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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22 VAC 40-201
VAC Chapter title(s)	Permanency Services-Prevention, Foster Care, Adoption, and Independent Living
Action title	Amend Permanency Regulation 2019
Date this document prepared	December 15, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The permanency regulation, 22VAC40-201, provides standards for local departments of social services (LDSS) for prevention, foster care, adoption, and independent living services. This regulatory action makes changes in response to legislation passed during the 2019 and 2020 Sessions of the Virginia General Assembly. The intent of this action is to make the regulation consistent with the Code of Virginia and to make any other changes the agency deems necessary after comments and review.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

LDSS-local departments of social services

VDSS-Virginia Department of Social Services

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Social Services took final action on 22VAC40-201 Permanency Services-Prevention, Foster Care, Adoption, and Independent Living on December 15, 2021.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

The mandate for this regulatory action is a directive from the General Assembly. Chapter 446 of the 2019 Acts of Assembly (SB 1339) requires the Board of Social Services to promulgate regulations to establish a caseload standard and Chapter 934 of the 2020 Acts of Assembly (SB 472) requires the Virginia Department of Social Services (VDSS) to promulgate regulations related to termination of parental rights, independent living needs assessments and plans, and reporting requirements for local boards and child-placing agencies.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The state's legal basis for this action is § 63.2-217 of the Code of Virginia that requires the State Board of Social Services to adopt such regulations as may be necessary to carry out the purpose of title 63.2. This regulatory action is necessary to comply with Chapter 446 of the 2019 Acts of Assembly (SB 1339), which makes numerous changes to the laws governing the provisions of foster care services, Chapter 677 and 676 of the 2019 Acts of Assembly (HB 1730 and SB 1253), which amends the age range for credit checks on children in foster care, and Chapter 934 of the 2020 Acts of Assembly (SB 472), which requires case consultation when reunification remains the goal after 12 months and reporting requirements when termination of parental rights do not occur in a timely manner.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This regulatory action is necessary to amend the existing regulation so that it will be consistent with the Code of Virginia. This regulation is essential to support the health, safety and permanency of children in foster care and facilitate the provision of foster care services to children and families. The goals of this regulatory action are: 1) amend existing regulation to align with changes made in the 2019 and 2020 Sessions of the Virginia General Assembly; 2) establish caseload standards in accordance with Chapter 446 of the 2019 Acts of Assembly (SB 1339); and 3) promulgate regulations related to termination of parental rights, independent living needs assessments and plans, and reporting requirements for local boards and child-placing agencies in accordance with Chapter 934 of the 2020 Acts of Assembly (SB 472).

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This regulatory action will incorporate technical corrections, language and processes necessary to ensure consistency with the Code of Virginia. This regulatory action includes changes to regulations on credit checks and independent living services, relative search and notification, a foster care complaint system, case consultation when reunification remains the goal after 12 months, acceptable reasons for not filing for termination of parental rights and reporting requirements for those cases, and caseload standards.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

This regulatory action poses no disadvantages to the public or the Commonwealth. This regulatory action proposes amendments to the Permanency regulation, which provides for the safety of children who come into the child welfare system and for children in the Commonwealth who are adopted. In particular, this action addresses recent Code changes to help improve the safety, permanency, and well-being of children and youth in foster care.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no requirements in this regulatory action that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no additional state agencies particularly affected by the regulatory change.

Localities Particularly Affected

This regulation impacts LDSS. LDSS are located statewide and no individual locality will be particularly affected.

Other Entities Particularly Affected

This regulatory action will impact children in foster care, birth parents, constituents, and relatives.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Valerie L'Herrou, Virginia Poverty Law Center	<p>Permanency Regulations 2019</p> <p>22VAC40-201-40: foster care placement regulations</p> <p>The proposal to strike “approved” will hopefully result in more children being placed with relatives at the time of removal, before the relative has had time to begin, let alone complete, the lengthy approval process. However, these regulations should go further in directing local departments to, for instance, seek waivers from the VDSS Commissioner to approve relative foster homes. Some local departments appear not to be aware of their ability to seek a waiver to approve a relative foster home.</p>	<p>The process and direction for seeking waivers is outlined in 22VAC40-211-90 which is in a separate chapter of the Virginia Administrative Code.</p>
	<p>22VAC40-201-100: Independent living regulations</p> <p>VPLC supports more youth being provided more timely Independent Living services due with fewer</p>	<p>Assessing and planning to support a youth’s permanent connections is an integral portion of the life skills assessments and transition plans LDSS are required to complete on youth ages 14 and over, including those youth between the ages of 18 and 21 participating in</p>

