



Proposed Regulation Agency Background Document

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| Agency name | State Board of Social Services |
| Virginia Administrative Code (VAC) citation | 22 VAC 40 -201 |
| Regulation title | Permanency Services-Prevention, Foster Care, Adoption and Independent Living |
| Action title | Establish New Permanency Services Regulation |
| Date this document prepared | February 15, 2006 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This is a joint action to repeal seven regulations and replace them with one comprehensive new Permanency Services regulation that will encompass the full range of services for providing a child with a safe, secure and stable situation in which to grow up. The seven regulations being repealed are: 22 VAC 40-200 Foster Care – Guiding Principles; 22 VAC 40-210 Foster Care – Assessing The Client’s Service Needs; 22 VAC 40-240 Nonagency Placement for Adoption – Consent; 22 VAC 40-250 Agency Placement Adoptions – AREVA; 22 VAC 40-260 Agency Placement Adoptions – Subsidy; 22 VAC 40-280 Nonagency Placements for Adoption – Adoptive Home Study; and 22 VAC 40-800 Family Based Social Services.

The new Permanency Services regulation will incorporate comprehensive definitions pertaining to permanency services and provide a regulatory structure for the programs pertaining to permanency for children: Foster Care Prevention and Stabilization, Foster Care Services, Agency Placement Adoptions, and Non-Agency Adoption Placement.

The new Permanency Services regulation incorporates and updates the repealed agency placement and non-agency placement regulations. The new regulation also includes one section on Foster Care Prevention and Stabilization and sections covering the range of foster care services including: entering foster care; foster care placement; case opening; initial assessment; choosing the goal; preparing the

service plan; service delivery; reviewing the service plan; closing the foster care case; funding; other requirements; independent living; and training. A section has also been added to address suspected violations in the placement and adoption of a child.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The statutory authority to repeal the seven regulations and promulgate the new Permanency Services regulation, can be found in §§ 63.2-217 and 63.2-319 of the Code of Virginia. These statutes describe the authority of the State Board of Social Services to adopt regulations as may be necessary to carry out the purposes of the Department and the programs the Department is mandated to provide.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The new Permanency Services regulation will incorporate all aspects of permanency - Foster Care Prevention, Foster Care, Independent living, Agency Placement Adoptions – AREVA, Agency Placement Adoptions – Subsidy, and Non-Agency Adoption Placement - in one new comprehensive regulation which will position all permanency services regulations in one location in the Virginia Administrative Code.

The new Permanency Services regulation is essential to protect the health, safety and welfare of children in the Commonwealth because it will strengthen the regulatory infrastructure of programs providing for the permanency of children - a strong, stable environment in which to grow up – resulting in the strengthening of the institution of family and improving the health, safety and welfare of children. The new Permanency Services regulation will also mandate new procedures integral to Virginia’s compliance with federal regulations and in keeping with the federal Child and Family Services program outcome goals. There are no environmental impacts resulting from this regulation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the “Detail of changes” section.)

This joint action will repeal the seven existing regulations pertaining to foster care prevention, foster care, and adoption services. A comprehensive new Permanency Services regulation will be promulgated to take the place of and expand upon, these seven regulations.

The new Permanency Services regulation will incorporate comprehensive definitions pertaining to all permanency services for children: Foster Care Prevention, Foster Care, Agency Placement Adoptions – AREVA, Agency Placement Adoptions – Subsidy, and Non-Agency Adoption Placement. Definitions will

be updated to ensure consistency between all service programs and to comply with federal and state requirements. The foster care prevention section will expand on and identify mandated and optional service provisions for preventing children from needing to enter foster care.

The foster care section will regulate all foster care services and activities as specified in the *Code of Virginia* including but not limited to: accepting children into placement; assessment and reassessments; service planning and service delivery; criminal history and central registry background checks; independent living placements; permanency goals; case reviews of children in foster care; types of foster care placements; and worker contacts with children in foster care. These sections specify changes in the provisions for: frequency of worker contact with children in foster care and their parents; required training for foster care and adoption workers and supervisory staff; procedures for conducting criminal background checks on adults in the home when children expected to return home; standardized foster care paper case file formats; timeframes for filing petitions for termination of parental rights; development of concurrent case plans for children; requirements for providing independent living services to older youth; requirements for conducting administrative panel reviews; and frequency for scheduling visitation between a child in foster care and the child’s parents and/or siblings.

The adoption section will incorporate and update current adoption regulations including Agency Placement Adoptions – AREVA; Agency Placement Adoptions – Subsidy, and Non-Agency Adoption Placement, into this chapter. This regulation will also mandate minimum requirements for foster and adoptive worker training.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The public is expected to benefit from this new comprehensive Permanency Services regulation. The regulation strengthens the protection offered to children by providing a regulatory framework for service provision to children in foster care and their families. It also strengthens the authority and responsibilities of local departments of social services who are entrusted to carry out service provision to children in foster care and their families by specifying how such services are to be provided and in what timeframes.

