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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-201
VAC Chapter title(s)	Permanency Services-Prevention, Foster Care, Adoption and Independent Living
Date this document prepared	April 19, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

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

Code—Code of Virginia
Board—State Board of Social Services
LDSS—local department(s) of social services

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 or 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.

Section 63.2-217 of the Code of Virginia (Code) provides the authority for the State Board of Social Services (Board) to adopt regulations necessary to carry out the purpose of Chapter 9 (Foster Care) and Chapter 12 (Adoption) of Title 63.2.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

There are no other viable alternatives for achieving the purpose of this regulation as it is the least burdensome for providing the necessary guidance to the LDSS on the administration of foster care and adoption services. As a result of the periodic review, it was determined that technical amendments will be made to the regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

One comment was received during the public comment period, which ended on January 9, 2023. No advisory group was formed to assist in the review.

Committer	Comment	Agency response
Eric Reynolds, Office of the Children’s Ombudsman	<p>OCO Recommendations for Amendments</p> <p>1. 22VAC40-201-70, subsection A.2. should be amended to be consistent with language in Va. Code 63.2-906(B)(2): "Transfer custody of the child to relative other than his prior family <i>or to fictive kin for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance program pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance program pursuant to § 63.2-1306;</i>"</p> <p>2. 22VAC40-201-40, subsection A: Can it be clarified that adoptive parents of siblings of the child in foster care be considered as relatives requiring notice of the child's entry into foster care?</p> <p>3. 22VAC40-201-10: The definition of "foster home" may be too</p>	The agency will review each of these comments and consider the recommendations in a future regulatory action.

	<p>inclusive and may include situations where a child is residing with a relative under an informal arrangement or other arrangements that would not be considered "foster care" as that term is defined in this same section.</p> <p>4. 22VAC40-201-40: The regulation should be amended to address the procedures required when an allegation of abuse or neglect is submitted against the child's foster care placement. Guidance provides some procedures but not all local agencies follow them consistently.</p> <p>5. 22VAC40-201-50: The regulation should be amended to provide procedures local agencies must follow regarding any social security benefits to which the child is entitled, with such procedures being in compliance with federal law.</p> <p>6. 22VAC40-201-50: Subsection E should be amended to include in the notice to the child's school information regarding the parent's contact with the child and participation in school events or activities, including whether such contact and participation is prohibited or limited by court order or otherwise.</p> <p>7. 22VAC40-201-80: Subsection C should be amended to require the visitation plan to include specific visitation arrangements describing the frequency, duration, and location of visits and any expected progression of the frequency, duration, or location of visits. The visitation plan should also include a provision addressing visits with siblings and relatives.</p> <p>8. 22VAC40-201-90: Subsection E should be amended to specify that the monthly face-to-face contact with the child be made by the</p>	
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	<p>assigned Family Services Specialist or with an approved service worker if the assigned FSS is unavailable.</p> <p>9. 22VAC40-201-110: Subsection K.3. should include language consistent with Va. Code 63.2-910.2(A)(2).</p>	
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation governs the administration of foster care and adoption services. This authority is essential in order to protect the safety and welfare of children, their families, foster parents, and adoptive parents. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The regulation should be amended. The need for technical amendments was identified during the review, and in addition, the public comments will be considered.

Small Business Impact

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.

This regulation is necessary because it governs the administration of foster care and adoption services. There were no complaints and only one comment received from the public concerning this regulation. The one comment dealt solely with technical amendments and did not have any economic impact on small businesses. This regulation does not conflict with federal or state law or regulations and there are no requirements that exceed applicable federal requirements. This regulation was last amended in 2022. There are no impacts on small businesses, as it does not include any language that prescribes limitations or requirements on small businesses.