




COMMONWEALTH of VIRGINIA

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TO: DUKE STOREN, Commissioner
Virginia Department of Social Services

FROM: ELLEN FULMER MALENKE 
Assistant Attorney General

DATE: March 14, 2019

SUBJECT: Regulation Section - 22VAC40-211 (Foster and Adoptive Home Approval Standards)

I am in receipt of the attached regulations. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulatory action addresses standards for foster and adoptive homes approved by local departments of social services. Changes in the proposed regulatory actions include clarifying that background checks conducted for youth over 18 in the Fostering Futures program be used for the sole purpose of determining whether other children should be placed or remain in the same foster home as the Fostering Futures participant. The background checks are not to be used as a basis for terminating or suspending the approval of the foster home.

Additionally, this regulatory action addresses standards for foster and adoptive homes approval by requiring local agencies to use the Mutual Family Assessment (MFA) home study template and authorizes VDSS to amend the MFA template and any necessary addenda.

Lastly, this regulatory action updates training requirements for prospective foster and adoptive providers by requiring the Normalcy for Youth in Foster Care training as part of the pre-service training. Training requirements for current providers have been updated to require that they complete Normalcy for Youth in Foster Care training.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process

Act (“APA”) and has not exceeded that authority. If you have any questions or need additional information about these regulations, please contact me at 786-4856.

cc: Kim F. Piner, Esquire
Attachment

DEPARTMENT OF SOCIAL SERVICES

Amend Foster and Adoptive Home Approval Regulation 2017

22VAC40-211-10. Definitions.

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

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

"Adult" means any person 18 years of age or over.

"Applicant" means an individual or couple applying to be approved as a foster or adoptive home provider or to provide respite services.

"Background checks" means a sworn statement or affirmation disclosing whether the individual has a criminal conviction, is the subject of any pending charges within or outside the Commonwealth of Virginia, and is the subject of a founded complaint of abuse or neglect within or outside the Commonwealth; criminal history record information; child abuse and neglect central registry check; and any other requirement as set forth in § 63.2-901.1 of the Code of Virginia.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) an adult who by law, social custom, express or implied acquiescence, collective consensus, agreement, or any other legally recognizable basis has an obligation to look after the well-being of a child left in his care; and (iii) persons responsible by virtue of their positions of conferred authority.

"Central registry" means a subset of the child abuse and neglect information system and is the name index with identifying information on an individual named as an abuser or neglector in founded child abuse or neglect complaints or reports not currently under administrative appeal, maintained by the department.

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

"Child-placing agency" means any person who places children in foster or adoptive homes or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board of social services that places children in foster homes or adoptive homes pursuant to § 63.2-900, 63.2-903 or 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 abuse and neglect information system" means the computer system that collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the central registry of founded complaints not on appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system.

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

"Corporal punishment" means punishment administered through the intentional infliction of pain or discomfort to the body through actions such as, but not limited to, (i) striking, or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Department" means the State Department of Social Services.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board of social services where the legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board of social services or licensed child-placing agency.

"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.

"In-service training" means the ongoing instruction received by providers after they complete their preservice training.

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

"Kinship foster parent" means an approved relative 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.

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

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in 42 USC § 675(10)(A) when making decisions regarding extracurricular, enrichment, and social activities.

"Parent" means the birth or adoptive parent of a child.

"Preservice training" means the instruction received by providers during the initial approval process.

"Provider" means an approved foster, adoptive, or kinship foster parent, or an individual approved to provide respite services. Individuals who wish to provide only respite services must meet all standards in this chapter unless there is a noted exception for respite providers.

"Respite care" means the provision of the service of temporary care for children on an emergency or planned basis for the purposes of providing placement stability, supporting the achievement of timely permanency, and promoting connections to relatives. Respite care services shall not exceed 14 consecutive days.

22VAC40-211-40. Mutual family assessment requirements.

A. An applicant shall complete and submit an application in accordance with department requirements and on department-approved forms or other forms that address all of the department's requirements.

B. Upon submission of a completed provider application, the local department is responsible for ensuring the initiation of the approval process. If at any point in the approval process the local department determines the home may not be approved, the application may be denied, and the process ended.

C. Local departments shall conduct a minimum of three face-to-face interviews on three separate days with each applicant, at least one interview shall be in the applicant's home. If there are two individuals listed as applicants, at least one interview must be with both individuals. At least one interview shall be with all individuals who reside in the home.

D. The local department shall obtain at least three references from persons who have knowledge of each applicant's character and applicable experience with children and caretaking of others. At least one reference per applicant shall be from a nonrelative.

E. Local departments shall ask if an applicant previously applied to, or was approved by, another local department or licensed child-placing agency. The local department shall have the applicant sign a request to release information from the other agency in order to obtain information about previous applications and performance and shall use that information in considering approval of the applicant.

F. As part of the approval process, the local department shall conduct a mutual family assessment (MFA). The MFA shall be completed on the approved MFA template and address all elements required by this standard and be documented by a combination of narrative and other data collection formats, and shall be signed and dated by the individual completing the MFA and the director of the local department or his designee. The information contained in the MFA shall include:

1. Demographic information including:

- a. Age of applicant;
- b. Marital status and history including verifications; and
- c. Family composition and history.