The regulation poses no disadvantages to the public and Commonwealth.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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| <p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p> | <p>The total projected cost to the state for FY 2007 is \$5,886,094 (\$4,199,770 GF and \$1,686,324 NGF) and for FY 2008 and thereafter is \$5,108,174 (\$3,616,330 GF and \$1,491,844 NGF). The IV-E federal grant is assigned to the non-general fund portion of the total expenses based on random moment sampling as a part of the cost allocation</p> |
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| | <p>process. These are ongoing expenditures.</p> <p>Costs include the need for an additional 120 workers in local agencies to implement the requirement for increased visitation between the worker and the foster child and the worker and the parents as well as attendance by workers at mandated training.</p> <p>FY2007 costs are higher because of the one-time expenses associated with hiring new staff (computers, etc).</p> |
| <p>Projected cost of the regulation on localities</p> | <p>The required local match would be \$2,545,523 for FY2007 and \$2,351,043 for each fiscal year beginning in FY 2008.</p> <p>An estimate of the costs related to delaying the use of adoption assistance funds until the finalization of an adoption would be based on an approximate 500 children per fiscal year continuing to receive foster care funds for an additional six months. The local board would continue to provide their portion of the foster care funds.</p> |
| <p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p> | <p>This regulation would impact local agencies and the foster families they work with.</p> <p>The need for these additions to staff results from the federal Child and Family Services Review and the Program Improvement Plan (PIP) developed by Virginia in response to the review. Implementation of the mandates in the PIP is necessary to avert significant fiscal penalties and help achieve positive outcomes for children and families.</p> |
| <p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>This regulation will affect the 120 local agencies and close to 8,000 foster children and their families.</p> <p>No small businesses are impacted.</p> |
| <p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p> | <p>N/A</p> |

Alternatives

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

Because all programs related to child permanency are interrelated it is most effective to repeal and replace the current regulations with one new comprehensive Permanency Services regulation encompassing all child permanency programs. The alternative would be to update existing regulations and promulgate new regulations in program areas pertaining to permanency that currently do not have regulations. Access to these regulations would be complex and disjointed due to each being located in disparate sections of the Virginia Administrative Code.

Regulatory flexibility analysis

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

This regulatory action has no known impact on small business; however, stability for children is beneficial to society including the business community. This regulation attempts to increase that stability.

Public comment

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

None

Family impact

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

The new Permanency Services regulation will strengthen the focus on family and family stability by ensuring a regulatory structure for all permanency services for children and families. It will update current regulations and create regulations where none currently exist. It will also organize all permanency related child welfare regulations in one place in the Administrative Code, making this regulation easily accessible to families and local department workers.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
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| | 40-201-10 | | This section defines words and terms used in the regulation including: Adult Adoption; Adoption; Adoptive home; Adoptive home study; Adoptive placement; Adoption Assistance Agreement; Adoption progress report; Adoption search; AFDC; Agency placement adoption; AREVA; Assessment; Birth family or birth sibling; Birth parent; Board; Child; Child placing agency; Child with special needs; Commissioner; Community Policy and Management Team (CMPT); Comprehensive Services Act for At-Risk Youth and Families (CSA); Custody investigation; Department; Family; Family Assessment and Planning Team (FAPT); Finalization of the Adoption; Foster child; Foster Care placement; Foster Care services; Foster Family Placement; Foster Home; ICPC; Independent living; Independent living placement; Individual Family Service Plan (IFSP); Intercountry placement; Interstate placement; Investigation and report of investigation; Juvenile court; Lifebook; Local department; Maintenance payment; Non-agency placement adoption; Non-custodial foster care agreement; Nonrecurring expenses; Parental placement; Permanency; Permanency planning; Petitioner; Person; Prior custodian; Reassessment; Residential placement; Resource Family; Reunification; Service fee directory; Service plan; Service |

