



## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC 40 -201
<b>Regulation title</b>	Permanency Services-Prevention, Foster Care, Adoption and Independent Living
<b>Action title</b>	Establish New Permanency Services Regulation
<b>Document preparation date</b>	December 15, 2004

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 is a joint action to repeal seven regulations and replace them with one comprehensive new Permanency Services regulation that will encompass the full range of services for providing a child with a safe, secure and stable situation in which to grow up.

The seven regulations being repealed are: 22 VAC 40-200 Foster Care – Guiding Principles; 22 VAC 40-210 Foster Care – Assessing The Client’s Service Needs; 22 VAC 40-240 Nonagency Placement for Adoption – Consent; 22 VAC 40-250 Agency Placement Adoptions – AREVA; 22 VAC 40-260 Agency Placement Adoptions – Subsidy; 22 VAC 40-280 Nonagency Placements for Adoption – Adoptive Home Study; and 22 VAC 40-800 Family Based Social Services.

The new Permanency Services regulation will incorporate comprehensive Definitions pertaining to permanency services and provide a regulatory structure for the programs pertaining to permanency for children: Foster Care Prevention and Stabilization, Foster Care Services, Agency Placement Adoptions, and Non-Agency Adoption Placement.

The new Permanency Services Regulations incorporate and update the repealed agency placement and non-agency placement regulations into the Permanency Services Regulation. The new regulation also includes one section on Foster Care Prevention and Stabilization and sections covering the range of

foster care services including: entering foster care; foster care placement; case opening; initial assessment; choosing the goal; preparing the service plan; service delivery; reviewing the service plan; closing the foster care case; funding; other requirements; independent living; and training. A section has also been added to address suspected violations of in the placement and adoption of a child.

**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.*

The state legal authority to promulgate the seven regulations being repealed, and to promulgate the new Permanency Services regulation, can be found in §§ 63.2-217 and 63.2-319 of the Code of Virginia. These statutes describe the authority of the State Board of Social Services to adopt regulations as may be necessary to carry out the purposes of the Department and the programs the Department is mandated to provide. Section 63.2-319 of the Code of Virginia charges local boards of social services with providing child welfare services, including protecting the welfare of children; preventing, remedying or assisting in the solution of problems that may result in the neglect, abuse, exploitation or delinquency of children; preventing the unnecessary separation of children from their families; restoring to their families children who have been removed; placing children in suitable adoptive homes; and assuring adequate care of children away from their homes in cases where they cannot be returned home or placed for adoption. Rather than dealing with different aspects of permanency for children piecemeal in separate regulations, a new comprehensive Permanency Services regulation will be promulgated that will incorporate all aspects of permanency in one new regulation.

**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.*

The new Permanency Services regulation will incorporate all aspects of permanency - Foster Care Prevention, Foster Care, Independent living, Agency Placement Adoptions – AREVA, Agency Placement Adoptions – Subsidy, and Non-Agency Adoption Placement - in one new comprehensive regulation which will position all permanency services regulations in one location in the Virginia Administrative Code.

The new Permanency Services regulation is essential to protect the health, safety and welfare of children in the Commonwealth because it will strengthen the regulatory infrastructure of programs providing for the permanency for children - a strong, stable environment in which to grow up – resulting in the strengthening of the institution of family and improving the health, safety and welfare of children. The new Permanency Services Regulation will also mandate new initiatives and procedures integral to Virginia’s compliance with federal regulations and in keeping with the federal Child and Family Services program outcome goals.

**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.)*

This joint action will repeal the seven existing regulations pertaining to foster care prevention, foster care, and adoption services. A comprehensive new Permanency Services regulation will be promulgated to take the place of and expand upon, these seven regulations.

The new Permanency Services regulation will incorporate comprehensive definitions pertaining to all permanency services for children: Foster Care Prevention, Foster Care, Agency Placement Adoptions – AREVA, Agency Placement Adoptions – Subsidy, and Non-Agency Adoption Placement. Definitions will be updated to ensure consistency between all service programs and to comply with federal and state requirements. The foster care prevention section will expand on and identify mandated and optional service provisions for preventing children from needing to enter foster care.

The foster care section will regulate all foster care services and activities as specified in the *Code of Virginia* including but not limited to: accepting children into placement; assessment and reassessments; service planning and service delivery; criminal history and central registry background checks; independent living placements; permanency goals; case reviews of children in foster care; types of foster care placements; and worker contacts with children in foster care. These sections specify changes in the provisions for: frequency of worker contact with children in foster care and their parents; required training for foster care and adoption workers and supervisory staff; procedures for conducting criminal background checks on children expected to return home; standardized foster care paper case file formats; timeframes for filing petitions for termination of parental rights; development of concurrent case plans for children; requirements for providing independent living services to older youth; requirements for conducting administrative panel reviews; and frequency for scheduling visitation between a child in foster care and the child's parents and/or siblings.

The adoption section will incorporate and update current adoption regulations including Agency Placement Adoptions – AREVA; Agency Placement Adoptions – Subsidy, and Non-Agency Adoption Placement, into this chapter. This regulation will also mandate minimum requirements for foster and adoptive worker training.

