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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-201
Regulation title(s)	Permanency Services-Prevention, Foster Care, Adoption, and Independent Living
Action title	Amend Permanency Regulation as a Result of 2017 Legislation
Date this document prepared	April 18, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Permanency regulation, 22VAC40-201, provides standards for local departments of social services (LDSS) for prevention, foster care, adoption, and independent living services. This regulatory action makes changes consistent with the Code of Virginia, including amending the name of the Putative Father Registry to Virginia Birth Father Registry and requiring additional information be added to the registry so that putative fathers can be notified prior to court proceedings for termination of parental rights and adoptions regarding a child that he may have fathered (Chapter 200 of the 2017 Acts of Assembly). Additionally, recent changes to the Code of Virginia require that youth who turn 18 years old while in foster care shall be enrolled in Medicaid provided they do not object and are eligible. They shall also be given the opportunity to participate in a survey to provide feedback regarding the youth's experience while in foster care (Chapter 187 of the 2017 Acts of Assembly). The intent of this action is to make the

regulation consistent with the Code of Virginia, and to make any other changes the agency deems necessary after comments and review.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

LDSS-local departments of social services
VDSS-Virginia Department of Social Services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

The state's legal basis for this action is § 63.2-217 of the Code of Virginia that requires the State Board of Social Services to adopt such regulations as may be necessary to carry out the purpose of Title 63.2. This regulatory action is to comply with the 2017 Acts of Assembly Chapter 200 (HB 2216) that amends the name of the Putative Father Registry to the Virginia Birth Father Registry throughout the Code of Virginia. Additionally, the 2017 Acts of Assembly Chapter 203 (SB 1461) and the 2017 Acts of Assembly Chapter 187 (HB 1451) require youth who turn 18 years old in foster care to be enrolled in Medicaid and be provided the opportunity to participate in a survey to provide feedback regarding their experience in foster care. This regulatory action will provide comprehensive and accurate direction regarding these required activities.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The proposed action updates regulation to correspond with the name change to the Virginia Birth Father Registry throughout Title 63.2 of the Code of Virginia and to include the process of registration for the putative father. This regulatory action is integral to Virginia's compliance with current state laws. Changing the name to the Virginia Birth Father Registry will eliminate confusion and better represent the purpose of the registry. The Virginia Birth Father Registry protects the rights of a putative father by providing notification of court proceedings for termination of parental rights and adoption regarding a child that he may have fathered, and potentially giving him an opportunity to be in his child's life.

Health insurance is integral in providing for the health, safety and welfare of youth aging out of foster care. The proposed revision to the regulation will ensure compliance with state law and direct the LDSS to enroll these youth in Medicaid upon turning 18 years old. Additionally, the feedback from the survey will be used to strengthen and improve the state's foster care program.

Substance

Please 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.

This regulatory action will incorporate technical corrections, language, and processes necessary to ensure consistency with the Code of Virginia and requirements that have been passed into law since the introduction of the current Permanency Services regulation. The amendments to sections 10, 100, and 190 include: changing the name from the Putative Father Registry to the Virginia Birth Father Registry; adding the requirement that youth turning 18 years old in foster care shall be enrolled in Medicaid provided they are eligible and do not object; and, adding the requirement that youth turning 18 years old in foster care be given the opportunity to participate in a survey to provide feedback on their experience in foster care.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

This regulatory action poses no disadvantages to the public or the Commonwealth as the amendments to the Permanency regulation provide for the safety of children who turn 18 years old while in foster care by ensuring that these youth are enrolled in Medicaid and providing an opportunity for these youth to give feedback about their experience in foster care through a survey. Additionally, the proposed regulatory action protects the rights of birth fathers by clarifying the registration timeline for the Virginia Birth Father Registry.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

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

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This regulation impacts LDSS. LDSS are located statewide and no individual locality will be particularly affected.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Virginia Department of Social Services (VDSS) is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Traci B. Jones, Adoption Program Manager, 801 East Main Street, Richmond, Virginia 23219, FAX: 804-726-7895, Phone: 804-726-7537, email: traci.jones@dss.virginia.gov, or to Em Parente, Foster Care Program Manager at the same address and FAX or Phone: 804-726-7538.

Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 this stage of this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<p>Projected cost to the state to implement and enforce the proposed regulation, including: a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p>	<p>There is no additional cost to the state to implement the name change to the Virginia Birth Father Registry or to ensure that all foster care youth that turn 18 years old while in foster care be enrolled in Medicaid. There will be an on-going projected cost for a dedicated part-time employee to analyze the data that is collected from the survey administered to foster care youth.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There will be no additional cost to localities to implement the name change to the Virginia Birth Father Registry, to ensure that all foster care youth that turn 18 years old while in foster care be enrolled in Medicaid, or to administer a survey to foster care youth. Foster care youth already receive Medicaid after they turn 18. VDSS believes that the cost of the part-time employee needed to collect and analyze data from the</p>

	survey will be absorbed by VDSS within its current appropriation.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	This regulation will impact LDSS and children and youth in the custody of these departments.
Agency’s best estimate of the number of such entities that will be affected. Please 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.	120 local departments may be affected. No small businesses will be directly impacted.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	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.
Beneficial impact the regulation is designed to produce.	The proposed change will bring the regulation into compliance with existing state laws.

Alternatives

Please describe any viable 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. 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 regulation.

This regulatory action reflects changes to the Code of Virginia related to the name change of the Virginia Birth Father Registry and modifying the timeframe for a birth father to register. The action ensures youth that turn 18 years old while in foster care will have Medicaid coverage and gives youth a way to provide feedback on their experience in foster care. There are no viable alternatives to making changes to this regulation, as these changes are in response to changes in the Code of Virginia. This action does not impact small businesses.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

There are no other regulatory methods that would accomplish the objectives of this regulatory action. The regulation is applicable to LDSS in their activities involving youth in foster care and adoptions and does not have an adverse impact on small businesses.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

There were no comments received during the public comment period.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.

This regulatory action changes the name of the Putative Father Registry to the Virginia Birth Father Registry and the timeframe for registration. These changes will provide clarification for the purpose of the registry and aid in giving a father the opportunity to be in his child's life. Additionally, the regulatory action provides Medicaid coverage to youth in foster care after they turn 18 years old, which promotes economic self-sufficiency. The regulatory action does not directly impact family income, care for elderly parents, or marital commitment.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		The Putative Father Registry is defined.	The registry name is changed to the Virginia Birth Father Registry, to be

			consistent with the Code of Virginia.
100		<p>There is no current requirement that youth in foster care receive Medicaid after they turn 18 years of age.</p> <p>There is not a requirement that youth are surveyed about their foster care experience.</p>	<p>LDSS are required to ensure that foster care youth continue to receive Medicaid after they turn 18 years of age, unless they object or are otherwise ineligible, to be consistent with the Code of Virginia.</p> <p>LDSS are required to provide opportunity for foster care youth to provide feedback about their foster care experience through a survey, consistent with the Code of Virginia.</p>
190		<p>Sets out the circumstances in which a search of the Virginia Putative Father Registry is conducted; who shall request a search; and establishes that the certificate of search and finding is to be filed before adoption or termination of parental rights</p>	<p>The registry name is changed to the Virginia Birth Father Registry, to be consistent with the Code of Virginia.</p> <p>The purpose of the registry is described to ensure the target population registers.</p> <p>A timely registration is defined, to be consistent with the Code of Virginia.</p>