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## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	22VAC40-211
<b>VAC Chapter title(s)</b>	Foster and Adoptive Home Standards
<b>Action title</b>	Implement Foster Parent Bill of Rights and Re-enforce the Role of the Foster and Adoptive Parents
<b>Date this document prepared</b>	August 18, 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.*

Chapter 336 of the 2019 Acts of Assembly (HB 2108) required the Department of Social Services (DSS) to promulgate regulations to ensure collaboration, communication, access, and transparency between the local boards, licensed child placing agencies (LCPA), and foster parents.

The regulatory action will require local boards and LCPA to provide foster parents with all reasonably ascertainable background, medical, and psychological records of the child prior to placement, all information relevant to the child's foster care services, and copies of all documents related to the foster parent, their family, and services provided to the foster home on an ongoing basis. Local boards and LCPA will be required to notify foster parents in a timely manner of all court hearings, scheduled meetings, and decisions made by the court, local board, or LCPA concerning the child's foster care service, and changes to the child's case plan or termination of the child's placement. The regulatory action will also mandate timely responses to requests for information regarding the child's progress after leaving foster care, if it is in the child's best interest. This regulatory action will set forth a dispute

resolution process through which a foster parent may contest an alleged violation by the local board or LCPA. The dispute resolution process will include an appeal process for the foster parent.

## 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.*

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DSS – Department of Social Services

LCPA – Licensed child placing agency

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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The mandate for this regulatory action is a directive from the General Assembly. The second enactment clause of Chapter 336 of the 2019 Acts of Assembly required DSS to promulgate regulations related to a Foster Parent Bill of Rights and a formalized process for dispute resolution.

## 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.*

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Section 63.2-217 of the Code of Virginia authorizes the State Board of Social Services to adopt regulations as may be necessary to carry out the Title 63.2. Sections 63.2-21, 63.2-901.1, and 63.2-1734 provide the legal authority for the State Board of Social Services to adopt regulations for foster and adoptive home approval and child welfare agencies.

## 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.*

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This regulatory action will help protect the health, safety, and welfare of children in care by ensuring collaboration, communication, access, and transparency between the local boards, LCPA, and foster parents. The regulatory action will include a statewide process for dispute resolution through which a foster parent may contest an alleged violation by the local board or LCPA of a foster parent's rights. The dispute resolution process promotes empowerment of foster parents as valuable members of the permanency planning team.

## 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.*

The substantive changes include the addition of a new section implementing a foster parent bill of rights, as required by Section 63.2-902 of the Virginia Code, and the establishment of a statewide dispute resolution process that a foster parent may use to contest an alleged violation.

More specifically, the regulatory action provides additional oversight regarding the rights of foster and adoptive parents and transparency between the local boards, LCPA, and the foster parents. The changes reinforce the provider's role as a member of the child welfare team and the expectation that the LDSS keep them informed on matters related to the child and which are essential in protecting the child's health, safety and welfare.

## 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.*

Previously, foster parents have not been parties to foster care cases. This will be the first time their roles will be officially established. Regulatory changes will benefit foster and adoptive parents by ensuring that their input and opinions are taken into consideration when determining appropriate services for children who are placed in their home. This will also allow for a more individualized approach to the child's treatment plan. It will also increase the retention of approved homes by:

- Engaging foster and adoptive parents in a manner that will support positive interactions between agencies and caregivers.
- Endorsing a healthy and mutually cooperative relationship with foster and adoptive parents by eliminating employee/employer approach.
- Addressing issues upfront that could possibly lead to families no longer wanting to foster.
- Encouraging early intervention for foster families who may be struggling with their role and responsibilities.

Currently, agencies have no formal internal processes in place to address foster or adoptive parents' concerns. These changes will now require agencies to allot time in their challenging schedules to adhere to the timeframes outlined. The regulatory action also ensures appropriate conduct of agency staff when interacting with foster and adoptive parents to achieve more positive outcomes for children

and reduce any potential barriers. Lastly, it ensures compliance with current regulations that require foster parent collaboration and input.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

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

**Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected:  
There are no other state agencies particularly affected by this regulatory action.

Localities Particularly Affected:  
This regulation impacts all LDSS. LDSS are located statewide and no individual locality will be disproportionately affected.

Other Entities Particularly Affected:  
This regulatory action will impact LCPA. No individual LCPA will be disproportionately affected.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>There is no additional cost to the state to implement and enforce this regulation.</p>
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<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no additional cost to other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Proposed changes will bring the regulation into compliance with existing state law and clarify the rights of foster parents and delineate the dispute process to ensure collaboration, communication, access, and transparency between the local boards, licensed child placing agencies (LCPA), and foster parents.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no additional costs associated with this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Proposed changes will bring the regulation into compliance with existing state law and clarify the rights of foster parents and delineate the dispute process to ensure collaboration, communication, access, and transparency between the local boards, LCPA, and foster parents.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>This regulation will impact LCPA. There is no additional cost to these other entities.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>No small businesses will be directly impacted.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>There will be no additional cost to businesses as a result of this regulation and there are no costs related to the development of real estate, fees, the purchase of equipment or services, or time required to comply with these requirements.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Proposed changes will bring the regulation into compliance with existing state law and clarify the rights of foster parents and delineate the dispute process to ensure collaboration, communication,</p>

	access, and transparency between the local boards, LCPA, and foster parents.
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**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

There are no other alternatives to the proposed regulatory action, as the action is necessary to make the regulation consistent with state law.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.*

There are no other alternative regulatory methods that would accomplish the necessary objectives of this regulatory action. The regulatory action is applicable to LDSS in their activities with foster parents and settling disputes.

**Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the *Code of Virginia*, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

## 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
Shannon Martin	Under #12, (where It states foster parents should be able to contact a worker 24 hrs a day, 7 days a week) it should specify this does not include the child abuse hotline.	VDSS will consider adding this clarification in the Code of Ethics and Mutual Responsibilities. A phone line has been obtained by VDSS and will be made available 24/7 to assist with the dispute resolution process.
Cate Hawks	<p>Will this replace the Code of Ethics and Mutual Responsibilities or could it be woven into that document that is signed upon placement?</p> <p>Could VDSS continue the existing family liaison in central office to manage disputes so there is an outside arbiter for families ensuring that situations are following state administered rules and policies; and give the families some comfort that they are being heard outside of their home community.</p>	<p>VDSS will update the Code of Ethics and Mutual Responsibilities to incorporate the Foster Parent Bill of Rights and the dispute resolution process.</p> <p>The Constituent Services Unit will remain available to field constituent concerns, along with the warm line devoted to foster parent matters. Local boards issue and maintain foster family approval and will continue to follow the dispute resolution process outlined in the foster care guidance when considering matters that involve foster family approval.</p>

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

The State Board of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to C. Garrett Jones, 804 E. Main Street, Richmond VA 23219, 804-726-7527, [garrett.jones@dss.virginia.gov](mailto:garrett.jones@dss.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

**Detail of Changes**

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
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	130	n/a	<p>Adds new section implementing a foster parent bill of rights, as required by § 63.2-902 of the Virginia Code. Establishes a clear and concise statewide dispute resolution process that a foster parent may use to contest an alleged violation to the regulation.</p> <p>Provides additional oversight regarding rights of foster and adoptive parents which is specific to collaboration, communication, access, and transparency between the local boards, LCPAs, and the foster parents. The regulation reinforces the provider's role as a member of the child welfare team and the expectation that the LDSS disclose to them information related to the child which is essential in protecting the health safety and welfare of children.</p>