## 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 public is expected to benefit from this new comprehensive Permanency Services regulation. The regulation strengthens the protection offered to children by providing a regulatory framework for service provision to children in foster care and their families. It also strengthens the authority and responsibilities of local departments of social services who are entrusted to carry out service provision to children in foster care and their families by specifying how such services are to be provided and in what timeframes.

The regulation poses no disadvantages to the public and Commonwealth.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>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</b>	\$14,675,919. The cost estimate is consistent with the fiscal impact statement for the Child and Family Services Review, Program Improvement Plan (PIP). Those elements of the PIP included in this regulatory package are included in this fiscal impact statement. The budget proposal for the PIP will be introduced by the Commissioner to the 2005 session of the General Assembly. These are on-going expenditures. Estimates for FY 2007 are \$6,610,001.
<b>Projected cost of the regulation on localities</b>	\$4,745,741 for FY 2006. \$4,205,201 for FY 2007.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	Local departments of social services and child placing agencies and children’s residential institutions serving children in foster care and in the custody of local departments will be affected by this regulation. It will provide these agencies with the legal basis to provide the full range of services to children and families involved in the foster care and adoption systems.
<b>Agency’s best estimate of the number of such entities that will be affected</b>	120 local departments of social services and approximately 169 child placing agencies and children’s residential institutions.
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	\$4,745,741 for FY 2006. \$4,205,201 for FY 2007.

**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.*

Because all programs related to child permanency are interrelated it is most effective to repeal and replace the current regulations with one new comprehensive Permanency Services regulation encompassing all child permanency programs. The alternative would be to update existing regulations and promulgate new regulations in program areas pertaining to permanency that currently do not have regulations. Access to these regulations would be complex and disjointed due to each being located in disparate sections of the Virginia Administrative Code.

**Public comment**

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

No public comments received.

**Family impact**

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

The new Permanency Services regulation will strengthen the focus on family and family stability by ensuring a regulatory structure for all permanency services for children and families. It will update current regulations and create regulations where none currently exist. It will also organize all permanency related child welfare regulations in one coherent place in the Administrative Code, making this regulation easily accessible to local department workers.

**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.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
22 VAC 40-280	22 VAC 40-201-170	Identifies Child Welfare League of America Standards for adoptive home studies that are outdated.	Updates the section to be more consistent with the Child Welfare League of America Standards for adoptive home studies, and the Minimum Standards for Licensed Child Placing Agencies (22VAC40-130).
22 VAC 40-200	NONE	Guiding principles for foster care	Regulation repealed. Guiding principles are being removed from the regulation as they are not a statement of procedure but rather philosophical statements of policy.
22 VAC 40-210	22 VAC 40-201-60	Requires workers to conduct the initial assessment within 60 days of placement and follow up assessments every six months. Identifies minimum areas to be covered in the assessment and how to document the assessment.	Increases the minimum requirements for areas to consider in completing an assessment to reflect federal outcomes related to maintaining children’s connections with siblings and other community connections. Requires documentation of assessments to be in the state’s approved case plan data system as opposed to the paper case file.
22 VAC 40-240	22 VAC 40-201-180	Specifies responsibilities of the agency and the Commissioner in	Removes the words “and Domestic Relations District” from the reference to the juvenile court. Requires agencies to evaluate the

		nonagency adoptions sent before the court.	suitability of the prospective adoptive parent rather than the suitability of the placement.
22 VAC 40-250	22 VAC 40-201-150	Requires workers to register children available for adoption in the Adoption Resource Exchange of Virginia.	Repeals this regulation and incorporates it fully into the new permanency services regulation. Numbering system corrected to match current format requirements for regulations.
22 VAC 40-260	22 VAC 40-201-160	Establishes requirements for adoption subsidy for eligible children.	Repeals this regulation and incorporates it fully into the new permanency services regulation. Numbering system corrected to match current format requirements for regulations.
22 VAC 40-210-10; 22 VAC 40-220-10; 22 VAC 40-230-10; 22 VAC 40-240-10; 22 VAC 40-250-10; 22 VAC 40-260-10; 22 VAC 270-10; 22 VAC 40-280-10	22 VAC 201-10	Definitions for current regulations	Adds definitions needed for foster care prevention and foster care services. Definitions added are: adoptive placement; adoption search; adoption progress report; birth family or birth sibling; birth parent; Board; Community Policy Management Team; Comprehensive Services Act for At-risk Children and Youth; concurrent permanency planning; custody investigations; EPSDT; family; Family Assessment and Planning Team; foster care placement; foster home; independent living placement; individual family service plan; Interstate Compact on the Placement of Children; interstate placement; investigation and report of investigation; juvenile court; local department; non-custodial foster care agreement; permanency; permanency planning; permanency planning indicator; petitioner; residential placement, resource family; reunification; service fee directory; service worker; state pool fund; Title IV-E; visitation and report.
22 VAC 40-800	22 VAC 40-201-20	Establishes definitions for family based services and puts forth a philosophical statement of family based services.	Requires services be provided to any family in order to prevent foster care placement. Specifies types of services to be provided. Defines mandated and non-mandated foster care prevention cases. Identifies funding sources to be used for prevention cases.
22 VAC 40-810	22 VAC 40-201-190	Provided examples from 1988 of fee schedules to use in adoptive home studies.	Deletes the example.
NONE	22 VAC 40-201-30	NONE	Identifies how children may enter the foster care system. Defines reasonable efforts requirements to prevent removal from the home. Describes information service workers must submit to the court for children entering the foster care system. Instructs workers when to submit service plans, conduct criminal background checks on parents or prior custodians, and what constitutes requirements of a non-custodial foster care agreement. All elements of this

