



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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MEMORANDUM

TO: Karin Clark
Virginia Department of Social Services

FROM: Susan P. D. Whyte 
Assistant Attorney General

DATE: July 31, 2026

SUBJECT: Exempt Final Stage Review of 22VAC40-211-90
Amend Chapter 211 for 2026 Legislative Changes

You have asked the Office of the Attorney General to review the attached regulation and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the exempt regulatory amendments and if the amendments comport with applicable state law.

Pursuant to Virginia 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 Virginia Code. I have reviewed the attached regulation, and it is my opinion the State Board has the authority to promulgate this regulation subject to compliance with the provisions of Executive Order 17, and that in so doing the State Board does not exceed that authority.

This regulation is exempt from the procedures of Article 2 of the Virginia Administrative Process Act. Specifically, the changes proposed are exempt pursuant to the enactment language of Chapter 648 of the Acts of Assembly.

If you have any questions, please feel free to call me at 804.786.3450.

Project 8718 - Final

Department of Social Services

Amend Chapter 211 for 2026 Legislative Changes

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. To allow children to be placed with kinship foster parents, temporary waivers may be granted for preservice 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 subsection B of this section.

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

F. A local department may request a barrier crime waiver for prospective kinship foster parents and adult household members in accordance with § 63.2-901.2 of the Code of Virginia.

1. No child shall be placed in a home where a prospective kinship foster parent or an adult household member has a conviction for a barrier crime as defined in § 19.2-392.02 of the Code

of Virginia and the individual does not meet the exceptions in subsection E, F, G, H and I of § 63.2-901.1, unless the barrier crime waiver has been approved by the department.

2. The local department must complete the following before submitting an application to request a barrier crime waiver:

a. A safety assessment that includes the factors in subsection (c) of § 63.2-901.2 of the Code of Virginia;

b. An in-person inspection of the home; and

c. A permanency assessment on the department-issued template.