



Emergency Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-705
Regulation title	Child Protective Services
Action title	Amend CPS regulation to comply with Abraham's Law
Date this document prepared	October 17, 2007

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*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an "emergency situation" as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The purpose of this action is to address situations created by Chapters 479 and 597 of the 2007 Acts of Assembly that pertain to the needs of terminally ill children by clarifying the definition of medical neglect. In order to protect the health, safety and welfare of terminally ill children, it is necessary to act immediately pursuant to § 2.2-4011 A of the *Code of Virginia* and make substantive changes to 22VAC40-705.

The action clarifies 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 all of the following circumstances are met:

1. The decision is made jointly by the parents or other person legally responsible for the child and the child;
2. The child is 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment;
3. The parents or other person legally responsible for the child and the child have considered alternative treatment options; and
4. The parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest.

Legal basis

Other than the emergency authority described above, 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) the promulgating entity, i.e., 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. The purpose of this proposed emergency regulatory action is to incorporate changes into the regulation that are required to clarify § 63.2-100 and implement the statutory changes found in Chapters 479 and 597 of the 2007 Acts of Assembly.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of Virginians.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22VAC705-10		There are no definitions in current regulation pertaining to terminally ill children	Add definitions of terms in § 63.2-100 pertaining to medical neglect and terminally ill children.
22VAC705-30		There is no exception for terminally ill children.	Add exception for terminally ill children in types of medical neglect.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been considered to meet the essential purpose of the action.

One alternative to the proposed emergency regulatory action is to continue with the status quo and not develop or clarify regulations. The Code of Virginia provides a framework for child protective services but does not provide the specific process.

Another alternative to the proposed emergency 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.

Family impact

Please assess the impact of the emergency 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.

The proposed emergency regulatory action may expand the rights of parents in nurturing their children.