



COMMONWEALTH of VIRGINIA

Office of the Attorney General
Richmond 23219

Mark R. Herring
Attorney General

900 East Main Street
Richmond, Virginia 23219
804 - 786 - 2071
804 - 371 - 8946 TDD

MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: ALLEN T. WILSON *ATW*
Senior Assistant Attorney General

DATE: May 29, 2015

SUBJECT: Proposed Regulation 22 VAC 40-201-10 et seq.
Permanency Services-Prevention, Foster Care,
Adoption and Independent Living

I have reviewed the attached proposed regulation to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the proposed regulation and if this action by the State Board comports with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. Virginia Code §§ 63.2-900, 63.2-901.1, 63.2-904, 63.2-907, 63.2-908, 63.2-1220.1 and 63.2-1232 specifically authorize the State Board to promulgate regulations relating to various aspects of foster care and adoptions. It appears that the State Board has the authority to promulgate the proposed replacement, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 17 (2014), and has not exceeded that authority.

If you have any questions, please feel free to call me at 786-0095.



Logged in: atw

Proposed Text

Action: Amend Permanency Regulation**Stage:** Proposed

5/26/15 8:38 AM [latest]

22VAC40-201-10. Definitions.

The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis pursuant to Virginia Code § 63.2-907, ~~and that is open to the participation of the birth parents or prior custodians and other individuals significant to the child and family,~~ to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may be attended by the birth parents or prior custodians and other interested individuals significant to the child and family, as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment ~~or services~~ provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the ~~child-placing agency local board~~ and the adoptive parents of a child with special needs, or, in cases in which the child is in the custody of a licensed child placing agency, to provide for the unmet financial and service needs of that sets out the payments and services that will be provided to benefit the child in accordance with Chapter 13 of Title 63.2 of the Code of Virginia.

"Adoption Manual" means ~~Volume VII, Section III, Chapter C – Adoption/Agency Placement of the Service Program Manual of the Virginia Department of Social Services dated October 2009/March 2010.~~

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoption search" means ~~interviews and written or telephone inquiries made by a local department to locate and advise the biological parents or siblings of an adult adoptee's request, by Application for Disclosure or petition to the court, for identifying information from a closed adoption record.~~

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption. ~~The adoptive home study is included in the dual approval process.~~

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in §§ 63.2-1300 and 63.2-1301 B of the Code of Virginia.

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team (CPMT)" means a team appointed by the local governing body ~~to receive funds~~ pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Comprehensive Services Act for At-Risk Youth and Families (CSA)" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Concurrent permanency planning" means ~~a sequential, structured approach to case management which requires working towards a permanency goal (usually~~

reunification) while at the same time establishing and working towards an alternative permanency plan utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually reunification with the family, simultaneously with an established alternative permanent plan for the child.

~~"Custody investigation" means a method to gather information related to the parents and a child whose custody, visitation, or support is in controversy or requires determination.~~

"Department" means the State Department of Social Services.

~~"Dual approval process Dually approved" means a process that includes a home study, mutual selection, interviews, training, and background checks to be completed on all applicants being considered for approval have met the required standards to be approved as a resource, foster or and adoptive family home provider.~~

"Entrustment agreement" means an agreement that the local board enters into with the parent, parents or guardian to place the child in foster care either to terminate parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for care of the child.

"Family Assessment and Planning Team (FAPT)" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement. Foster care also includes children under the placement and care of the local board who have not been removed from their home.

~~"Foster care maintenance payments" means payments to cover federally allowable those expenses made on behalf of a child in foster care including the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's incidentals, reasonable travel to the child's home for visitation for the child to visit relatives and reasonable travel to remain in his previous in the school in which the child is enrolled at the time of the placement, and other allowable expenses in accordance with guidance developed by the department. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in set out in 42 U.S.C. 675.~~

~~"Foster Care Manual" means Chapter E – Foster Care of the Child and Family Services Manual of the Virginia Department of Social Services dated July 2011.~~

~~"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the CPMT where legal custody remains with the parents or guardians, or (ii) an entrustment or commitment of the child to the local board or licensed child placing agency.~~

"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia, that describes the programs, care, services, and other support which will be offered to the child and his parents and other prior custodians. The foster care plan defined here is the case plan referenced in Title IV-E 42 U.S.C. 675.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of ~~prevention, placement casework~~, treatment, and community services, including but not limited to independent living services, for a planned period of time to a child meeting the requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years, or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual Family Service Plan (IFSP)" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children (ICPC)" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the ~~local department~~ child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about

the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs including, but not limited to, attorney or other fees directly related to the finalization of the adoption; transportation; court costs; and reasonable and necessary fees of licensed child-placing agencies as set out in § 63.2-1301 D.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

~~"Permanency planning indicator (PPI)" means a tool used in concurrent permanency planning to assess the likelihood of reunification. This tool assists the worker in determining if a child should be placed with a resource family and if a concurrent goal should be established.~~

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

~~"Resource parent" means a provider who has completed the dual approval process and has been approved as both a foster and adoptive family home provider.~~

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

~~"Service plan" means a written document that describes the programs, care, services, and other support which will be offered to the child and his parents and other prior custodians pursuant to § 16.1-281 of the Code of Virginia,~~

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"SSI" means Supplemental Security Income.

"State pool fund funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse of a birth or adoptive parent; or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the ~~visitation~~ visits conducted pursuant to § 63.2-1212 of the Code of Virginia ~~subsequent to the entry of an interlocutory order of adoption and the written report compiling of the findings made in the course of the visitation, which~~ The report is filed in the circuit court in accordance with § 63.2-1212.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 16 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia. Youth may also mean an individual over the age of 16 who is the subject of an adoption assistance agreement.

22VAC40-201-20. Foster care prevention services.

A. The local department shall first make reasonable efforts to keep the child in his home.

B. The local department shall make diligent efforts to locate and assess relatives or other alternative caregivers to support the child remaining in his home or as placement options if the child cannot safely remain in his home.

C. ~~Foster care services;~~ The local department shall provide services pursuant to § 63.2-905 of the Code of Virginia, shall be available to the child and birth parents or custodians to prevent the need for foster care placement when the child is abused and neglected as defined in § 63.2-100 or has been found to be a child in need of services as defined in § 16.1-228 or as determined by the family assessment and planning team (FAPT) .

D. Any services available to a child in foster care shall also be available to a child and his birth parents or custodians to prevent foster care placement and shall be based on an assessment of the child's and birth parents' or custodians' needs.

E. ~~Any service~~ Appropriate services shall be provided to prevent foster care placement or to stabilize the family situation provided the need for the service is

documented in the local department's servicewritten plan or in the IFSP used in conjunction with accessing CSA funds.