2. Financial information (not required for applicants to be only respite providers) including:

- a. Employment information on applicant;
- b. Assets and resources of applicant; and
- c. Debts and obligations of applicant.

3. List of individuals involved in completing the MFA process and their roles.

4. Narrative documentation shall include information from the interviews, references, observations and other available information and shall be used to assess and document that the applicant:

a. Is knowledgeable about the necessary care for children and physically and mentally capable of providing the necessary care for children;

b. Is able to articulate a reasonable process for managing emergencies and ensuring the adequate care, safety, and protection of children;

c. Expresses attitudes that demonstrate the capacity to love and nurture a child born to someone else;

d. Expresses appropriate motivation to foster and adopt;

e. Shows stability in all household relationships;

f. Has the financial resources to provide for current and ongoing household needs;
and

g. Has complied with 22VAC40-211-70.

G. The individual completing the MFA for the local department shall have met the training requirements. The local department worker shall have knowledge related to foster care and adoption policy and the skills and standards for developing the MFA and approving a foster or adoptive home.

22VAC40-211-60. Training.

A. The local department shall ensure that preservice training is provided for foster and adoptive providers. This training shall address but not be limited to the following core competencies:

1. Factors that contribute to neglect, emotional maltreatment, physical abuse, and sexual abuse, and the effects thereof;
2. Conditions and experiences that may cause developmental delays and affect attachment;
3. Stages of normal human growth and development;
4. Concept of permanence for children and selection of the permanency goal;
5. Reunification as the primary child welfare goal, the process and experience of reunification;
6. Importance of visits and other contacts in strengthening relationships between the child and his birth family, including his siblings;
7. Legal and social processes and implications of adoption;
8. Support of older youth's transition to independent living;
9. The professional team's role in supporting the transition to permanency and preventing unplanned placement disruptions;
10. Relationship between child welfare laws, the local department's mandates, and how the local department carries out its mandates;
11. Purpose of service planning;
12. Impact of multiple placements on a child's development;
13. Types of and response to loss, and the factors that influence the experience of separation, loss, and placement;
14. Cultural, spiritual, social, and economic similarities and differences between a child's primary family and foster or adoptive family;

15. Preparing a child for family visits and helping him manage his feelings in response to family contacts;
16. Developmentally appropriate, effective and nonphysical disciplinary techniques;
17. Promoting a child's sense of identity, history, culture, and values;
18. Respecting a child's connection to his birth family, previous foster families or adoptive families;
19. Being nonjudgmental in caring for the child, working with his family, and collaborating with other members of the team;
20. Roles, rights, and responsibilities of foster parents and adoptive parents;
21. Maintaining a home and community environment that promotes safety and well-being; ~~and~~
22. Mandated child abuse and neglect reporter laws and responsibilities; and
23. Normalcy for youth in foster care.

B. Local departments shall ensure that each foster and adoptive home provider receives annual in-service training.

1. Training shall be relevant to the needs of children and families and may be structured to include multiple types of training modalities (for example, online foster parent training courses; seminars and conferences).

2. The department shall provide opportunities for training on an annual basis.

C. The provider is required to complete preservice and annual in-service trainings. As a condition of reapproval each provider shall complete in-service training.

D. Local departments shall explain confidentiality requirements to providers and require providers to keep confidential all information regarding the child, his family, and the circumstances that resulted in the child coming into care.

22VAC40-211-80. Standards of care for continued approval.

A. The provider shall provide care that does not discriminate on the basis of race, color, sex, national origin, age, religion, political beliefs, sexual orientation, disability, or family status.

B. The provider shall ensure the child receives meals and snacks appropriate to his daily nutritional needs. The child shall receive a special diet if prescribed by a licensed health care provider or designee or in accordance with religious or ethnic requirements or other special needs.

C. The provider shall ensure that he can be responsive to the special mental health and medical needs of the child.

D. The provider shall establish rules that encourage desired behavior and discourage undesired behavior. The provider shall not use corporal punishment or give permission to others to do so and shall sign an agreement to this effect.

E. The provider shall provide clean and seasonal clothing appropriate for the age and size of the child.

F. Providers and any other adults who transport children shall use functioning child restraint devices in accordance with requirements of Virginia law.

G. In the reapproval process the local department shall verify that the requirements for approval, including background checks, are still being met by the provider.

H. Results of background checks for Fostering Futures program participants shall be used for the sole purpose of determining whether other children should be placed or remain in the same foster home as the participant.

22VAC40-211-120. Normalcy for children in foster care.

Local departments will support the foster parent in exercising the reasonable and prudent parent standard in decisions regarding the child's participation in age-appropriate activities, in accordance with subsection D of § 63.2-904 of the Code of Virginia and with this chapter.

FORMS (22VAC40-211)

Resource Family Assessment Template, 032-04-0060-01-eng (eff. 10/2010)

