



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Virginia Department of Social Services
VAC Chapter Number:	22 VAC 40-260
Regulation Title:	Agency Placement Adoptions - Subsidy
Action Title:	Amend Result of Periodic Review
Date:	April 17, 2002

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIR A) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation addresses adoption subsidy, which is a money payment or service provided to adoptive parents on behalf of a child with special needs. The regulation provides criteria by which a child is defined as a special needs child prior to and after adoption finalization, and describes the types of subsidy agreements and payments, application requirements, and conditions for terminating adoption assistance agreements.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The state source of legal authority for the regulation is the Code of Virginia, §§ 63.1-25 and 63.1-238.5. The State Board of Social Services is authorized to make rules and regulations necessary to carry out Title 63.1 of the Code of Virginia, Welfare.

The federal source of legal authority for the regulation is Title IV-E of the Social Security Act, which provides federal financial participation in the adoption assistance program. The regulation does not exceed the minimum requirements of the federal mandate.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

No comments were received as a result of the Notice of Periodic Review published in the Virginia Register. An informal advisory group of Department of Social Services' Adoption staff, regional Adoption Consultants and local agencies was formed to assist in the development of the revisions.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goal of this regulation is to establish guidelines for the uniform administration of the adoption subsidy program, which is mandated by federal and state laws. Adoption subsidy facilitates the adoption of children who are considered difficult to place because they have special needs. Without subsidy, these children are likely to remain in long-term foster care. Virginia's adoption program is state supervised and locally administered by 121 local departments of social services (local departments). This regulation is essential because it provides a structure for uniformity in the application of subsidy among local departments. It is essential to the health, safety and welfare of special needs children waiting for adoptive families. It is also crucial in meeting compliance with the Adoption and Safe Families Act, which requires the state to provide health care coverage for children with special needs. This regulation is clearly written and easily understandable.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

This regulation sets forth necessary guidelines for uniform administration of the adoption subsidy. The option of not having a subsidy regulation is not feasible, as uniformity of services across the state is critical.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The agency is recommending that the regulation be amended. Amendments are needed in order to revise the special needs eligibility criteria, delete obsolete provisions, and improve overall clarity.

The agency also recommends that the regulation 22 VAC 40-270, Agency Placement Adoptions – Appeals, be repealed. An appeal provision will be added to this regulation, thereby eliminating the need for a separate appeal regulation. The intent of 22VAC-40-270-10 et. seq., providing for adoptive parents and applicants appeal rights, will still be assured through this regulation.

Substance

Please detail any changes that would be implemented.

The agency recommends the following changes to the regulation:

22 VAC 40-260-10

Clarifies that adoption assistance agreements are for federal subsidy, state subsidy or conditional subsidy. Deletes reference to local subsidy, which is no longer used in Virginia.

Clarifies that there are three conditions that must be met in order for a child to be a “child with special needs” by:

- Deleting the reference to “legally free for adoption,” and replacing with the requirement that the child must be unlikely to return home because of terminated parental rights. This amendment makes clear that termination of parental rights is one of three main factors in defining a child with special needs. It makes state requirements consistent with federal Title IV-E requirements regarding the definition of special needs.

- Deleting language in the second factor requiring that determination be made that the child cannot be placed within a reasonable time due to certain factors. Replaces with the

more simplified requirement that the child have individual characteristics making him/her hard to place, omitting the subjective language “within a reasonable period of time.”

-Adding a third factor in defining special needs, requiring that reasonable efforts be made to first place without subsidy. This makes state requirements consistent with federal Title IV-E requirements regarding the definition of special needs.

Clarifies that, for special conditions not diagnosed until after the final order of adoption, the diagnosis cannot be more than 12 months old.

22 VAC 40-260-20

Reformatting to better delineate between eligibility before legal adoption and after legal adoption. New sections (A and B) are dedicated to eligibility before and after legal adoption, respectively. Reformatting also better presents the adoption subsidy program in the order in which it is administered; beginning with basic eligibility criteria, special needs criteria, determining the type payment, through termination of the adoption assistance agreement.

A, 1: Clarifies basic eligibility criteria, addressing age and custody. Adds additional clarification that the child must have been placed by a local board or licensed agency. The exception is when the child has resided for 18 months with foster parents who file an adoption petition under Code of Virginia, Section 16.1-219.36.

A, 2: Amends this section to address determination of whether a child has special needs, rather than determination of the child’s eligibility for subsidy. A child determined to have special needs is eligible for subsidy.

A, 2, b, (2): Requires that hereditary tendency, congenital problem or birth injury that could lead to future disability be verified by a medical/psychological statement. This supports adoption assistance policy requirements for documentation of special needs and pertinent diagnostic reports.

A, 2, b, (4): Amends the characteristic related to minority or mixed racial heritage by adding a minimum age of 3 years. This change reflects the population of children currently waiting for adoptive homes. Healthy African-American children under the age of 3 are no longer hard to place.