	<p>barriers, and allowing more families to be involved in helping with IL plans. Adding an emphasis on helping youth who wish to reunite with family would help more youth navigate this with support.</p> <p>22VAC40-201-110. Court hearings and case reviews.</p> <p>VPLC comments that outlining the specifics of exceptions to filing petitions to terminate a parent’s rights will help more children retain relationships with their birth families, and potentially reunifying even if outside the 15-month window.</p> <p>22VAC40-201-145. Foster care complaint system</p> <p>Constituents should also be notified of the opportunity to complain to the Virginia Office of the Children’s Ombudsman.</p>	<p>the Fostering Futures program. The transition plan that must be updated annually includes the following sections for goals:</p> <ul style="list-style-type: none"> • “Relationships and Communication” which includes developing and sustaining healthy relationships, cultural competency, and permanent connections to caring adults. • “Permanency” which includes establishing family connections and placement options to provide a lifetime of commitment. For young adults, it means connection to trusted adults. <p>VDSS agrees that outlining the exceptions to filing petitions to terminate parental rights will support LDSS in their determinations of when it is in the best interest of the child not to file for termination of parental rights at 15 months in care.</p> <p>When the Office of the Children’s Ombudsman becomes fully operational, VDSS will ensure that the constituent services unit has the referral information for the Office of the Children’s Ombudsman to provide to constituents.</p>
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Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
				No changes were made to this regulatory action since the proposed stage. The actual regulation text has

				been updated to reflect other regulatory actions that became finalized in the interim. Most notable are the changes to the underlying regulation as a result of the exempt regulatory action that became effective on October 13, 2021 (RIS Project #6763).
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Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
*40		<p>Within 30 days of the child’s entry into foster care, the LDSS will identify and notify, in writing, all adult relatives that the child has been removed and the options to participate in the care and placement of the child. The LDSS shall also conduct a search of the Virginia Birth Father Registry if the child’s father is unknown.</p> <p>The local department shall ensure a child in foster care is placed in an approved home or licensed facility that complies with all applicable federal and state requirements for safety and child well-being</p>	<p>The minimum requirement of searching for relatives at the time of entry, annually, and prior to the child’s placement changes has been added. This change is a result of state legislation (2019 Acts of Assembly Chapter 446).</p> <p>“Approved” has been removed to further incorporate all allowable placements that meet federal and state requirements even if full foster home approval hasn’t been granted.</p>
*70			A new requirement has been added that when a child has been in care for 12 months and reunification remains the case plan goal, the LDSS shall consult

			with the Commissioner or designee regarding case planning. This change is a result of state legislation (2020 Acts of Assembly Chapter 934).
*100		<p>Independent living services shall be identified by the youth, foster or adoptive family, local department, services providers, legal community and other interested individuals.</p> <p>Independent living services shall be provided to all youth ages 14 to 18 years of age and offered to any person between 18-21 years of age who is transitioning from foster care to self-sufficiency.</p> <p>Independent living assessments must be completed and used to develop the service plan.</p> <p>Allowed youth placed in foster care before 18 and who turn 18 prior to July 1, 2016 can continue to receive independent living services from ages 18-21.</p> <p>The local department shall run annual credit checks on all youth in foster care who are 14 years of age and older.</p>	<p>The youth's parent or prior custodian has been added to the list of individuals who are involved in identifying necessary independent living services. Engaging the child's family, especially their parent/caregiver is vital to ensuring the best outcomes for youth.</p> <p>Clarification has been added to this requirement to specify this applies to youth in foster care ages 14-21 and youth who are between 14-23 years of age and who were in foster care at any point between 14-21 years of age.</p> <p>Independent living assessments (now known as life skills assessments) and transition plans are due within 30 days of a youth in foster care reaching 14 years of age or within 30 days of a youth who is 14 years of age or older entering foster care and such assessments and plans must be updated annually in accordance with the 2020 Acts of Assembly Chapter 934.</p> <p>All language referencing the independent living program that was in place prior to the Fostering Futures program for youth 18-21 has been removed as all youth in that program have aged out and now Fostering Futures is the program that provides support to youth 18-21.</p> <p>The requirement has been modified to include youth between the ages of 14 and 18 as the LDSS cannot run credit checks on adults, in accordance with the 2019 Acts of Assembly Chapter 677.</p>
*110		<p>If a child has been in foster care for 15 out of last 22 months, the LDSS shall file a petition to terminate parental rights.</p>	<p>The requirement has been changed to account for convictions of certain offenses and to identify exceptions to the requirement to file for termination of parental rights. The three exceptions are outlined in this section as well as documentation and reporting requirements. This change is a result of</p>

			state legislation (2020 Acts of Assembly Chapter 934).
*140			The caseload standard of 15 foster care cases per foster care worker has been added. This change is a result of state legislation (2019 Acts of Assembly Chapter 446).
	*145	This new section outlines investigation procedures for foster care complaints received by VDSS.	This change is a result of state legislation (2020 Acts of Assembly Chapter 934). The foster care complaint process is already in place in VDSS and there is no likely impact.