



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Social Services
VAC Chapter Number:	22 VAC 40-260-20
Regulation Title:	Agency Placement Adoptions - Subsidy
Action Title:	Revise
Date:	April 4, 2000

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

Summary

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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

This regulation increases opportunities for children to be adopted by providing financial assistance to families adopting children with special needs.

Basis

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

Sections 63.1-25 and 63.56, of the Code of Virginia, grant authority to the State Board of Social Services to promulgate regulations for the provision of foster care services that shall be directed toward the prevention of unnecessary foster care placements and toward the permanent planning for children in the custody of or placed by local boards of social services. Rulemaking under these two sections of the Code is permissible, rather than mandatory. Chapter 11.1, of the Code of Virginia, requires the State Board of Social Services to make all rules and regulations necessary for the proper administration of the provisions of Chapter 11.1.

Purpose

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

The contemplated regulation is essential for the efficient and economical performance of the adoption assistance program in Virginia. Proposed changes include changes in the eligibility criteria for adoption assistance, which will ensure that only those children who are truly special needs children (and, therefore, hard to place for adoption) will be provided with adoption assistance payments. Additionally, the proposed changes to this regulation ensure that funding allocated for the adoption assistance program is used only for the support of families adopting children with special needs.

Substance

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

This regulation proposes changes to the existing regulation in the following areas: eligibility for adoption assistance, type of payment to be provided, and termination of the agreement.

The existing regulation facilitates adoption for special needs children by requiring agencies to provide an adoption assistance agreement for all children who have special needs and who have been determined eligible for subsidy. Prior to the implementation of adoption assistance, children with special needs were remaining in foster care and not being adopted. The proposed revisions are to ensure compliance with federal laws, to ensure that the children receiving adoption assistance are the children who are the most difficult to place for adoption, and to ensure that families adopting children with special needs are provided with financial support to adopt these children.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Changing eligibility criteria for the adoption assistance program is controversial. Currently, any child who is a member of a minority race is eligible for adoption assistance. The proposed amendment raises the age for minority children to those who are three years of age or older. One school of thought is that being a member of a minority race is not a reason, in and of itself, for being labeled a child with special needs. Another school of thought is that minority children, even infants, continue to be hard to place.

The proposed amendments are being made because there are few minority children under the age of three who have to be registered on the Adoption Resource Exchange in order to locate an adoptive family. The argument that minority children under the age of three are hard to place comes from the fact that in private child placing agencies a fee must be charged to minority families interested in adopting. Many minority families do not believe in paying a fee for adoption services. However, with the activities of Virginia's One Church One Child program, there are African American families waiting to adopt African American children who are under the age of three.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the

individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

This regulation affects children for whom parental rights have been terminated and for whom adoptive families are desired. It also impacts families approved to adoption children. It is intended to have a positive effect on children needing alternative permanent families and on families interested in adopting children. No fiscal impact is anticipated with these amendments.

Detail of Changes

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

This regulation proposes changes to the existing regulation in the following areas: eligibility for adoption assistance, type of payment to be provided, and termination of the agreement. The existing regulation facilitates adoption for special needs children by requiring agencies to provide an adoption assistance agreement for all children who have special needs and who have been determined eligible for subsidy. Prior to the implementation of adoption assistance, children with special needs were remaining in foster care and not being adopted. The proposed revisions are to ensure compliance with federal laws, to ensure that the children receiving adoption assistance are the children who are the most difficult to place for adoption, and to ensure that families adopting children with special needs are provided with financial support to adopt these children.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

In 1992, the department established a committee for the purpose of providing guidance in the development of regulations governing adoption. This committee is called the Adoption Advisory Board and has the following goals: (1) to provide a forum for comprehensive reviews of policies governing adoption, (2) to identify and recommend suggested revisions, (3) to review draft proposals of policy revisions, and (4) to provide recommendations for the enhancement of the adoption program in Virginia. Membership of the committee consists of all stakeholders in the adoption process including adoption agencies, local departments of social services, other community organizations, administrators of agencies, birth parents, adoptive parents, adoptees and adoption attorneys.

A review by the Adoption Advisory Board was the process used by the department to consider the continuing need for this regulation, proposed revisions to this regulation, or the elimination of this regulation. The review by the Adoption Advisory Board resulted in a determination that the individual characteristics that make children hard to place for adoption have changed since promulgation of the existing regulation. For example, minority children are no longer hard to place if they are infants, nor are Caucasian children under the age of eight. Additionally, there have been changes in federal law that impact this regulation. Changes are being proposed to ensure consistency with federal laws governing adoption assistance. This regulation is critical to the welfare of children in foster care who need adoptive homes since it authorizes the provision of financial support to families adopting children with special needs. The alternative that was considered was to propose changes in Chapter 11.1, of the Code of Virginia. It was felt, however, that the law governing adoption assistance should remain broad with regulations promulgated by the State Board of Social Services providing the details of the program.

Public Comment

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

No public comments were received during the NOIRA comment period.

Clarity of the Regulation

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

The agency, through examination of the regulation and feedback from the Adoption Advisory Committee has determined that the regulation is clearly written and understandable by the individuals and entities affected.

Periodic Review

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

This regulation will be reviewed as needed and no later than three years after the proposed regulation is effective. At that time, the agency will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated, and to ensure that the

regulation addresses the specific goal of facilitating adoption for children with special needs.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 proposed revision to these regulations impact prospective adoptive families who will be adopting children that no longer met the eligibility criteria for adoption assistance. They will encourage economic self-sufficiency and the assumption of responsibility for children who are adopted who are not eligible for adoption assistance.