F. Children at imminent risk of entry into foster care shall be evaluated by the local department as reasonable candidates for foster care based on federal regulations, 45 CFR 1356.60 (c).

G. The local department shall ~~consider a~~ develop a written plan for the implementation of wrap around plan of care services prior to removing a child from his home. As long as the risk of removal from the home continues, services shall be provided to address identified needs. In the event that the child can no longer be safely maintained in the home, the local department and shall document why the support and services considered and provided the reasons such support and services were not sufficient to maintain the child in his home.

H. ~~Within 30 days after~~ Prior to removing the child from the custody of his parents, the local department shall make diligent efforts, ~~in accordance with the Foster Care Manual~~ to notify in writing all adult relatives that the child is being removed ~~or has been removed or is likely to be removed~~ and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home.

22VAC40-201-30. Entering foster care.

A. A child enters foster care through a court commitment, entrustment agreement, or noncustodial foster care agreement. ~~Foster care children who have been committed to the Department of Juvenile Justice (DJJ) shall re-enter foster care at the completion of the DJJ commitment if under the age of 18.~~

B. The entrustment agreement shall specify the rights and obligations of the child, the birth parent or custodian, and the ~~child placing agency local department~~. Entrustments shall not be used for educational purposes, to make the child eligible for Medicaid, or to obtain mental health treatment.

1. ~~Temporary entrustment~~ Entrustment agreements that are not for the termination of parental rights may be revoked by the birth parent or custodian or ~~child placing agency local board~~ prior to the court's approval of the agreement.

2. ~~Permanent entrustment~~ Entrustment agreements that terminate parental rights shall only be entered into when the birth parent and the ~~child placing agency local board~~, after counseling about alternatives to permanent relinquishment, agree that voluntary relinquishment of parental rights and placement of the child for adoption are in the child's best interests. When a ~~child placing agency local board~~ enters into a permanent entrustment agreement, the child-placing agency shall make diligent efforts to ensure the timely finalization of the adoption.

3. ~~Local departments shall submit~~ Submission of a petition for approval of the entrustment agreement to the juvenile and domestic relations court pursuant to ~~§ 63.2-903~~ shall be in accordance with § 16.1-277.01 of the Code of Virginia.

C. A child may be placed in foster care by a birth parent or custodian entering into a noncustodial foster care agreement with the local department where the birth parent or custodian retains legal custody and the local department assumes placement and care of the child.

1. A noncustodial foster care agreement shall be signed by the local department and the birth parent or custodian and shall address the conditions for care and control of the child; and the rights and obligations of the child, birth parent or custodian, and the local department. Local departments shall enter into a noncustodial foster care agreement at the request of the birth parent or custodian

when such an agreement is in the best interest of the child. When a noncustodial foster care agreement is executed, the permanency goal shall be reunification and continuation of the agreement is subject to the cooperation of the birth parent or custodian and child.

2. The plan for foster care placement through a noncustodial foster care agreement shall be submitted to the court for approval within ~~60~~45 days of the child's entry into foster care. Submission of a petition for approval of a noncustodial agreement to the juvenile and domestic relations court shall be made in accordance with § 16.1-281 of the Code of Virginia.

3. When a child is placed in foster care through a noncustodial foster care agreement, all foster care requirements shall be met.

22VAC40-201-35. Re-entry into foster care from commitment.

A. In the event the person was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice (DJJ) and has not attained the age of 18 years, the local board shall resume custody upon the persons release from commitment, unless an alternative arrangement for the custody of the person has been made and communicated in writing to DJJ. At least 90 days prior to the childs release from commitment on parole supervision the local department shall consult with the court service unit on the childs return to the locality and collaborate to develop a foster care plan that prepares the child or youth for successful transition back to the custody of the local department or to an alternative custody arrangement, if applicable. The plan shall identify services necessary for the transition and how the services are to be provided.

B. The foster care plan shall be submitted to the court for approval within 45 days of the childs re-entry into foster care. Submission of a petition for approval of the foster care plan to the juvenile and domestic relations shall be made in accordance with § 16.1-281 of the Code of Virginia.

22VAC40-201-40. Foster care placements.

A. Within 30 days of the child being placed in the custody of the local board, the local department shall exercise due diligence to notify in writing all adult relatives that the child has been removed and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home.

B. The local department shall ensure a child in foster care is placed in a licensed or ~~an~~ approved home or licensed facility that complies with all applicable federal and state requirements for safety. Placements shall be made subject to the requirements of § 63.2-901.1 of the Code of Virginia. The following requirements shall be met when placing a child in a licensed or ~~an~~ approved home or licensed facility:

1. The local department shall ~~make diligent efforts~~ exercise due diligence to locate and assess relatives as a foster home placement for the child, including in emergency situations.

2. The local department shall place the child in the least restrictive, most family like setting consistent with the best interests and needs of the child.

3. The local department shall attempt to place the child in as close proximity as possible to the birth parent's or prior custodian's home to facilitate visitation, provide continuity of connections, and provide educational stability for the child.

4. The local department shall ~~make diligent efforts~~ take reasonable steps to place the child with siblings unless such a joint placement would be contrary to the safety or well-being of the child or siblings.

5. The local department shall, when appropriate, consider placement ~~with a resource parent in a dually approved home~~ so that if reunification fails, the placement is the best available placement to provide permanency through adoption for the child.

6. The local department shall not delay or deny placement of a child into a foster family placement on the basis of race, color, or national origin of the foster or resource parent or child.

7. When a child being placed in foster care is of native American, Alaskan Eskimo or Aleut heritage and is a member of a nationally recognized tribe, the local department shall follow all federal laws, regulations, and policies regarding the referral of a ~~the child of native American heritage~~. The local department may contact the ~~Virginia Council on Indians~~ Department of Historic Resources for information on contacting Virginia tribes and shall consider tribal culture and connections in the placement and care of a child of Virginia Indian heritage.

8. If a child is placed in a kinship foster placement pursuant to § 63.2-900.1 of the Code of Virginia, the child shall not be removed from the physical custody of the kinship foster parent, provided the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family partnership meeting; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517 of the Code of Virginia.

B C. A service worker shall make a preplacement visit to any out-of-home placement to observe the environment where the child will be living and ensure that the placement is safe and capable of meeting the needs of the child. The preplacement visit shall precede the placement date except in cases of emergency. In cases of emergency, the visit shall occur on the same day as the placement.

~~C D.~~ Foster, or adoptive, or resource family homes shall meet standards established by the board and shall be approved by child-placing agencies. Group homes and residential facilities shall be licensed by the appropriate licensing agency. Local departments shall verify the licensure status of the facility prior to placement of the child. Prior to the placement of a child in a licensed child-placing agency (LCPA) foster home, the local department shall verify that the LCPA approved the foster home. Prior to the placement of a child in a childrens residential facility, the local department shall verify that the facility is licensed to operate by the appropriate state regulatory authority.

