



Proposed Regulation Agency Background Document

Agency name	Department of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-705
Regulation title	Child Protective Services
Action title	Amend CPS Regulation
Document preparation date	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This proposed regulatory action will amend existing and add new child protective services (CPS) regulations to incorporate current Code of Virginia requirements and clarify existing regulations. These changes include (1) expanding the definitions of physical and medical neglect, (2) clarifying the use of state criminal history searches in CPS investigations, (3) clarifying the requirement to electronically record victim interviews and the exceptions to that requirement, (4) revising the length of time local departments have to validate a report or complaint, and (5) amending training requirements.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 63.2-217 of the Code of Virginia delegates the authority and responsibility for promulgating child welfare regulations to the State Board of Social Services. Section 63.2-1503 instructs local departments

of social services to staff CPS units and carry out the CPS program according to regulations adopted by the Board.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is essential to protect the health, safety or welfare of children at risk for child abuse or neglect by amending the CPS regulations to make them consistent with recent changes to the Code of Virginia pertaining to the CPS program.

The goal of this regulatory action is to amend existing CPS regulations and add new regulations to make the CPS regulations consistent with the Code of Virginia. These regulatory changes will clarify and strengthen the CPS program while balancing the rights of alleged abusers with protecting children and families. The proposed changes take into account the resources of local departments of social services to administer the CPS program.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed regulatory action expands the definition of physical abuse to include children who are left alone with a person required to register as a violent sex offender. It requires the local department, upon request by the subject of an unfounded complaint of abuse or neglect, to advise the subject if the complaint was made anonymously.

The proposed regulatory action expands the definition of medical neglect by specifying that a decision by the parents or other person legally responsible for a child with a life-threatening condition to refuse a particular medical treatment shall not be deemed a refusal to provide necessary care if certain conditions are met.

The proposed regulatory action changes the length of time allowed to validate a CPS report from 14 to 5 days. It also clarifies that local departments of social services may conduct either investigations or family assessments in response to complaints of child abuse or neglect. Currently, regulations authorize local departments to conduct only investigations in response to complaints of child abuse or neglect. Risk assessments will be required with both family assessment responses and investigations.

The proposed change will allow CPS workers to inform a Family Advocacy Program when a family assessment response in response to a valid CPS report has identified service needs, which may result in improved services to families and children. It clarifies that families may decline services offered as a result of either a family assessment or an investigation.

The proposed regulatory action requires reasonable diligence to locate a victim child when either of two conditions is met; the existing regulation requires reasonable diligence to locate a victim child when both conditions are met. These conditions are the existence of a founded investigation or a child protective services case opened pursuant to § 63.2-1503 (F) of the Code of Virginia.

The proposed regulatory action affects several aspects of abuse or neglect investigations. It clarifies the requirement to tape victim and abuser interviews and the methods to record interviews. It establishes authority for local departments to conduct state criminal record checks as part of the investigation process. It provides that siblings of the victim and other children in the home are to be interviewed and observed by the CPS worker during the investigation; other children in the home of the victim child can offer valuable information to the CPS worker. The proposed regulatory action removes the requirement to observe the home environment of a victim in an Out of Family report and allows local departments discretion to determine when such observation is necessary.

The proposed regulatory action deletes the requirement that the local director or designee meet with the alleged abuser prior to a founded disposition being made; it clarifies that an alleged abuser may meet at any time with local department staff during the investigation to hear and refute the evidence.

The existing regulation provides only for the training of CPS workers and requires training to be completed within one year of employment. The proposed regulatory action adds supervisors to the employees that must be trained and extends the time to complete training to two years. It also confirms that required training includes family assessment response policy and skills.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The proposed regulatory action will enable local departments to use CPS staff resources more effectively when conducting investigations and family assessments. The proposed regulatory action will enable the Department to more effectively assist local departments of social services to train local department staff by including CPS supervisors in the training plan and by increasing the length of time that CPS workers have to complete required training.

The proposed regulatory action poses no disadvantage to the Commonwealth or to the public.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<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 projected cost to the state to implement and enforce the proposed regulation.</p>
<p>Projected cost of the regulation on localities</p>	<p>The proposed regulatory action related to local departments conducting state criminal record checks as part of the CPS investigation will pose a cost to the local department. Because the proposed action is not mandatory for local</p>

