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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22 VAC40-201
Regulation title(s)	Permanency Services- Prevention, Foster Care, Adoption and Independent Living
Action title	Fair Hearings for Foster Care
Date this document prepared	February 17, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action amends 22VAC40-201-10 and adds section 22VAC40-201-115. The regulation was initially amended as an emergency regulatory action and became effective 6/25/14. The emergency regulation expires June 24, 2016, necessitated by passage of House Bill 2045 (2013). The replacement regulation creates an appeal process related to the provision of foster care services. Key provisions of the regulation are: who has a right to appeal; who shall be notified of the right to an appeal and what is included in the notice; the ability of the Commissioner to delegate the duty and authority to duly qualified officers; information about the decision; and the appellant's right to judicial review.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

DSS – Virginia Department of Social Services

Statement of final agency action

Please provide a statement of the final action taken by the agency including:1) the date the action was taken;2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Social Services approved the final action on 22 VAC40-201, Permanency Services – Prevention, Foster Care, Adoption and Independent Living on February 17, 2016.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Federal authority is 45 CFR 1355.30 (k), 205.10 and 1392.11. State authority is §§ 63.2-217 and 63.2-915 of the Code of Virginia. This regulation will replace an emergency regulation that became effective on 6/25/14.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action establishes a hearing process for individuals who may receive a payment or service that is intended to benefit a child in foster care. This action provides that those individuals may appeal to the Commissioner when they believe a benefit has been denied or unreasonably delayed. Appropriate and timely benefits help to protect the health and welfare of children in foster care.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

Substantive provisions of the regulatory action include: identifying who has a right to appeal to the Commissioner of Social Services; what decisions or benefits may not be appealed; who shall be notified of the right to an appeal and what is included in the notice; the ability of the Commissioner to delegate the duty and authority to duly qualified officers; information about the decision; and, the appellant's right to judicial review.

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 there are no disadvantages to the public or the Commonwealth, please indicate.

The advantage of this regulation is that it provides a process for individuals to appeal to the Commissioner when they believe a benefit related to a foster care case, has been denied or unreasonably delayed. This action poses no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This regulation impacts all 120 local departments of social services.

Family impact

Please assess the impact of this 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.

While this regulatory action does not impact the rights and authority of parents, marital commitment, or family income, it does have the potential for indirect impact on the family. Creation of an appeals process could impact birth parents or caretakers in situations where there is a goal of reunification with those parents or caretakers. Those individuals would be able to appeal if they were denied or delayed in receiving a service or benefit that could help them accomplish some of what is needed in order to have their child returned home.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
115	Provided that decisions made by family assessment and planning teams or other multi-disciplinary teams could be appealed to the Commissioner.	References to the family assessment team and other multi-disciplinary teams was stricken in section 115 E and F.	Only the actions of the local departments of social services to deny, delay or change the benefits for the child contained in a plan are appealable to the Commissioner. Decisions made by the family assessment teams or other multi-disciplinary teams in the development of the plans must be appealed through the processes provided by those entities.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No comments were received on the proposed regulation.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

			<p>The individual appealing has the right to a representative, to bring witnesses, examine information on which the local department relied in making its decision and to question or refute witnesses.</p> <p>Decisions by the hearing officer shall be based exclusively on the evidence and materials introduced at the hearing.</p> <p>The individual appealing shall be notified of the decision in writing.</p> <p>When the hearing decision is in favor of the individual, the local department shall promptly begin the process to provide the service or make corrective payments.</p> <p>The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review.</p>
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