~~D E.~~ Local departments shall receive notice of the approval by the receiving state from the department's office of the ICPC prior to placing a child out of state.

~~E F.~~ When a child is to be placed in a home in the local department is considering placement of a child in a foster or adoptive home approved by another local department's jurisdiction department within Virginia, the local department intending to place the child shall notify the local department that approved the home that the home is being considered for the child's placement. consult with the approving local department about placement of the child and The local department shall also verify that the home is still approved and shall consult with the approving local department about placement of the child.

~~F G.~~ When a child is moving with a foster, or adoptive, or resource family is moving from one jurisdiction to another, the local department holding custody shall notify

the local department in the jurisdiction to which the foster, ~~or~~ adoptive, ~~or~~ resource family is moving.

~~G H.~~ When a child moves with a foster, ~~or~~ adoptive, ~~or~~ resource family from one jurisdiction to another in Virginia, the local department holding custody shall continue supervision of the child unless supervision is transferred to the other local department.

~~H I.~~ A local department may petition the court to transfer custody of a child to another local department when the birth parent or prior custodian has moved to that locality.

~~I J.~~ In planned placement changes or relocation of foster parents, birth parents with residual parental rights or prior custodians and all other relevant parties shall be notified that a placement change or move is being considered if such notification is in the best interest of the child. ~~The birth parent or prior custodian shall be involved in the decision-making process regarding the placement change prior to a final decision being made.~~

~~4.~~ The service worker shall consider the child's best interest and safety needs when involving the birth parent or prior custodian and all other relevant parties in the decision-making process regarding placement change or notification of the new placement.

~~2 K.~~ In the case of an where an emergency situation requires an immediate placement change, the birth parent with residual parental rights or prior custodian and all other relevant parties shall be notified immediately of the placement change. ~~The child placing agency~~ local department shall inform the birth parent or prior custodian why the placement change occurred and why the birth parent or prior custodian and all other relevant parties could not be involved in the decision-making process.

22VAC40-201-50. Initial foster care placement activities.

A. Information on every child in foster care shall be entered into the department's automated child welfare system ~~in accordance with guidance in the initial placement activities section of the Foster Care Manual.~~

B. The local department shall assess the child for Title IV-E eligibility. ~~The local department shall also~~ refer the child for all financial benefits to which the child may be eligible, including but not limited to Child Support, ~~Title IV-E,~~ SSI, other governmental benefits, and private resources.

C. The service worker shall ensure that the child receives a medical examination no later than 30 days after initial placement. The child shall be provided a medical evaluation within 72 hours of initial placement if conditions indicate such an evaluation is necessary. Dental appointments shall be scheduled every six months as age appropriate and physicals shall be scheduled at regular intervals.

D. ~~The~~ In accordance with § 22.1-3.4 of the Code of Virginia, the local department shall collaborate with the appropriate local educational agencies school division to ensure that the child remains in his previous school placement when there is a joint determination that it is in the best interests of the child. ~~The local department shall take into account the appropriateness of the current educational setting of the child and the proximity to the school in which the child is enrolled at the time of placement.~~ If remaining in the same school is not in the best interests of the child, the service worker shall enroll the child in an appropriate new school as soon as possible but no more than 72 hours after placement.

1. The child's desire to remain in his previous school setting shall be considered in making the decision about which school the child shall attend.

2. The service worker, in cooperation with the birth parents or prior custodians, foster care providers, and other involved adults, shall coordinate the school placement.

3. If remaining in the same school is jointly determined to be in the best interests of the child, the local department shall arrange for transportation for the child to remain in that school unless the child requires specialized transportation documented in the Individualized Education Program (IEP) for the child, which is funded by the responsible school division.

4. The local department shall document in writing the joint determination with the local school division of the child's best interest for school placement.

5. If the joint determination process cannot be completed prior to the placement in the new residence, the child will remain in the same school until the best interest determination is completed.

E. Within 72 hours of placing a school age child in a foster care placement, the local department making the placement shall give written notification to the principal of the school in which the child is to be enrolled and the superintendent of the relevant school division of the placement and notify the principal of the status of parental rights.

22VAC40-201-60. Assessment.

A. Assessments shall be conducted in a manner that respectfully involves children and birth parents or prior custodians to give them ~~a say in what happens to them~~ an opportunity for shared decision making. Decision making shall include input from children, youth, birth parents or prior custodians, and other interested individuals. Assessments shall be used both in the establishment of foster care goals and also to inform service plans.

~~B. The initial foster care assessment shall result in the selection of a specific permanency goal. In accordance with guidance in the assessment section of the Foster Care Manual, the local department shall complete the PPI during the initial foster care assessment to assist in determining if a concurrent goal should be selected.~~

~~C.~~ The initial foster care assessment shall be completed within time frames developed by the department but shall not exceed 30 calendar days after acceptance of the child in a foster care placement.

~~4 C.~~ When a child has been removed from his home as a result of abuse or neglect, the initial foster care assessment shall include a summary of the Child Protective Services' safety and risk assessments.

~~2 D.~~ The history and circumstances of the child, the birth parents or prior custodians, or other interested individuals shall be assessed at the time of the initial foster care assessment to determine their service needs. The initial foster care assessment shall:

a 1. Include a comprehensive social history;

b 2. Utilize assessment tools designated by the department;

c 3. Be entered into the department's automated child welfare system; and

~~d~~ 4. Include a description of how the child, youth, birth parents or prior custodians, and other interested individuals were involved in the decision making process.

~~D. The service worker shall refer the child, birth parents or prior custodians, and foster, adoptive or resource parents for appropriate services identified through the assessment. The assessment shall include an assessment of financial resources.~~

~~E. Assessments of Assessment shall be ongoing and evaluate the effectiveness of services to the child; birth parents or prior custodians; and foster, or adoptive, or resource- parents and the need for additional services shall occur at least every three months as long as the goal is to return home. For all other goals, assessments of the effectiveness and need for additional services shall occur at least every six months after placement for as long as the child remains in foster care. The assessments shall be completed in accordance with guidance in the assessment section of the Foster Care Manual.~~

F. The service worker shall refer the child; birth parents of prior custodians; and foster or adoptive parents for appropriate services identified through the assessment. The assessment shall include an assessment of financial resources.

22VAC40-201-70. Foster care goals.

