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FROM: SUSAN P. D. WHYTE
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DATE: August 17, 2020

SUBJECT: Exempt Final Regulation – Amend Foster and Adoptive Home Approval Standards for 2020 Legislation, 22 VAC 40-211

I am in receipt of the attached regulation to amend the Foster and Adoptive Home Approval Standards for Local Departments of Social Services regulation (22 VAC 40-211). You have asked the Office of the Attorney General to determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate this regulation and if it comports with applicable state law.

The State Board’s authority to promulgate this regulation is granted under Virginia Code § 63.2-217 and § 63.2-219. The proposed amendments to the regulation are necessary implement requirements of legislation passed during the 2020 session of the General Assembly (*See* Chapter 562 (SB 1025) of the 2020 Acts of Assembly) and to conform to the federal Family First Prevention Services Act.

It is my view that the State Board has the authority to promulgate the final regulation, and that that the amendments are exempt from the procedures of Article 2 of the Administrative Process Act, except that it is still subject to public comment. If you have any questions or need additional information about this regulation, please contact me at 804-786-3450.

Project 6387 - Final

DEPARTMENT OF SOCIAL SERVICES

Amend Foster and Adoptive Home Approval Standards for 2020 Legislation

22VAC40-211-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Adoptive parent" means any provider selected and approved by a parent or a local department for the placement of a child with the intent of adoption.

"Adult" means any person 18 years of age or over.

"Applicant" means an individual or couple applying to be approved as a foster or adoptive home provider or to provide respite services.

"Background checks" means a sworn statement or affirmation disclosing whether the individual has a criminal conviction, is the subject of any pending charges within or outside the Commonwealth of Virginia, and is the subject of a founded complaint of abuse or neglect within or outside the Commonwealth; criminal history record information; child abuse and neglect central registry check; and any other requirement as set forth in § 63.2-901.1 of the Code of Virginia.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) an adult who by law, social custom, express or implied acquiescence, collective consensus, agreement, or any other legally recognizable basis has an obligation to look after the well-being of a child left in his care; and (iii) persons responsible by virtue of their positions of conferred authority.

"Central registry" means a subset of the child abuse and neglect information system and is the name index with identifying information on an individual named as an abuser or neglector in founded child abuse or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster or adoptive homes or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board of social services that places children in foster homes or adoptive homes pursuant to § 63.2-900, 63.2-903, or 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child abuse and neglect information system" means the computer system that collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the central registry of founded complaints not on appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system.

"Commissioner" means the commissioner of the department, his designee, or authorized representative.

"Corporal punishment" means punishment administered through the intentional infliction of pain or discomfort to the body through actions such as, but not limited to, (i) striking, or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Department" means the State Department of Social Services.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board of social services where the legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board of social services or licensed child-placing agency.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"In-service training" means the ongoing instruction received by providers after they complete their preservice training.

"Interstate Compact on the Placement of Children" means a uniform law that has been enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands that establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Kinship foster parent" means ~~an a approved relative provider~~ or fictive kin provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in 42 USC § 675(10)(A) when making decisions regarding extracurricular, enrichment, and social activities.

"Parent" means the birth or adoptive parent of a child.

"Preservice training" means the instruction received by providers during the initial approval process.

"Provider" means an approved foster, adoptive, or kinship foster parent, or an individual approved to provide respite services. Individuals who wish to provide only respite services must meet all standards in this chapter unless there is a noted exception for respite providers.

"Respite care" means the provision of the service of temporary care for children on an emergency or planned basis for the purposes of providing placement stability, supporting the achievement of timely permanency, and promoting connections to relatives. Respite care services shall not exceed 14 consecutive days.

22VAC40-211-20. Approval of provider homes.

A. When applicants are approved in accordance with the standards of this chapter, they are approved as foster or adoptive providers. The approved provider shall be allowed to choose to provide only foster or adoptive care.

~~B. If the relative provider cannot meet the standards described in this chapter, the local department may, upon its discretion, request a waiver on certain standards in accordance with 22VAC40-211-90. If the waiver is not allowed, the local department shall not approve the home for the placement of children.~~

B. Providers must meet all standards of approval. Waivers may be granted in order to approve kinship foster parents as outlined in 22VAC40-211-90.

C. The standards of this chapter apply to adoptive home providers until the final order of adoption is issued for a specific child. The standards continue to apply after the final order of adoption if the provider wishes to continue as an approved foster care provider.

~~D.~~

~~Local departments may grant emergency approval of a provider.~~

- ~~1. Emergency approvals shall include:
 - ~~a. Completed background checks; and~~
 - ~~b. A home visit by the local department prior to or on the day of the placement.~~~~
- ~~2. Emergency approvals shall not exceed 60 days.~~
- ~~3. Emergency approval of a provider may be granted when the placement:
 - ~~a. Is with a relative;~~
 - ~~b. Is with an adult known to the family; or~~
 - ~~c. Will facilitate the child remaining in the community.~~~~

Ⓔ D. All local department-approved providers shall:

1. Be at least 18 years of age;
2. Agree not to use corporal punishment with the child in their care or allow others to do so and shall sign an agreement to that effect; and
3. Sign a confidentiality agreement indicating that the individual completing the mutual family assessment for the local department explained the confidential nature of the information related to the child in his care and of the requirement to maintain that confidentiality.