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| | <p>40-201-20</p> <p>40-201-30</p> <p>40-201-40</p> <p>40-201-50</p> | | <p>worker; Special service payments; SSI; State pool fund; Step-parent adoption; Subsidy/adoption assistance; Title IV-E; Treatment program; Visitation and report; and, Youth.</p> <p>Prevention and Stabilization - States that services shall be available for prevention of the need for foster care and sets forth mandated and non-mandated types of services. Also states that families have the right to decline services.</p> <p>Entering Foster Care - Sets out court order requirements for children entering foster care. Addresses requirements for temporary and permanent entrustment agreements and non-custodial foster care agreements and addresses situations involving children of American Indian heritage.</p> <p>Foster Care Placements - Sets out the requirements for a local agency in placing a child to ensure the safety of each child. This includes pre-placement visits and the requirements for different types of placements including: foster family homes; foster homes approved by licensed child placing agencies; treatment foster care program home; adoptive home; and, independent living placement. This section also addresses placing a child in a different local department's jurisdiction and situations where the foster parents move to a different jurisdiction.</p> <p>Foster Care Case Opening - Provides that the Department shall approve one specific official case documentation system in which all foster care and adoption cases shall be documented. Sets out the case opening requirements and the types of paper case records which supplement the official case record. Sets out the requirements for information on foster families that shall be part of the Department's approved case documentation system. States that all children in foster care shall be referred for an initial determination of Title IV-E eligibility and timeframes for actions related</p> |
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| | 40-201-90 | | <p>Service Delivery – Sets out the requirements for provision of services based on each goal a foster child may have. Sets out the local department’s responsibilities to the foster parents or providers. This includes providing information, including foster parents in planning and appropriate notice when a change in placement is to occur. Sets out requirements for worker contacts with child including face-to-face, and in the home. Also, includes requirements for contacts when children are placed out of state. Sets out requirements for services provided to older youth in foster care including opportunities for independent living activities regardless of child’s permanency goal. Sets out requirements for medical services provided to children in foster care. This section includes residential care and respite services for foster parents.</p> |
| | 40-201-100 | | <p>Reviewing the Service Plan- Sets out the requirements for reviews of services plans including the following types of reviews: foster care review hearing; permanency planning hearing; administrative panel review; and the supervisory review. Included are timeframes, individuals who should be included, information to be considered in the reviews and next steps dependent upon results of the reviews. Next steps may include development of new plan based on new goals for the child. This section also identifies exceptions to required reviews including when a case is on appeal or when children have been committed to the Department of Juvenile Justice. Sets out requirements for re-determining Title IV-E and Medicaid eligibility.</p> |
| | 40-201-110 | | <p>Closing the foster care case - This section addresses how court commitments are terminated and also how noncustodial foster care agreements are terminated. It also addresses closure in the Department’s approved case documentation system, return of personal items and retention of records and access to records after closure.</p> |

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| | <p>40-201-140</p> | | <p>Independent Living – Sets out requirements for developing service plans for older youth including the youth being a member of the team developing the plan. Requires the local department to offer a program of education, vocational training, employment, financial support, daily living skills and counseling for youth leaving foster care. Provides that services may continue up to the age of 21 and that the local department shall approve all independent living arrangements and shall supervise youth in such arrangements. It also requires the local department and the youth to enter into a contract identifying responsibilities for each party. States that Education and Training Vouchers (ETV) are available to help the youth with education and training specific expenses.</p> |
| | <p>40-201-150</p> | | <p>Adoption Resource Exchange of Virginia (AREVA) - Sets out the purpose of AREVA and the services offered including maintaining a registry of children awaiting adoption and preparing and distributing a photo-listing. Sets out requirements for registering children with AREVA including the requirement that all children be listed within 60 days of termination of parental rights under certain circumstances. Also, lists requirements for registration of approved families and when there may be a deferment in the photo-listing of a child. Sets out the responsibilities of the local departments and the AREVA staff in recruitment of adoptive families, registering child with AREVA, matching children and families and keeping each other informed about changes in the status of the children or prospective adoptive families.</p> |
| | <p>40-201-160</p> | | <p>Adoption Subsidies – Sets out criteria for determining the eligibility of children for adoption subsidy and for determining that a child has special needs. Sets out criteria for determining the child’s eligibility after legal adoption and criteria for determining the type of subsidy the child may be eligible for. Requires the use of a VDSS developed adoption assistance form.</p> |

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| | <p>40-201-190</p> | | <p>Agency Responsibilities for Consent in Non-Agency Adoptive Placements – Requires that the local department conduct a home study and provide copies to the court. Sets out the information that shall be included in the report submitted to the court. Requires the local department to make a recommendation to the court on the suitability of the family to adopt. Requires the local department to report to the Commissioner for investigation if it suspects there has been an exchange of money or other thing of value in violation of the law in connection with the adoption. Also requires that the local department report to the Commissioner for investigation any suspected child placing activities conducted by persons without legal authority to do so.</p> |
| | <p>40-201-200</p> | | <p>Fees for Court Services - Describes the services for which a local department may charge a fee including: court ordered custody investigations; adoption searches; nonagency placement adoption; investigation and reports; and, visitation and reports. Sets out the basis for the fee schedule and addresses collection of fees and reimbursement procedures.</p> |
| | <p>40-201-210</p> | | <p>Suspected violations in the placement and adoption of a child – Sets out procedures for Commissioner to follow when there are suspected violations of law related to exchange of money or other thing of value related to an adoption.</p> <p>Training – Provides that local departments shall provide required new worker and in-service training for all foster care and adoption workers using curriculum developed or prescribed by the Department of Social Services.</p> |