~~A. Foster care goals are established to assure permanency planning is achieved for the child. Priority shall be given to the goals listed in subdivisions 1, 2, and 3 of this subsection, which are recognized in federal legislation as providing children with permanency. The selection of goals other than those in subdivisions 1, 2, and 3 of this subsection must include documentation as to why each of these first three goals were not selected. Foster~~ Permissible foster care goals are:

- ~~1. Return~~ Transfer custody to parent or prior custodian; ;
- ~~2. Transfer of custody of the child to a relative other than his prior family; ;~~
- ~~3. Adoption~~ Finalize adoption; ;
- ~~4. Permanent~~ Place in permanent foster care; ;
- ~~5. Independent~~ Transition to independent living if child is admitted to the United States as a refugee or asylee; ;or
- ~~6. Another~~ Place child in another planned permanent living arrangement in accordance with subsection A2 of § 16.1-282.1.

~~B. When the permanency goal is changed to adoption, the local department shall file petitions with the court 30 days prior to the hearing to:~~

- ~~1. Approve the foster care service plan seeking to change the permanency goal to adoption; and~~
- ~~2. Terminate parental rights.~~

~~Upon termination of parental rights, the local department shall provide an array of adoption services to support obtaining a finalized adoption.~~

~~C. The goal of permanent foster care shall only be considered for children age 14 and older in accordance with guidance in the section on choosing a goal in the Foster Care Manual. The local department shall engage in concurrent permanency planning in order to achieve timely permanency for the child. Permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated.~~

~~D. When the goal for the youth is to transition to independent living, the local department shall provide services pursuant to guidance in the section on choosing a goal in the Foster Care Manual .~~

~~E. The goal of another planned permanent living arrangement may be chosen when the court has found that none of the alternative permanency goals are appropriate and the court has found the child to:~~

1. Have a severe and chronic emotional, physical, or neurological disabling condition; ~~and~~

2. Require long-term residential care for the condition; ~~and-~~

3. None of the alternatives listed in clauses (i) through (v) of Virginia Code § 16.1-282.1 (A) is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child.

~~FE.~~ If either the goal of permanent foster care or another planned permanent living arrangement is selected, the local department shall continue to search for relatives and significant individuals as permanent families throughout the child's involvement with the child welfare system. The local department shall continue to evaluate the best interest of the child and the changing circumstances of the child and extended family.

~~F.~~ These permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated. Although one goal may appear to be the primary goal, other goals shall be continuously explored and planned for as appropriate. The goal of independent living services shall only be selected for those children admitted to the United States as a refugee or asylee or those youth age 18 leaving foster care and meeting the requirements to receive independent living services. For those youth with this goal, the service worker shall continue diligent efforts to search for a relative or other interested adult who will provide a permanent long-term family relationship for the youth.

22VAC40-201-80. Service Foster care plans.

A. Every child in foster care longer than 45 days shall have a ~~current service written~~ foster care plan approved by the court within sixty days of entry into foster care. The ~~service foster care~~ plan shall specify the ~~assessed~~ permanency goal and ~~when appropriate~~ the concurrent permanency goal, and shall meet all requirements set forth in federal or state law. ~~The~~ In the development of the service foster care plan, the local department shall consider input from ~~occur through shared a decision-making between the local department;~~ the child; the birth parents or prior custodians; the foster, ~~or adoptive, or resource~~ parents; and any other interested individuals which may include service providers. All of these ~~partners~~ persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

~~B. A service~~ The foster care plan shall be written after the completion of a thorough the assessment. ~~Service Foster care~~ plans shall directly reference how the strengths identified in the foster care assessment will support the plan and the needs to be met to achieve the permanency goal, including the identified concurrent permanency goal, in a timely manner.

C. A plan for visitation with the birth parents or prior custodians; and siblings, grandparents, or other interested individuals for all children in foster care shall be developed and presented to the court as part of the ~~service foster care~~ plan in accordance with § 63.2-900.2 of the Code of Virginia. ~~A plan shall not be required if such visitation is not in the best interest of the child.~~

22VAC40-201-90. Service delivery.

A. Permanency planning services ~~Services~~ shall be provided to support the safety and well-being of the child. ~~Services to children and birth parents or prior custodians shall be delivered as part of a total system with cooperation, coordination, and collaboration occurring among children and youth, birth parents or prior custodians, service providers, the legal community and other interested~~

individuals continue until evidence indicates the services are either not effective to reach the child's goal; no longer necessary because the goal has been achieved; or the birth parent or prior custodian has refused services.

B. Permanency planning for children and birth parents or prior custodians shall be an inclusive process providing ~~timely notifications and~~ full disclosure to the birth parents or prior custodians of the establishment of a concurrent permanency goal ~~when indicated~~ and the implications of concurrent permanency planning for the child and birth parents or prior custodians. ~~Child placing agencies~~ Local departments shall ~~also make timely notifications~~ notify the birth parents or prior custodians concerning placement changes, hearings and meetings regarding the child, assessments of needs and case progress, and ~~responsiveness shall be~~ responsive to the requests of the child and birth parents or prior custodians.

~~C. Services to children and birth parents or prior custodians shall continue until an assessment indicates the services are no longer necessary. Services to achieve concurrent permanency goals shall be provided to support achievement of both permanency goals.~~

~~D~~ In order to ~~meet the child's permanency goals~~ ensure that permanency is achieved for the child, services may be provided to ~~extended family~~ relatives or other interested individuals who are assessed to be potential permanency options for the child and may continue until an assessment indicates the services are no longer necessary.

D. Developmental and medical examinations shall be provided for the child in foster care in accordance with the Virginia Department of Medical Assistance Services Early Periodic Screening Diagnosis and Treatment (EPSDT) Periodicity Schedule. Dental examinations shall be provided for the child in accordance with the American Academy of Pediatric Dentistry Periodicity Schedule as determined by the Virginia Department of Medical Assistance Services. As indicated through assessment, appropriate health care services shall include trauma, developmental, mental health, psychosocial, and substance abuse services and treatments. Local departments shall follow the protocols for appropriate and effective use of psychotropic medications for children in foster care disseminated by DSS.

E. All children in foster care shall have a face-to-face contact with an approved ~~case service~~ worker at least once per calendar month regardless of the child's permanency goal or placement ~~and in accordance with guidance in the service delivery section of the Foster Care Manual and the Adoption Manual. The majority~~ More than 50% of each child's visits shall be in his place of residency.

1. The purpose of the visits shall be to assess the child's progress, needs, adjustment to placement, and other significant information related to the health, safety, and well-being of the child.

2. The visits shall be made by individuals who meet the department's requirements consistent with 42 USC § 622(b).

~~F. Supportive services to foster, adoptive, and resource parents shall be provided.~~

4. The local department shall enter into a placement agreement developed by the department with the foster, ~~or adoptive, or resource~~ parents. As required by § 63.2-900 of the Code of Virginia, The the placement agreement shall include, at a minimum, a code of ethics and mutual responsibilities for all parties to the agreement as required by § 63.2-900 of the Code of Virginia.

