



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	40
VAC Chapter Number:	22 VAC 40-220-10 et. seq.
Regulation Title:	Agency Placement Adoptions-Guiding Principles
Action Title:	Revision from Periodic Review
Date:	12/21/2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation sets forth guiding principles for local departments of social services in providing agency placement adoption services.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Sections 63.1-25 and 63.1-56 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 permanent planning for children in the custody of or placed by local boards of social services. Rulemaking under these two sections is discretionary rather than mandatory.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

General notice for periodic review of this regulation was published in the July 2, 2001 Virginia Register for a 20-day comment period. No comments were offered.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goal of this regulation was to establish principles that guide best practices relative to agency placement adoption. The principles were based on best practice standards, as well as laws in affect at that time. The regulation is clearly written and easily understandable by the individuals and entities affected.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

This regulation provides basic principles upon which adoption services delivery should be based. No requests for alternatives or changes were offered as a result of the public comment period.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The agency recommends the regulation be repealed because it conflicts with federal law. The regulation was enacted in 1989 based on best practices, and state and federal laws in place at that time. Since then, changes to state and federal law have impacted some of the guiding principles.

Guiding Principle 5 provides that the preferred adoptive family for a child is one of the same race, ethnic or cultural background whenever possible. This conflicts with the federal Multi-Ethnic Placement Act (MEPA) of 1994 and as later amended in 1997. MEPA prohibits states and any other entity within the state that receives federal funds and is involved in adoption or foster care placements from categorically denying to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the adoptive or foster parent, or of the child involved. MEPA also prohibits delaying or denying the placement of a child for adoption or into foster, on the basis of race, color, or national origin of the adoptive foster parent or the child involved. States violating this law are subject to fiscal penalties through reduction in Title IV-E payments.

Also in 1997, the federal Adoption and Safe Families Act (ASFA) was enacted, and drastically changed the way states administer both adoption and foster care programs. ASFA mandated that states place highest priority on the permanency, safety, and well being of children. It required states to terminate parental rights for children sooner and focused on moving children into permanent placements earlier.

Guiding Principle 12 addresses the rights of adult adoptees to full disclosure of information from their records except that which would reveal the identify of their family of origin. This is now mandated by the Code of Virginia, making the regulation unnecessary.

The remaining guiding principles in the regulation represent recommended best practice standards, and not statutory requirements. All applicable federal and state laws, and best service delivery practices will be maintained in agency placement adoption policy and procedures, Volume VII, Section VII, Section III, Chapter C.

Substance

Please detail any changes that would be implemented.

The regulation would be repealed, and all applicable federal and state laws, and best service delivery practices will be maintained in agency placement adoption policy and procedures, Volume VII, Section VII, Section III, Chapter C.

Family Impact Statement

Please provide a preliminary 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.

Repeal of this regulation will have no impact on families. Current federal and state mandates, including ASFA and MEPA, will be incorporated in agency placement adoption policy. The best practices reflected in the regulation will also be maintained in policy. Children and families will continue to receive adoption services that are based on uniform guiding principles and in compliance with state and federal mandates.