	<p>departments, it is not possible to project costs to local departments. The cost per search is currently \$15.00.</p> <p>The proposed regulatory action related to training for CPS workers and supervisors may be cost neutral because it will provide additional time for local CPS workers to receive the policy and skills training and allow local departments to balance the need for training of new staff with the day-to-day operation of the local CPS program and the associated administrative costs. The family assessment training is already included in the current CPS policy and skills curriculum.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>All alleged victims of child abuse and neglect. Siblings and their caretakers and/or alleged abusers will be affected by the proposed regulatory action.</p> <p>Subjects of unfounded investigations that were anonymously reported who believe the report is malicious will be affected by the regulation.</p> <p>Other entities likely to be affected by the proposed regulatory action include local law enforcement, Child Advocacy Centers, military advocacy programs and mandated reporters of suspected abuse or neglect.</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 (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>47,130 children were reported as being neglected or abused and 40,959 caretakers were suspected of abusing or neglecting a child or children in fiscal year 2006. Potentially, all children under age 18 in Virginia could be affected by the regulation. All local law enforcement organizations in Virginia could be affected by the regulation. No small businesses are expected to be affected by the proposed regulatory action.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There is no projected cost, including administrative costs, of the proposed regulatory action on affected individuals or other entities.</p> <p>The current regulation states that if a person suspects that he is the subject of a report or complaint of child abuse and/or neglect made in bad faith or with malicious intent, he may petition the court for access to the record including the identity of the reporter. The amendment to this section states that upon request, a local department shall advise the subject of an unfounded investigation if the complaint or report was made anonymously. This change in the regulation will save the subject time and money pursuing the identity of an anonymous reporter through the court system.</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.

The Code of Virginia provides a framework for child protective services but does not provide the specific process. There is no viable alternative to amending these regulations.

An alternative to the proposed regulatory action is to amend the Code of Virginia pertaining to Child Protective Services by adding more specificity to CPS processes. This alternative is unlikely because regulations provide a level of flexibility and detail that is inappropriate for statute.

Public comment

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

One email comment was received during the public comment period following the publication of the NOIRA that recommended adding the religious accommodation to all categories of abuse and neglect as defined in § 63.2-100 of the Code of Virginia and not limiting the accommodation to medical neglect. The Code of Virginia would need to be changed to incorporate this recommendation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have a positive impact on the family and family stability by allowing local departments to use professional discretion and skill to conduct thorough investigations and assessments that result in accurate dispositions and recommendations for services to strengthen families, reduce risk for further abuse and increase safety.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22VAC40-705-10		The existing regulation includes only investigations in the definition of local department.	The proposed change clarifies that local departments conduct either investigations or family assessments in response to child abuse or neglect complaints.

		<p>The existing regulation has no definitions in pertaining to terminally ill children.</p>	<p>The proposed changes add definitions of terms in § 63.2-100 pertaining to medical neglect and terminally ill children.</p>
22VAC40-705-30		<p>The existing regulation does not include children left alone with certain sex offenders in the definition of physical neglect.</p> <p>The existing regulation does not provide an exception for terminally ill children as a type of medical neglect.</p>	<p>B. The proposed change incorporates into the definition of physical neglect a child whose parent or other person responsible for his care knowingly leaves the child alone with a person, not related by blood or marriage, who is required to register as a violent sex offender.</p> <p>C. The proposed changes incorporates the exception for terminally ill children as a type of medical neglect if certain conditions are met, as required by the Code of Virginia.</p>
22VAC40-705-40		<p>The existing regulation is silent about the newborn infant's mother and positive drug toxology results.</p> <p>The existing regulation allows investigation as the only CPS response to a valid complaint.</p> <p>The existing regulation allows 14 days to validate the complaint.</p> <p>There is no authority in the regulation to inform the subject of a CPS report who believes the report is</p>	<p>The proposed changes include:</p> <p>A. 4 Adds a positive drug toxology report on mother of newborn infant as a basis to validate a report of suspected child abuse and neglect.</p> <p>The rationale for the proposed change supports the intent of the Code of Virginia to provide a basis to suspect a newborn infant is abused or neglected.</p> <p>A.4 (1) and (3) Adds family assessment as a CPS response option when the complaint has been validated.</p> <p>These are technical amendments to incorporate Differential Response options in the CPS program.</p> <p>A.4. e. Requires the Department to validate the complaint within 5 days. This is consistent with the requirement that a local department validate all complaints within the same period of time.</p> <p>F. Requires the local department when requested by the subject of an unfounded investigation to advise the subject if the report was made anonymously. This change reflects a</p>

