



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Karin Clark
Virginia Department of Social Services

FROM: Susan P. D. Whyte *SPDW*
Assistant Attorney General

DATE: November 26, 2019

SUBJECT: Foster Parent Bill of Rights and Dispute Resolution Process; 22VAC40-211

I am in receipt of the attached regulation, which you have asked the Office of the Attorney General to review to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the specified regulation and whether the specified regulation comports with applicable state law.

Pursuant to Va. Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Code of Virginia. Consequently, it is my opinion that the State Board has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act and Executive Order 14 (2018) (amended) and the State Board has not exceeded that authority.

The authority for this emergency action is based on Virginia Code § 2.2-4011(B) because these regulations are necessary to implement the legislative mandate in Chapter 336 of the 2019 Acts of Assembly.

If you have any questions, please feel free to call me at 786-3450.

Attachment

DEPARTMENT OF SOCIAL SERVICES

Amend Foster and Adoptive Home Approval Regulation 2019

22VAC40-211-130. Foster Parent Bill of Rights and Dispute Resolution Process.

A. In accordance with § 63.2-902 of the Code of Virginia relating to foster care agreements and the rights of foster parents regarding resolution of disputes, each local department of social services shall implement and ensure that all foster parents receive a copy of the Foster Parent Bill of Rights and a signed copy of receipt is placed in the foster parent's file.

Foster parents shall abide by all responsibilities as set forth in state and federal law, including, but not limited to all responsibilities set forth in 22 VAC 40-211.

In addition to any claim for benefits pursuant to 42 USC § 671 et seq., and pursuant to § 63.2-905 of the Code of Virginia, all foster parents have the following rights regarding collaboration, communication, access and transparency:

1. To be regarded as the primary caretaker of a child placed in foster care and to be treated with dignity, respect, trust, value and consideration; including the local department giving due consideration to the foster parent's family values, traditions and beliefs;
2. To receive copies of all documents related to the foster parent, his or her family, and ongoing services provided to the foster home;
3. To be considered part of the foster care team and to be able to contribute input regarding the child's permanency plan and receive copies of the plan;

4. To be provided all reasonably ascertainable background, medical, and psychological records of the child prior to placement, or at the initial placement or at any time during the placement of a child in foster care;
5. To be provided all information relevant to the child's foster care services as allowed by federal and state law;
6. To be notified of court hearings and scheduled meetings;
7. To be informed of decisions made by the court, local board, or licensed child-placing agency concerning the child's foster care services;
8. To be able to communicate, to the extent permitted under federal and state law, with professionals who work directly with the child in foster care, including therapists, physicians, and teachers;
9. To be informed in a timely manner of changes to the child's case plan or the termination of the child's placement;
10. To be afforded the same rights as outlined in the Foster Care Placement Agreement and the Code of Ethics and Mutual Responsibilities;
11. To be provided with reimbursements for costs associated with foster care services in a timely manner;
12. To be provided with a method to contact the local board or licensed child-placing agency for assistance 24 hours a day and seven days a week; and
13. To receive a timely response from the local department regarding whether or not information may be provided to requests for information regarding the child's progress after leaving foster care.

B. Foster parents have a right to file a complaint regarding alleged violations of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents. When filing such a complaint, foster parents must follow the following steps:

1. The foster parent shall contact the service worker assigned to the foster home within ten business days and provide a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child placing agencies, and the foster parents, and attempt to resolve the dispute.

2. The service worker shall respond within five business days and explain any corrective action to be taken in response to the foster parent's complaint.

3. If the foster parent and service worker are unable to resolve the complaint informally, the foster parent may file a written complaint through the dispute resolution process with the local board's foster care supervisor or assigned designee.

a. The written complaint shall include a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents, and a copy of the service worker's response.

b. The written complaint shall be sent to the supervisor and must be received by the supervisor within 10 business days of the foster parent receiving the service worker's response.

4. The foster care supervisor or assigned designee shall respond to the complaint in writing within five business days setting forth all findings regarding the alleged violation and any corrective action taken.

5. If the foster parent disagrees with the findings or corrective actions proposed by the foster care supervisor or assigned designee, the foster parent may appeal the decision to the local director by filing a written notice of appeal.

a. The notice of appeal shall include a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents, and a copy of the foster care supervisor or assigned designee's findings or recommendations.

b. The notice of appeal shall be sent to the local director and must be received by the local director within ten business days of the foster parent receiving the supervisor's response.

6. The local director shall hold a meeting between all parties within seven business days to gather any information necessary to determine the validity of the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents, and the appropriateness of any recommendations for corrective action made by the family services specialist and foster care supervisor or assigned designee.

7. A summary of the meeting shall be documented in writing by the service worker after approval by the foster care supervisor or assigned designee.

8. Following such meeting and documentation the local director shall issue to all parties written findings and, when applicable, recommendations for corrective actions.

C. The dispute resolution process set forth in subsection B above, does not apply to a complaint related to the denial or failure of a local board to act upon an individual's claim for benefits. Complaints related to a claim for benefits shall still be appealable pursuant to 42 USC § 671(a)(12) and 22 VAC 40-201-115.