1. Services to prevent placement disruptions shall be provided to the foster and adoptive parents.

2. Foster, ~~and adoptive, and resource~~ parents who have children placed with them shall be contacted by a service worker as often as needed in accordance with ~~22VAC211-100~~ 22VAC40-211-100 to assess service needs and progress.

3. Foster, ~~and adoptive, and resource~~ parents shall be given full factual information about the child, including but not limited to, circumstances that led to the child's removal, and complete educational, medical and behavioral information. All information shall be kept confidential by the foster and adoptive parents.

4. Foster, ~~and adoptive, and resource~~ parents shall be given ~~appropriate sections of~~ the foster care service plan. Information in the service plan which is prohibited by code from being released shall not be provided to the foster parent in accordance with § 16.1-281 B and C.

5. ~~If needed, services to stabilize the placement shall be provided.~~

6. Respite care for foster, ~~and adoptive, and resource~~ parents may be provided on an emergency or planned basis ~~in accordance with criteria developed by the department.~~

~~7.6.~~ The department shall make ~~a contingency fund~~ funds available to provide reimbursement to local departments' foster ~~and resource~~ parents for damages pursuant to § 63.2-911 of the Code of Virginia ~~and according to department guidance to property caused by children placed in the home~~. Provision of reimbursement is contingent upon the availability of funds.

22VAC40-201-100. Providing independent living services.

A. Independent living services shall be identified by the youth; foster, ~~or resource~~ family; local department; service providers; legal community; and other interested individuals and shall be included in the service plan. Input from the youth in assembling these individuals and developing the services is required.

B. Independent living services ~~may shall~~ be provided to all youth ages 14 to 18 and ~~may shall~~ be provided until the youth reaches age 21 offered to any person between 18 and 21 who is in the process of transitioning from foster care to self-sufficiency.

C. ~~The child-placing agency~~ local department may offer a program of independent living services that meets the youth's needs such as education, vocational training, employment, mental and physical health services, transportation, housing, financial support, daily living skills, counseling, and development of permanent connections with adults.

D. ~~Child-placing agencies~~ Local departments shall assess the youth's independent living skills and needs ~~in accordance with guidance in the service delivery section of the Foster Care Manual~~ and incorporate the assessment results into the youth's service plan.

E. A youth placed in foster care before the age of 18 may continue to receive independent living services from the ~~child-placing agency~~ local department between the ages of 18 and 21 if:

1. The youth is making progress in an educational or vocational program, has employment, or is in a treatment or training program; and

2. The youth agrees to participate with the local department in (i) developing a service agreement and (ii) signing the service agreement. The service agreement shall require, at a minimum, that the youth's living arrangement shall be approved by the local department and that the youth shall cooperate with all services; or

3. The youth is in permanent foster care and is making progress in an educational or vocational program, has employment, or is in a treatment or training program.

F. A youth age 16 and older is eligible to live in an independent living arrangement provided the ~~child-placing agency~~ local department utilizes the independent living arrangement placement criteria developed by the department to determine that such an arrangement is in the youth's best interest. An eligible youth may receive an independent living stipend to assist him with the costs of maintenance. The eligibility criteria for receiving an independent living stipend will be developed by the department.

G. Any person who was committed or entrusted to a ~~child-placing agency~~ local department and chooses to discontinue receiving independent living services after age 18 ~~but prior to his 21st birthday~~ may request a resumption of independent living services provided that (i) the person has not yet reached 21 years of age and (ii) the person has entered into a written agreement, less than 60 days after independent living services have been discontinued, with the local board regarding the terms and conditions of his receipt of independent living services in accordance with § 63.2-905.1 of the Code of Virginia. Local departments shall provide any person who chooses to leave foster care or terminate independent living services before his twenty-first birthday, written notice of his right to request restoration of independent living services in accordance with § 63.2-905.1 of the Code of Virginia by including such written notice in the persons transition plan.

H. ~~Child-placing agencies~~ Local departments shall assist eligible youth in applying for educational and vocational financial assistance. Educational and vocational specific funding sources shall be used prior to using other sources.

I. Local departments shall provide independent living services to any person between 18 and 21 years of age who:

1. Was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice; and,

2. Is in the process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency; and

3. Provides written notice of his intent to receive independent living services and enters into a written agreement which sets forth the terms and conditions for the provision of independent living services with the local board within 60 days of his release from commitment.

~~I~~J. Every six months a supervisory review of service plans for youth receiving independent living services after age 18 shall be conducted to assure the effectiveness of service provision.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. File petitions in accordance with the requirements for the type of hearing.

2. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the ~~child-placing agency~~ service worker shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

3. Inform the court of reasonable efforts made to achieve concurrent permanency goals ~~in those cases where a concurrent goal has been identified.~~

B. An administrative panel review shall be held six months after a permanency planning hearing when the ~~goals goal~~ of adoption, permanent foster care, or independent living have has been approved by the court ~~unless the court requires more frequent hearings~~. A foster care review hearing will be held annually. The child will continue to have ~~Administrative Panel Reviews~~ administrative panel reviews or review hearings every six months until a final order of adoption is ~~issued~~ or the child reaches age 18.

C. The local department shall invite the child; the birth parents or prior custodians when appropriate; the child's foster, ~~or adoptive, or resource~~ parents; placement providers; guardian ad litem; court appointed special advocate (CASA); relatives and other interested individuals service providers to participate in the administrative panel reviews.

D. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. ~~All interested individuals~~ Individuals who were invited, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

E. A supervisory review is required every six months for youth ages 18 to 21.

F. ~~When~~ In accordance with § 16.1-242.1 of the Code of Virginia, when a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

G. An adoption progress report shall be prepared every six months after a permanency planning hearing when the goal of adoption has been approved by the court. The adoption progress report shall be entered into the automated child welfare data system. The child will continue to have annual review hearings in addition to adoption progress reports until a final order of adoption is issued or the child reaches age 18.

H. If a child is in the custody of the local department and a pre-adoptive family has not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent in accordance with § 16.1-283.2 of the Code of Virginia.

22VAC40-201-120. Funding.

A. The local department is responsible for establishing a foster child's eligibility for federal, state, or other funding sources and making required payments from such sources. ~~State pool funds shall be used~~ Local departments shall seek state pool funds for a child's maintenance and service needs when other funding sources are not available.

B. The assessment and provision of services to the child and birth parents or prior custodians shall be made without regard to the funding source.

~~C. Local departments shall reimburse foster or resource parents for expenses paid by them on behalf of the foster child when the expenses are preauthorized or for expenses paid without preauthorization when the local department deems the expenses are appropriate.~~

~~D. The child's eligibility for Title IV-E funding shall be redetermined upon a change in situation and in accordance with federal Title IV-E eligibility requirements, the Title IV-E Eligibility Manual, October 2005, and the Adoption Manual.~~

E. The service worker is responsible for providing the eligibility worker information required for the annual redetermination of Medicaid eligibility and information related to changes in the child's situation.

