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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC 40-211
Regulation title(s)	Foster and Adoptive Home Approval Standards
Action title	Amend Foster and Adoptive Home Approval Regulation 2017
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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This regulation addresses standards for foster and adoptive homes approved by local departments of social services (LDSS). Changes in the proposed regulatory action include clarifying that background checks conducted for youth over 18 years old in the Fostering Futures program be used for the sole purpose of determining whether other children should be placed or remain in the same foster home as the Fostering Futures program participant (Chapter 194 of the 2017 Acts of Assembly). The background checks are not to be used as a basis for terminating or suspending the approval of the foster home.

Additionally, this regulatory action addresses standards for foster and adoptive homes approval by requiring local agencies to use the Mutual Family Assessment (MFA) home study template and authorizes Virginia Department of Social Services (VDSS) to amend the MFA template and any necessary addenda (Chapter 193 of the 2017 Acts of Assembly).

Lastly, this regulatory action updates training requirements for prospective foster and adoptive providers by requiring the Normalcy for Youth in Foster Care training as part of the pre-service training. Training requirements for current providers have been updated to require that they complete Normalcy for Youth in Foster Care training (Chapter 631 of the 2016 Acts of Assembly).

Additional amendments may be deemed necessary based on public comment received.

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
CRAFFT-Consortium for Resource, Adoptive and Foster Family Training
LCPA-Licensed Child Placing Agency
MFA-Mutual Family Assessment

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 legal authority for this regulatory action can be found in §§ 63.2-217 and 63.2-901.1 of the Code of Virginia. These sections provide general authority to the State Board of Social Services for developing regulations for foster and adoptive home approval standards.

Additionally, this regulatory action is necessary to comply with the 2017 Acts of Assembly, Chapter 194 (HB 1942) that requires children over 18 years old in foster care to have background checks for the purpose of determining the placement of other children in the same home, the 2017 Acts of Assembly, Chapter 193 (HB 1795) that requires the use of the MFA home study template when approving foster and adoptive homes, and the 2016 Acts of Assembly, Chapter 631 (HB 600) that requires the Board to adopt regulations that promote normalcy for children in foster care.

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 regulatory action clarifies that the results of background checks conducted on Fostering Future participants will be used for the sole purpose of determining current and future placements in the foster home, which is essential in protecting the health, safety, and welfare of all children.

The regulatory action also requires LDSS to use the MFA home study template when approving foster and adoptive homes. By requiring one uniform template, the agency will attain consistency among the numerous localities and ensure that all foster and adoptive homes are held to the same high standard; thereby, protecting the health, safety, and welfare of children in these homes.

Requiring foster and adoptive parents to complete the Normalcy for Youth in Foster Care training is essential to ensure that children placed in foster care will be provided the most normal life experience as possible.

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.

Substantive proposed changes to the regulation include: adding a new sub-section clarifying that results of background checks conducted for youth over 18 years old in the Fostering Futures program be used for the sole purpose of determining current and future placements of children in that particular foster home; amending standards for foster and adoptive home approval by requiring the application of the MFA template when approving provider homes; and requiring Normalcy for Youth in Foster Care training for all prospective and current providers.

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.

The regulatory action poses no disadvantages to the public or the Commonwealth. This regulatory action proposes amendments, which provide for the safety of children and foster families by requiring youth participating in the Fostering Futures program to submit to background checks for the sole purpose of deciding current and future placements in the foster home. Additionally, this regulatory action promotes consistency amongst different localities when approving foster and adoptive homes by the use of a standard home study template. Normalcy training requirements will improve the skills and knowledge of approved providers and will ensure that youth in foster care have the same opportunities as children who are not in foster care.

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 are more restrictive than 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 regulatory action will not affect any particular locality in a disproportionate manner, as compared to other localities.

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, VDSS is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory action. Also, VDSS is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and, the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Forum feature of the Virginia Regulatory Town Hall website at <http://www.townhall.virginia.gov>, or by mail, email, or fax to Keisha Williams, Prevention and Resource Family Program Manager, Virginia Department of Social Services, Division of Family Services, 801 E. Main Street, Richmond, Virginia, 23219, phone: 804-726-7550, fax: 804-819-7173, email: K.Williams@dss.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 p.m. 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.

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 and enforce this regulation. The development of additional regulatory and policy guidance documents and the monitoring of adherence to the regulations is a current responsibility of VDSS staff.</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 for the proposed changes related to conducting background checks for Fostering Futures participants because the LDSS are already paying for this service.</p> <p>Proposed changes that require LDSS to use the MFA home study template will not result in any additional cost to the localities. The required template is posted on the VDSS website.</p> <p>There will be no additional cost to the localities for the change to the regulation requiring that prospective foster and adoptive parents attend Normalcy for Youth training prior to approval. This training is offered online and is already posted on the VDSS public website; thereby, making it easily accessible to all prospective applicants.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>This regulation will impact LDSS and those individuals seeking to be approved as foster and adoptive parents.</p>
<p>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.</p>	<p>This will impact 120 local departments. No small businesses will be directly impacted.</p>
<p>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.</p>	<p>There will be no additional cost to businesses as a result of this regulation. Nor are there any costs related to the development of real estate.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed changes will bring the regulation into compliance with existing state and federal laws and clarifies procedures and requirements.</p>

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.

No alternatives were considered, as some of the actions in this proposal are necessary to ensure compliance with Code changes that took effect July 1, 2016 and July 1, 2017. Other proposed changes require regulatory authority to enact. There are no viable alternatives to making changes to this regulation in response to changes in the Code. This action has no impact on 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 alternative regulatory methods that would accomplish the objectives of this regulatory action. The regulation does not have an 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 will not affect the authority and rights of parents in the education, nurturing, and supervision of their children. It will not discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children or elderly parents. This action will not erode the marital commitment. There is no relationship between this action and disposable family

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10			Adds the definition of “Normalcy.”
40			Adds requirement for the usage of the approved MFA template when approving homes.
60			Adds the requirement that foster and adoptive providers must complete Normalcy for Youth in Foster Care training.
80			Adds new sub-section clarifying that background checks for Fostering Futures participants are to be used for the sole purpose of determining new and current placements in the home.
	120		Adds new section requiring normalcy for children placed in foster care. Normalcy is a requirement of the Preventing Sex Trafficking and Strengthening Families Act of 2014, which allows foster parents to make day-to-day decisions about a child’s participation in age-appropriate extracurricular, enrichment and social activities.