A, 2, b, (5): Amends the characteristic related to sibling group members to specify those situations where the siblings have a relationship with each other. This change recognizes that continuing sibling relationships is important.

A, 2, c: Revises reference to reasonable efforts for clarity.

A, 2, c, (2): Revises language regarding when reasonable efforts to first place the child without subsidy are considered to have been made. Replaces current language requiring local recruitment efforts and listing in the AREVA photo-listing for a minimum of 30 days with less restrictive language. This is consistent with Title IV-E requirements regarding reasonable efforts.

B, 3: Requires that the child's physical, mental or emotional condition at the time of placement, or hereditary tendency, congenital or birth injury be verified by a diagnosis that is not more than 12 months old. This is not a new requirement, but was revised for clarity. It is consistent with the definition of special needs in earlier sections.

C, 1: Deletes reference to state subsidy. State subsidy is addressed in a separate section.

C, 2: Deletes reference to state and local funds, and replaces with Comprehensive Services Act (CSA) pool funds. In 1993, state and local foster care funds were pooled with other funds into a single pool, referred to as the CSA state pool.

C, 3, a: Deletes reference to state and local funds and replaces with CSA funds.

C, 3, c: Deletes provision that reasonable efforts to first place the child without subsidy are not required if a conditional subsidy is involved. This change makes the reasonable efforts criteria for a conditional subsidy consistent with that for federal and state subsidies.

D: Adds language requiring negotiation of payments with adoptive parents, taking into consideration the needs of the child, family circumstances, and other resources available to defray the costs of adoption assistance. Clarifies that while adoptive parents' income is not to be the sole factor, negotiation with adoptive parents and exploration of other resources are required for accountability purposes. This is consistent with Title IV-E requirements.

D, 1, a: Adds a provision for not having to provide a maintenance payment when it is determined through negotiation that a payment is not needed. The added provision supports the negotiation requirement in the regulation.

D, 1, c: Deletes requirement for approval of negotiated maintenance rate by the Department. This requirement is burdensome to families and local agencies, and is no longer necessary.

D, 1, d: Adds language clarifying that increases in the amount of maintenance payments will be made under certain circumstances for children receiving the maximum allowable basic maintenance payment.

D, 1, f: Adds item f, providing for payments for specialized care provided to the child by the adoptive parent. Such services are included as special services payments in the current

regulation, rather than maintenance. This change is being made at the recommendation of the Internal Revenue Service to ensure that the specialized care payments are not counted as income.

D, 2, a: Adds language clarifying that special service payments are used in meeting the child's non-routine dental needs. The current regulation implies that all dental needs may be covered through special service payments. The revision will place responsibility for routine dental care for adopted children with their adoptive parents.

It further clarifies that special service payments must be directly related to the child's individual characteristic that makes the child hard to place, or to the physical, mental or emotional condition that existed at placement but not identified before final order. This clearly delineates special service payments (focused on the needs of the child) from maintenance payments (focused on the needs of the child and family), and gives adoptive parents and local agencies flexibility in developing adoption assistance agreements.

D, 2, b, (2): Deletes eyeglasses from the equipment that can be purchased with special service payments. The revision is consistent with that regarding non-routine dental needs.

D, 2, b, (7): Deletes provision because it has been moved to the section on maintenance payments.

D, 2, g: Deletes reference to Department's purchase of service requirements, and requires that the rate of payment shall not exceed the prevailing community rate. The Department no longer has purchase of service requirements for adoption services.

D, 3: Replaces "special needs" child with child "with special needs." This is a technical amendment for clarification.

D, 3, a, (1) and (4): Deletes reference to rates set by the Department. The Department no longer sets rates for adoption services.

E, 2, a: Technical amendment.

F, 2, a: Adds a requirement for the placing agency to maintain responsibility for payments and services identified in the agreement, regardless of where the family resides. This is consistent with state and federal law regarding the protection of interests of children in interstate situations.

G, 1, b: Revises language to allow maintenance payments to continue for a child turning 18 during his/her senior of school, if the child is expected to graduate by the end of the school year in which he/she turns 18.

G, 4: Adds provision for adoptive parents and applicants to appeal adoption service and policy related issues. Adoptive parent/applicant appeal rights have been provided in a separate regulation. It has been recommended that the separate appeal regulation be repealed, and appeal rights be incorporated into 22 VAC 40-260.

The regulation 22 VAC 40-270 would be repealed. A provision for appeal would be incorporated into this regulation (see above paragraph), ensuring the continued right of appeal for adoptive parents and applicants.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 amendments will have no impact on the authority and rights of parents in education and supervision of their children or the economic self-sufficiency and responsibility of individuals and families. They will have no impact on the marital commitment or disposable family income.