



townhall.virginia.gov

Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-211
VAC Chapter title(s)	Foster and Adoptive Home Standards
Action title	Amend Foster and Adoptive Home Approval Standards
Date this document prepared	December 11, 2019

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 the subject matter, intent, and goals 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 or changes. If applicable, generally describe the existing regulation.

Chapter 336 of the 2019 Acts of Assembly (HB2108) requires 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 regulation requires local boards and LCPA 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, his family, and services provided to the foster home on an ongoing basis. Local boards and LCPA are required to notify foster parents of court hearings; scheduled meetings; decisions made by the court, local board, or licensed child-placing agency concerning the child's foster care service; changes to the child's case plan or termination of child's placement in a timely manner. The regulation also requires the timely response to requests for information regarding the child's progress after leaving foster care, if it is in the child's best

interest. The regulation 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 includes an appeal process for the foster parent.

The agency intends to promulgate a permanent replacement regulation.

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.

DSS – Department of Social Services
LCPA – Licensed child placing agencies

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor's Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change

The second enactment clause of Chapter 336 of the 2019 Acts of Assembly requires DSS to promulgate regulations to be effective within 280 days of its enactment.

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 and 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 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

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The amendments to this regulation 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 regulation 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.

New provisions include: requires local boards and LCPA provide foster parents with all reasonably ascertainable background, medical, and psychological records of the child prior to placement; local boards and LCPA are required to notify foster parents of court hearings; scheduled meetings; decisions made by the court, local board, or licensed child-placing agency concerning the child's foster care service; changes to the child's case plan or termination of child's placement in a timely manner; requires the timely response to requests for information regarding the child's progress after leaving foster care, if it is in the child's best interest; and sets forth a dispute resolution process through which a foster parent may contest an alleged violation by the local board or LCPA.

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.

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 address Code changes.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this Emergency/NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

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 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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

INSERT:

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. 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 emergency 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
	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, licensed child placing agencies, 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> <p>This regulation will impact local department of social services and LCPA agencies, as it will require staff to respond to written complaints of alleged violations and adhere to specific timeframes which will create additional demands on their schedules.</p>