Ⓕ E. If the approval process results in the local department's denial of the application, the local department shall notify the applicant in writing of its decision. A copy of the letter shall be filed in the applicant's record.

22VAC40-211-70. Standards for the home of the provider.

A. The home shall have sufficient appropriate space and furnishings for each child receiving care in the home including:

1. Space to keep clothing and other personal belongings;
2. Accessible basin and toilet facilities;
3. Safe, comfortable sleeping furnishings;
4. Sleeping space on the first floor of the home for a child unable to use stairs unassisted, other than a child who can easily be carried; and
5. Space for recreational activities.

B. All rooms used by the child shall be heated in winter, dry, and well-ventilated and have appropriate access to exits in case of emergency.

C. Rooms and study space used by the child shall have adequate lighting.

D. The provider and children shall have access to a working telephone in the home.

E. Multiple children sharing a bedroom shall each have adequate space including closet and storage space. Bedrooms shall have adequate square footage for each child to have personal space.

F. Children over the age of two years shall not share a bed.

G. Children over the age of two shall not share a bedroom with an adult unless the local department approves and documents a plan to allow the child to sleep in the adult's bedroom due to documented needs, disabilities or other specified conditions. Children of any age cannot share a bed with an adult.

H. Children of the opposite sex over the age of three shall not sleep in the same room.

I. Children under age seven or children with significant and documented cognitive or physical disabilities shall not use the top bunk of bunk beds.

J. The home and grounds shall be free from litter and debris and present no hazard to the safety of the child receiving care.

1. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need and the local department requests such an inspection.

2. Possession of any weapons, including firearms, in the home shall comply with federal and state laws and local ordinances. The provider shall store any firearms and other weapons with the activated safety mechanisms, in a locked closet or cabinet. Ammunition shall be stored in a separate and locked area. The key or combination to the locked closet or cabinet shall be maintained out of the reach of all children in the home.

3. Providers shall ensure that household pets are not a health or safety hazard in accordance with state laws and local ordinances and the local department shall request verification of provider compliance.

4. Providers shall keep cleaning supplies and other toxic substances stored away from food and locked as appropriate. Medications shall be out of reach of children and locked as appropriate. Medications shall be stored separately from food, except those medicines that require refrigeration.

5. Every home shall have an operable smoke detector, the specific requirements of which shall be coordinated through the local fire marshal. If a locality does not have a local fire marshal, the state fire marshal shall be contacted.

6. Every home shall contain basic first aid supplies.

~~K. The number of children in the provider's home shall not exceed eight. Factors to consider in determining capacity include, but are not limited to:~~

- ~~1. The physical accommodations of the home;~~
- ~~2. The capabilities and skills of the provider to manage the number of children;~~
- ~~3. The needs and special requirements of the child;~~
- ~~4. Whether the child's best interest requires placement in a certain type of home;~~
- ~~5. Whether any individuals in the home, including the provider's children, require special attention or services of the provider that interfere with the provider's ability to ensure the safety of all children in the home; and~~
- ~~6. Whether the foster care provider is also a child care provider.~~

K. No more than six children in foster care may be placed in the home of a provider.

L. The number of foster children that may be cared for in a home under subparagraph (K) may exceed the numerical limitation in subparagraph (K), for any of the following reasons:

1. To allow a parenting youth in foster care to remain with the child of the parenting youth.
2. To allow siblings to remain together.
3. To allow a child with an established meaningful relationship with the family to remain with the family.
4. To allow a family with special training or skills to provide care to a child who has a severe disability.

LM. During the approval process, the provider shall develop a written emergency plan that includes, but is not limited to, fire and natural disasters. The plan shall include:

1. How the provider plans to maintain the safety and meet the needs of the child in the provider's home during a disaster;
2. How the provider shall evacuate the home, if necessary, in a disaster; and

3. How the provider shall relocate in the event of a large scale evacuation.

MN. Providers shall arrange for responsible adults to be available who can serve in the caretaker's role in case of an emergency. If the planned or long-term absence of the provider is required, the local department shall be notified of and approve any substitute arrangements the provider wishes to make.

NO. In the event of a large scale evacuation due to a disaster, if the provider cannot reach the local department, the provider shall call the State Child Abuse Hotline to notify the department of the provider's location and contact information.

22VAC40-211-90. Allowing a waiver.

A. The local department may request and the provider may receive a permanent or temporary waiver from the department on a standard if the waiver does not jeopardize the safety and proper care of the child or violate federal or state laws or local ordinances.

~~B. If a provider is granted a waiver and is in compliance with all other requirements of this chapter, the provider is considered fully approved.~~

B. To allow children to be placed with kinship foster parents, temporary waivers may be granted for pre-service training, completion of a mutual family assessment, tuberculosis assessment, screening or tests and physical examinations for a period not to exceed six months. Permanent waivers related to standards for the home of a provider as referenced in 22VAC40-211-70 may be granted to kinship foster parents.

C. If a provider is granted a waiver and is in compliance with all other requirements of this chapter, the provider is considered fully approved.

D. Any temporary waivers granted are for a period not to exceed six months. Before the end of the six month period, the kinship foster parent must have completed all requirements that had previously been waived under Section B of this chapter.

E. Any permanent waivers granted are considered on a case-by-case basis and must be reviewed on an annual basis by the department.

~~C. Any waivers granted are considered on a case-by-case basis and must be reviewed on an annual basis by the department.~~