service providers for the following subject headings: standards for providers and other persons; standards for care for adult services providers; standards for the home of the adult foster care or adult day care provider; record requirements for adult foster care and adult day care providers; approval period; allowable variance; emergency approval; provider monitoring; renewal process; relocation of out-of-home provider; right to appeal; and the rights of adults in care.

Section 40 provides standards for child care providers for the following subject headings: standards for providers and other persons; standards for care; standards for the home of the out-of-home provider; children's record requirements; approval period; allowable variance; provider monitoring; renewal process; inability to meet standards; relocation of out-of-home provider; and the right to grieve.

Section 50 and 60 address standards for permanency providers which include adoptive parent(s) (until the final order of adoption is issued) and/or foster parent(s) that provide a home which improves the safety, permanency and well-being of the child in care. Section 50 provides standards for adoption providers for the following subject headings: standards for providers and other persons; standards for care; standards for the providers; child record requirements for the provider; approval period; allowable variance; provider monitoring; renewal process; inability to meet standards; relocation of provider; and the right to grieve. Section 60 provides standards for foster providers for the following subject headings: standards for providers and other persons; standards for care; standards for the home of the provider; child record requirements for the provider; approval period; allowable variance; emergency approval; provider monitoring; renewal process; inability to meet standards; relocation of the provider; right to grieve; foster parent appeal right; and standards continue to apply for foster care providers who care for youth between the ages of 18 and 21.

Alternatives

Please describe the specific 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.

An alternative would be to allow each local department of social services to develop its own provider standards. This alternative is rejected, however, because providing a set of provider standards for all local departments of social services to use reduces the risk of harm to children and adults, offers families assurances that providers and their homes meet qualifications, and is less confusing and easily understood by the entities affected.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No public comment was received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation is clearly written, with commonly used words and phrases, and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

This regulation will be reviewed as needed, and no later than four years after the effective date. At that time, the Department of Social Services will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended or repealed and to ensure that the regulation addresses the specific and measurable goals of assuring that the care purchased or arranged by local departments of social services meets health and safety standards, supports care that is conducive to the health, safety and well-being of children and adults, and complies with all applicable federal and state laws and regulations.