22VAC40-201-130. Closing the foster care case.

A. Foster care cases are closed or transferred to another service category under the following circumstances:

1. When the foster care child turns 18 years of age;
2. When the court releases the child from the local department's custody prior to the age of 18;
3. When a ~~voluntary placement agreement~~ temporary entrustment or non-custodial agreement has expired, been revoked, or been terminated by the court;
4. When the foster care child is committed to ~~DJJ~~ the Virginia Department of Juvenile Justice; or
5. When the final order of adoption is issued.

B. When the foster care case is closed for services, the case record shall be maintained according to the record retention schedules ~~of~~ established by the Library of Virginia.

C. Any foster care youth who has reached age 18 has the right to request information from his records in accordance with state law.

22VAC40-201-140. Other foster care requirements.

A. The director of a local department or his designee may grant approval for a child to travel out-of-state and out-of-country. The approval must be in writing and maintained in the child's file.

B. Pursuant to § 63.2-908 of the Code of Virginia, a foster ~~or resource~~ parent may consent to a marriage or entry into the military if the child has been placed with him through a permanent foster care agreement which has been approved by the court.

C. An employee of a local department, including a relative, cannot serve as a foster, adoptive, ~~or resource~~ or licensed child-placing agency parent for a child in the custody of that local department. ~~The employee can be a foster, adoptive, or resource parent for another local department or licensed child-placing agency or~~ In the event it is in the child's best interest that a local employee be the foster parent, the child's custody may be transferred to another local department.

D. The child of a foster child remains the responsibility of his parent, unless custody has been removed by the court.

1. The child is not subject to requirements for service foster care plans, reviews, or hearings. However, the needs and safety of the child shall be considered and documented in the service foster care plan for the foster child (parent).

2. The child is eligible for maintenance payments in accordance with 42 U.S.C. 675 (4) (B), and Medicaid in accordance with 42 U.S.C. 672 (h), and child support services based on federal law and in accordance with guidance in the Foster Care Manual and the Adoption Manual.

E. When a child in foster care is committed to the ~~Department of Juvenile Justice (DJJ)~~ DJJ, the local department no longer has custody or placement and care responsibility for the child. As long as the discharge or release plan for the child is to return to the local department prior to reaching age 18, the local department

shall maintain a connection with the child in accordance with guidance developed by the department.

F. At least 90 days prior to a youths release from commitment to DJJ, the local department shall:

1. Consult with the court services unit concerning the youths return to the locality; and,
2. Work collaboratively with the court services unit to develop a plan for the youths successful transition back to the community which will identify the services necessary to facilitate the transition and will describe how the services will be provided.

22VAC40-201-150. Adoption Resource Exchange of Virginia.

A. The Adoption Resource Exchange of Virginia (AREVA) is a service offered by the department that connects families with children who are available for adoption within the Commonwealth of Virginia. AREVA is one tool used to help local departments reach the federal goal of permanency within 24 months specified in § 471 of the Title IV-E of the Social Security Act (42 USC § 671) and the requirement of § 16.1283 F of the Code of Virginia to file reports to the court on progress towards adoption. The purpose of AREVA is to increase opportunities for children waiting to be adopted by providing services to child-placing agencies having custody of these children. The services provided by AREVA include, but are not limited to:

1. Maintaining a registry of children awaiting adoption and a registry of approved parents waiting to adopt;
2. Preparing and posting an electronic photo-listing of children with special needs awaiting adoption and a photo-listing of parents awaiting placement of a child with special needs;
3. Providing information and referral services for children who have special needs to link child-placing agencies with other adoption resources;
4. Providing ongoing targeted and child-specific recruitment efforts for waiting children;
5. Providing consultation and technical assistance on child-specific recruitment to child-placing agencies for waiting children; and
6. Monitoring local departments' compliance with legal requirements, guidance, and policy on registering children and parents.

B. For a child in foster care that has the foster care plan goal of adoption as specified in § 63.2-906 and whose parental rights have been terminated, the child-placing agency shall register the child with the Adoption Resource Exchange of Virginia (AREVA), within 60 days of termination of parental rights.

C. Child-placing agencies shall comply with all of the AREVA requirements according to guidance in the Adoption Manual.

22VAC40-201-160. Adoption assistance.

A. An adoption assistance agreement shall be executed by the child-placing agency for a child who has been determined eligible for adoption assistance. Local departments shall use the adoption assistance agreement form developed by the department.

~~B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs as defined in 22VAC40-201-10 and meet the following criteria:~~

~~1. Be under 18 years of age and meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 USC § 673); or~~

~~2. Be under 18 years of age and in the placement and care of a child-placing agency at the time the petition for adoption is filed and be placed by the child-placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the child has resided for 18 months with the foster or resource parents who file a petition for adoption under § 63.2-1229 of the Code of Virginia.~~

~~C. The types of adoption assistance for which a child may be eligible are:~~

~~1. Title IV-E adoption assistance if the child meets federal eligibility requirements.~~

~~2. State adoption assistance when the child's foster care expenses were paid from state pool funds or when the child has a conditional agreement and payments are not needed at the time of placement into an adoptive home but may be needed later and the child's foster care expenses were paid from state pool funds. A conditional adoption assistance agreement allows the adoptive parents to apply for state adoption assistance after the final order of adoption. A conditional adoption assistance agreement shall not require annual certification.~~

~~D. Adoption assistance payments shall be negotiated with the adoptive parents taking into consideration the needs of the child and the circumstances of the family. In considering the family's circumstances, income shall not be the sole factor. Family and community resources shall be explored to help defray the costs of adoption assistance~~

~~E. Three types of payments may be made on behalf of a child who is eligible for adoption assistance:~~

~~1. The adoptive parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.~~

~~a. The total amount of reimbursement is based on actual costs and shall not exceed \$2,000 per child per placement.~~

~~b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.~~

~~c. Nonrecurring expenses include:~~

~~(1) Attorney fees directly related to the finalization of the adoption;~~

~~(2) Transportation and other expenses incurred by adoptive parents related to the placement of the child. Expenses may be paid for more than one visit;~~

~~(3) Court costs related to filing an adoption petition;~~

~~(4) Reasonable and necessary fees related to adoption charged by licensed child-placing agencies; and~~

~~(5) Other expenses directly related to the finalization of the adoption.~~

~~2. A maintenance payment shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed. In these cases a conditional adoption assistance agreement may be entered into. The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home.~~

~~a. The amount of the payment shall be negotiated with the adoptive parents taking into consideration the needs of the child and circumstances of the adoptive parents.~~

~~b. The maintenance payments shall not be reduced below the amount specified in the adoption assistance agreement without the concurrence of the adoptive parents or a reduction mandated by the appropriation act.~~