			section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual.
NONE	22 VAC 40-201-40	NONE	Requires local departments to place children in foster care in appropriate placements. Describes types of foster home placements available in Virginia. Requires criminal background checks be completed on emergency placement families, relatives, and prior custodians with whom the child is placed if the home is not already approved as a foster home. Requires service workers: provide foster homes with medical and educational information about the child; not deny a placement due to race, color or national origin of the child or family; conduct preplacement visits to all out-of-home placements before placing a child; complete Interstate Compact on the Placement of Children processes before placing children out of state; inform parents of placement changes within 10 days. Describes the process for interjurisdictional placements in Virginia. All elements of this section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual.
NONE	22 VAC 40-201-50	NONE	Requires workers to open and maintain foster care cases in the states approved case documentation system. Mandates a paper case record format. Requires all foster care children be referred for Title IV-E, Medicaid benefits and Child Support if applicable. Requires workers to refer children for needed services. All elements of this section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual.
NONE	22 VAC 40-201-70	NONE	Describes permanency goals available for children in foster care and requires workers to establish a permanency goal for a child through the service plan process. All elements of this section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual.
NONE	22 VAC 40-201-80	NONE	Requires a service plan for every child in foster care and when such plans must be revised. This provision is currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual. Additional requirement not currently in the Foster Care Policy Manual: Requires service plans address certain areas including

			visitation with parents and how the parent, child and foster family were included in the service planning process.
NONE	22 VAC 40-201-90	NONE	Requires workers provide needed services to help children achieve their permanency goal. All elements of this section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual. Requires workers complete a home study when a child is placed with a relative. Requires workers complete adoption progress reports at specified intervals. Instructs workers on the processes required in adoptive planning including the provision of full, factual information about the child and the child's family to the adoptive family. Specifies the rights and responsibilities of permanent foster care parents. Establishes requirements for respite care services for foster parents. Additional requirement not currently in the Foster Care Policy Manual: Requires workers to have monthly face-to-face contacts with children in the child's placement setting.
NONE	22 VAC 40-201-100	NONE	Specifies the requirements for reviewing the service plan. Describes the types of mandated foster care court hearings and agency reviews of foster care cases. Requires service workers to submit certain information to the court prior to each court review. Requires certain foster care cases to undergo an agency administrative panel review once each year, in between annual judicial hearings. Requires local departments to invite community stakeholders to be part of the administrative panel review process. Requires workers to reassess children's eligibility for Title IV-E, and Medicaid services and a regular basis. All elements of this section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual. Additional requirement not currently in the Foster Care Policy Manual: Requires ( as opposed to "urges" in current Foster Care Policy Manual) local departments to petition for termination of parental rights at the permanency planning hearing unless federally defined compelling reasons exist that preclude such filing.
NONE	22 VAC 40-201-110	NONE	Describes service workers responsibilities for closing foster care cases. Sets mandated timeframes for case closure in the



			Department's approved case documentation system. Instructs local departments on the long-term maintenance of case records. Requires local departments to provide prevention and support services to children and families once a child is returned home from an out-of-home placement. All elements of this section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual.
NONE	22 VAC 40-201-120	NONE	Establishes criteria for local departments to pay for the daily care and provision of services to children in foster care and children in independent living. Identifies which state or local agency is responsible for payments when children are in mental health facilities or committed to juvenile justice. Requires local departments to reimburse foster parents for certain additional costs incurred by the parent for the child in the foster home. Establishes requirements for local departments to pay for educational services for children in certain situations. All elements of this section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual.
NONE	22 VAC 40-201-130	NONE	Establishes procedures for: releasing foster care case records to other parties; out-of-country travel for children in foster care; use of child restraint devices; child protective service reporting; paying for the child of a child in foster care; service planning for children from a local department placed in the custody of the Department of Juvenile Justice. All elements of this section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual.
NONE	22 VAC 40-201-140	NONE	Requires service workers provide independent living services to all foster care youth as necessary. Establishes criteria for: when to select the goal of independent living for youth; how to assess needed services for older youth; when to use an independent living placement; and the use of Educational and Training Voucher federal funds to support youth in vocational and educational settings. All elements of this section are currently required in the Virginia Department of Social Services Volume VII, Section III, Chapter B, Foster Care Policy Manual.
	22 VAC 40-201-200		Requires the Commissioner to investigate and when necessary, take appropriate action on reports of suspected violations of law in

			the placement and adoption of children as provided in the <i>Code of Virginia</i> .
NONE	22 VAC 40-201-210	NONE	Requires all foster care and adoption staff receive training using criteria and a curriculum developed by the Department.