		malicious that the reporter is anonymous.	change of the Code of Virginia (§ 63.2-1514) which became effective July 1, 2005.
22VAC40-705-50		Requires CPS reports to the local department of social services be validated within 14 days. The existing regulation does not include the Code of Virginia reference pertaining to the definitions of abuse or neglect.	A. The proposed regulatory action will require local departments to validate a CPS report within 5 days. This change will require local departments to take action on a report based on the information received. If a report is screened out, a new report can be made when additional information has been received by the local department. B.4 The proposed change clarifies the definitions of abuse and neglect are consistent with the definitions of abuse and neglect in § 63.2-100 of the Code of Virginia.
22VAC40-705-70		The current regulation specifies audio tape recordings only.	A. The proposed change expands the types of recordings that can be made to include electronic recordings of victim and/or abuser interviews.
22VAC40-705-80		The current regulation requires all victim interviews be audio taped with certain exceptions.	The proposed changes provides for more types of electronic recording than audio recordings. B.1 The proposed change includes the siblings of a victim child and/or other children residing in the home with the victim child to be interviewed and observed by the CPS worker during the investigation. Other children in the home of the victim child can offer valuable and important information to the CPS worker conducting and investigation. It is important for the CPS worker to have access to all children in the home to complete a thorough CPS investigation. The proposed regulation clarifies the exceptions to electronic recording of victim interviews. The exceptions include the local commonwealth attorney making a determination that electronic taping of the victim interview is not appropriate in the context the criminal investigation. The proposed change adds an additional exception to electronic taping of victim interviews if the interview

		<p>The current regulation provides an opportunity for the alleged abuser or neglector to tape record the interview.</p> <p>Requires CPS worker to observe the home environment of a child victim in all CPS reports.</p> <p>There is no existing regulation.</p>	<p>occurred during a family assessment and it is detrimental to the child to reinterview the victim.</p> <p>B.2.b The proposed change allows more types of electronic recording of the abuser or neglector interview.</p> <p>B.4 Allows local departments discretion to determine when to observe the home environment of a victim in an Out of Family report.</p> <p>In most reports, this requirement does not further the collection of information to make a determination of abuse or neglect since the alleged abuser is not a household member.</p> <p>The current requirement to observe the home environment during the investigation of an in-home CPS report will not change.</p> <p>The proposed changes will not negatively impact the rights of alleged abusers, alleged victims or families.</p> <p>B.7 The proposed new regulation authorizes the local department to obtain and consider the results of a statewide criminal history record information about the alleged abuser or neglector and all adult household members in the home or a home where the child visits.</p>
<p>22VAC40-705-120</p>		<p>The existing regulation requires the local director or designee to provide an opportunity to conference with the alleged abuser before a founded disposition is made.</p>	<p>D. The proposed change clarifies that an alleged abuser may meet at anytime with local department staff during the investigation to hear and refute the evidence that supports a founded disposition.</p> <p>There are three levels of administrative appeal for the abuser or neglector, including local conference, state hearing and circuit court. It is not necessary for this requirement to be mandatory to ensure the due process of the alleged abuser.</p>
<p>22VAC40-705-140</p>		<p>The existing regulation requires a CPS worker</p>	<p>E. The proposed change allows CPS workers to inform a Family Advocacy</p>

		<p>to notify the Family Advocacy Program when there is a founded disposition in an investigation.</p>	<p>Program when a family assessment identifies service needs.</p> <p>The CPS program allows for either an investigation or family assessment. Allowing CPS workers to inform a Family Advocacy Program when there are identified service needs resulting from a family assessment may result in improved services to families and children served by these programs.</p> <p>The current requirement to notify Family Advocacy Programs when there is a founded disposition in an investigation will not change.</p>
<p>22VAC40-705-150</p>		<p>The existing regulation addresses only family assessments when families wish to decline services</p> <p>The existing regulation requires reasonable diligence to locate a victim child when two conditions are met.</p>	<p>B. The proposed change clarifies that families may decline services offered as a result of either a family assessment or an investigation.</p> <p>The intent of the CPS program is that families may decline services offered as a result of either family assessments or investigations.</p> <p>F. The proposed change requires reasonable diligence to locate a victim child when either of two conditions is met. These conditions are a founded investigation or a child protective services case has been opened pursuant to § 63.2-1503 F of the Code of Virginia.</p> <p>The current regulation requires both a founded investigation and an open CPS services case. It is important to exercise reasonable diligence to locate a victim child in both situations to ensure the child's safety and to reduce risk of future abuse or neglect.</p>
<p>22VAC40-705-180</p>		<p>The existing regulation requires skills and policy training for CPS investigations to be completed within one year of employment and includes only CPS workers.</p>	<p>B. Adds family assessment skills and policy training requirements for local CPS staff and increases the length of time to complete required training to two years.</p> <p>Family assessments are the most common response by CPS to reports of suspected child abuse and neglect.</p> <p>The skills and policy associated with this response are equally important as those associated with investigations.</p>

			<p>The proposed change adds supervisors to the training plan. Although CPS workers benefit from policy and skills training, it is equally important that the local department supervisors are also trained.</p> <p>Providing additional time for local CPS workers to receive the additional training will allow local departments to balance the need for training of new staff with the day-to-day operation of the local CPS program. The current curricula for CPS policy and skills training already include family assessments and investigations.</p>
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