~~c. Increases in the amount of the maintenance payment shall be made when the child is receiving the maximum allowable foster care maintenance rate and:~~

~~(1) The child reaches a higher age grouping, as specified in guidance for foster care maintenance rates; or~~

~~(2) Statewide increases are approved for foster care maintenance rates.~~

~~3. A special service payment is used to help meet the child's physical, mental, emotional, or nonroutine dental needs. The special service payment shall be directly related to the child's special needs. Special service payments shall be time limited based on the needs of the child.~~

~~a. Types of expenses that are appropriate to be paid are included in the Adoption Manual.~~

~~b. A special service payment may be used for a child eligible for Medicaid to supplement expenses not covered by Medicaid.~~

~~c. Payments for special services are negotiated with the adoptive parents taking into consideration:~~

~~(1) The special needs of the child;~~

~~(2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and~~

~~(3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.~~

~~d. The rate of payment shall not exceed the prevailing community rate.~~

~~e. The special services adoption assistance agreement shall be separate and distinct from the adoption assistance agreement for maintenance payments and nonrecurring expenses;~~

~~F. When a child is determined eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement:~~

~~1. Shall be executed within 90 days of receipt of the application for adoption assistance;~~

~~2. Shall be signed before entry of the final order of adoption;~~

~~3. Shall specify the amount of payment and the services to be provided, including Medicaid; and~~

~~4. Shall remain in effect regardless of the state to which the adoptive parents may relocate.~~

~~G. Procedures for the child whose eligibility for adoption assistance is established after finalization shall be the same as for the child whose eligibility is established before finalization except the application shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs and the child otherwise meets the eligibility requirements of subsection B of this section for adoption assistance payments. Application for adoption assistance~~

~~after finalization shall be for state adoption assistance. Application for adoption assistance after finalization of the adoption shall be for state adoption assistance.~~

~~H. The adoptive parents shall annually submit an adoption assistance affidavit to the local department in accordance with guidance in the Adoption Manual.~~

~~I. The local department is responsible for:~~

~~1. Payments and services identified in the adoption assistance agreement, regardless of where the family resides; and~~

~~2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due.~~

~~J. Adoption assistance shall be terminated when the child reaches the age of 18 unless the child has a physical or mental disability or an educational delay resulting from the child's disability which warrants continuation of the adoption assistance. If a child has one of these conditions the adoption assistance may continue until the child reaches the age of 21.~~

~~K. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:~~

~~1. The child is no longer receiving financial support from the adoptive parents; or~~

~~2. The adoptive parents are no longer legally responsible for the child.~~

~~L. Child placing agencies are responsible for informing adoptive parents in writing that they have the right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. Applicants for adoption assistance shall have the right to appeal adoption assistance decisions related to:~~

~~1. Failure of the child placing agency to provide full factual information known by the child placing agency regarding the child prior to adoption finalization;~~

~~2. Failure of the child placing agency to inform the adoptive parents of the child's eligibility for adoption assistance; and~~

~~3. Decisions made by the child placing agency related to the child's eligibility for adoption assistance, adoption assistance payments, services, and changing or terminating adoption assistance.~~

22VAC40-201-161. Adoption Assistance.

A. The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs.

B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs in accordance with §§ 63.2-1300 and 63.2-1301 and meet the following criteria:

1. Be under 18 years of age and meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 USC § 673); or

2. Be under 18 years of age and in the placement and care of a child-placing agency at the time the petition for adoption is filed and be placed by the child-placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the foster parents have filed a petition for adoption under § 63.2-1229 of the Code of Virginia.

C. Adoption assistance may include the following payments or services where appropriate:

1. Title IV-E maintenance payments if the child meets federal eligibility requirements.

2. State funded maintenance payments when the local department determines: (i) that the child does not meet the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673); (ii) the child is a child with special needs; (iii) the child's foster care expenses were paid from state pool funds or Title IV-E; and (iv) an adoption assistance payment is necessary to facilitate an adoption.

3. A state funded special service payment is used to help meet the child's physical, mental, emotional or dental needs. Special service payments, when the child is in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, meets the criteria of a child with special needs set out in § 63.2-1300, and the adoptive parents are capable of providing permanent family relationships needed by the child in all respects excepts financial.

4. Non-recurring expense payments when an adoption assistance agreement is entered into prior to the finalization of the adoption.

D. For the child who meets the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673) or who is receiving state funded maintenance payments and has a special medical need as specified in § 32.-325 of the Code of Virginia and in the Virginia DSS Medicaid Eligibility manual, M0310.102 2b, the adoption assistance agreement shall include a statement indicating the child's Medicaid eligibility status.

E. Additional criteria for the payments and services specified in C above are as follows:

1. A maintenance payment shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates or it is determined through negotiation that the payment is not needed. The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home.

a. The amount of the payment shall be negotiated by a representative of the department with the adoptive parents, taking into consideration the needs of the child and circumstances of the adoptive parents.

b. The maintenance payments shall not be reduced below the amount specified in the adoption assistance agreement without the concurrence of the adoptive parents or a reduction mandated by the appropriation act.

c. Increases in the amount of the maintenance payment shall be made when the child is receiving the maximum allowable foster care maintenance rate and:

(1) The child reaches a higher age grouping, as specified in guidance for foster care maintenance rates; or

(2) Statewide increases are approved for foster care maintenance rates.

2. The special service payment shall be directly related to the child's special needs listed on the adoption assistance agreement. Special service payments shall be time limited based on the needs of the child and can be modified beyond the original provision of the agreement when the local department and the adoptive parents agree to the modification in a signed and dated addendum. Subsection K of this section addresses addendums to an existing agreement.

a. Types of payments that are appropriate are included in the Chapter F, Section 2 of the VDSS Child and Family Services Manual.

b. A special service payment may be used for a child eligible for Medicaid to supplement payments not covered by Medicaid.

c. Payments for special services are negotiated by a representative of the department with the adoptive parents, taking into consideration:

(1) The special needs of the child;

(2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and

(3) The circumstances of the adoptive family. In considering the family's circumstances, income shall not be the sole factor.

d. The rate of payment shall not exceed the prevailing community rate.

e. The special services adoption assistance payments shall be separate and distinct from the maintenance payments and nonrecurring expenses on the adoption assistance form.

3. The adoptive parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.

a. The total amount of reimbursement is based on actual costs and shall not exceed \$2,000 per child per placement.

b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.

c. Nonrecurring expenses include those items set out in § 63.2-1301 D of the Code of Virginia.

4. When the adoptive parents decline a specific payment or agree to a reduced payment amount and their family circumstances or the child's needs change, the adoptive parents may request a change to the agreement and an addendum to the adoption assistance agreement can be negotiated. The requirements for addendums to an existing adoption assistance agreement are in subsection K in this section.

F. All adoption assistance payments, services and agreements shall be negotiated with the adoptive parents by a representative of the department, taking into consideration the needs of the child, the circumstances of the family, and the limitations specified in subsections B, C and E above. Documentation supporting the requests for payments and services shall be provided by the adoptive parents and for consideration in the negotiation of the adoption assistance agreement. Income shall not be the sole factor in considering the family's circumstances during the negotiations. Available family and community resources shall be explored as an alternative or supplement to the adoption assistance payment.

G. An adoption assistance agreement shall be executed by the local board for a child who has been determined eligible for adoption assistance and when an adoption assistance agreement is necessary to facilitate the adoption. Local departments shall use the adoption assistance agreement form developed by the department. The agreement shall be entered into by the local board and the adoptive parents; or, in cases in which the child is in the custody of a licensed child-placing agency, the agreement shall be entered into by the local board, the licensed child-placing agency and the adoptive parents.

H. When a child is determined eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement:

1. Shall be executed within 90 days of receipt of the application for adoption assistance;

2. Shall be signed before entry of the final order of adoption;

3. Shall specify the payment types, monthly amounts, special services to be provided; and

4. Shall remain in effect regardless of the state to which the adoptive parents may relocate.

I. Application for adoption assistance after finalization of the adoption shall be for state adoption assistance as set out in § 63.2-1301 B of the Code of Virginia. The application for adoption assistance shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs.

J. The adoptive parents shall annually submit a signed adoption assistance affidavit to the local department by the end of the month in which the adoption assistance agreement was effective.

K. Adoption assistance agreements may be modified beyond the original provisions of the agreement to the extent provided by law when the local department and the adoptive parents agree in writing to the extension, new special services or provisions in an addendum signed and dated by the local department and the adoptive parents. The local departments shall use the addendum form provided by the department and the changes to the agreement shall be negotiated by a representative of the department. The provisions of the special services and payments specified on the addendum shall still meet the requirements specified in subsections C and D of this section.

L. The local department is responsible for:

1. Maintaining payments and services identified in the adoption assistance agreement and any addendums in effect, regardless of where the family resides;

2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due;

3. Discussing with the adoptive parents the child's unique needs and their ability to manage the need of the child;

4. Assisting the adoptive parents in coordinating services to meet the child's special needs related to adoption assistance upon request;

5. Providing services to prevent disruption of the placement and strengthen family well-being, when requested by the adoptive parents; and

6. Providing training, when requested, to the adoptive parents as part of an already established local department curriculum. If the local department does not provide the necessary training when requested, the local department shall identify potential training sources and assist the adoptive parent in accessing the training.

M. Adoption assistance shall be terminated when the child reaches the age of 18 years unless the child has a physical or mental disability or an educational delay resulting from the child's disability which warrants continuation of the adoption assistance. If a child has a physical or mental disability which warrants continuation of the adoption assistance, the adoption assistance payments may continue until the child reaches the age of 21 years if the local department and adoptive parents sign an addendum to the agreement to extend the agreement to the specified age. If the sole reason for continuing the agreement beyond the age of 18 is educational delay, then state funded adoption assistance may continue until the youth graduates from high school or until the youth's twenty-first birthday, whichever is earlier, if the local department and the adoptive parents sign an addendum to the agreement to extend the agreement to the end of the month of

high school graduation or until the youth's twenty-first birthday, whichever is earlier.

N. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:

1. The child is no longer receiving financial support from the adoptive parents; or
2. The adoptive parents are no longer legally responsible for the support of the child.

O. Local boards of social services are responsible for informing adoptive parents in writing of their right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. In accordance with § 63.2-1304 of the Code of Virginia for any applicants for, and recipients of, adoption assistance shall have the right to appeal adoption assistance decisions by a local board or licensed child-placing agency in granting, denying, changing or discontinuing adoption assistance.

22VAC40-201-170. Child placing agency's responsibilities for consent in non-agency adoptive placements.

A. At the request of the juvenile court, the child-placing agency shall:

1. Conduct a home study of the prospective adoptive home that shall include the elements in §§ 63.2-1231 and 63.2-1205.1 of the Code of Virginia and department guidance in Volume VII, Section III, Chapter D—Adoption/Non-Agency Placement and Other Court Services of the Service Program Manual of the Virginia Department of Social Services, October 2009 taking into consideration that the manner in which a family receives a child for adoption shall have no bearing on how the family is to be assessed for purposes of adoptive placement.; and,

2. Provide the court with a written report of the home study.

B. The child-placing agency shall make a recommendation to the court regarding the suitability of the individual to adopt.

C. ~~If As provided in §§ 63.2-1218 and 63.2-1219, if the child-placing agency suspects an exchange of property, money, services, or any other thing of value has occurred in violation of law in the placement or adoption of the child, it shall report such findings to the commissioner for investigation. The following exceptions apply:~~

~~1. Reasonable and customary services provided by a licensed or duly authorized child-placing agency, and fees paid for such services;~~

~~2. Payment or reimbursement for medical expenses directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings and for expenses incurred for medical care for the child;~~

~~3. Payment or reimbursement to birth parents for transportation necessary to execute consent to the adoption;~~

~~4. Usual and customary fees for legal services in adoption proceedings; and~~

~~5. Payment or reimbursement of reasonable expenses incurred by the adoptive parents for transportation in inter-country placements and as necessary for compliance with state and federal law in such placements.~~

22VAC40-201-200. Training.

A. Local department ~~foster care and adoption~~ serviceworkers and supervisory staff shall attend and complete initial in-service training in accordance with §§ 63.2-913 and 63.2-1200.1 with guidance in the ~~Foster Care Manual and the Adoption Manual~~.

B. Local department ~~foster care and adoption workers and supervisory staff~~ shall complete an individual training needs assessment using a method developed by the department.

C. Local department ~~foster care and adoption~~ serviceworkers and supervisory staff shall attend and complete annual in-service training in accordance with guidance developed by the department.

FORMS (22VAC40-201)

Application for Adoption Assistance July 2014

Adoption Assistance Agreement July 2014

Addendum to Adoption Assistance Agreement July 2014

Application for Disclosure of Adoption Record July 2014

DOCUMENTS INCORPORATED BY REFERENCE

Child & Family Services Manual, Chapter E - Foster Care, July 2011, Virginia Department of Social Services

Service Program Manual, Volume VII, Section III, Chapter C - Adoption/Agency Placement, October 2009/March 2010, Virginia Department of Social Services

Service Program Manual, Volume VII, Section III, Chapter D - Adoption/Agency Placement, October 2009, Virginia Department of Social Services

Title IV-E Eligibility Manual (E. Foster Care), January 2012, Virginia Department of Social Services