



Proposed 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	Review and Amend CPS Regulation
Date this document prepared	December 12, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

This regulatory action serves as a comprehensive review of the agency's child protective services (CPS) regulations. The action repeals 22VAC40-700 (Child Protective Services Central Registry Information) and 22VAC40-720 (Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces), and incorporates those provisions into 22VAC40-705, Child Protective Services.

Substantive changes add:

- definitions for near fatality and response time;
- requirement for reports to be acted upon and the victim child to be interviewed within the determined response time;
- federal requirement to notify relatives within 30 days of removal;
- requirement for a risk assessment to be completed for all investigations;
- provision for suspending certain investigations;
- retention requirements for serious sexual abuse records;
- requirement to notify school boards for all employees in founded investigations and notify the individual of this action; and
- training requirements for all CPS staff.

Substantive changes remove:

- requirement to invalidate reports for substance exposed infant if mother sought counseling;
- directive for not rendering founded dispositions for substance exposed infants;
- reference to exact timeframes for emergency removals

Proposed amendments clarify: the definition of mental abuse or neglect; responsibilities for mandated reporting of substance abuse exposure for newborns; release of information to the Military Family Advocacy; release of information when there is a legitimate interest; and release of information while there is a pending criminal investigation.

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.

Board- State Board of Social Services
CPS- Child Protective Services
DSS- Department of Social Services
LDSS- Local department of social services

Legal basis

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

Section § 63.2-217 of the Code of Virginia gives the State Board of Social Services (Board) the responsibility to make rules and regulations to carry out the purposes of social services. Section § 63.2-1501 et seq. provides the authority for the CPS program.

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, the environmental benefits, and the problems the proposal is intended to solve.

This regulatory action is essential to protect the health, safety and welfare of children at risk for child abuse or neglect. The goal of this regulatory action is to: 1) conduct a review of 22VAC40-705; 2) amend existing CPS requirements and add new requirements to make the CPS regulation consistent with the Code of Virginia; 3) clarify and strengthen the CPS program while balancing the rights of alleged abusers with protecting children and families; and 4) reduce the number of regulations the public may have to review to find CPS information.

Substance

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

The provisions of the repealed regulations will be incorporated into 22VAC40-705. The two repealed regulations include requirements for reporting to the Military Family Advocacy Program and retention time of names of abusers and victims involved in founded investigations within the central registry. This action will reduce the total number of regulations for the CPS program from four to two. A separate regulation, 22VAC40-730, provides requirements specific to conducting investigations of child abuse and neglect in an out of family setting by a non-familial caretaker.

Statutory changes made in 2013 necessitate additions and amendments to the regulation. These include provisions for (1) suspending sexual abuse and child death investigations if reports generated outside the local agency are necessary to make a disposition and (2) notification to local school boards for all founded investigations that involve any school employee.

Substantive changes include adding:

- definitions for near fatality and response time;
- requirement for reports to be acted upon and the victim child to be interviewed within the determined response time;
- federal requirement to notify relatives within 30 days of removal;
- requirement for a risk assessment to be completed for all investigations;
- provision for suspending certain investigations;
- retention requirements for serious sexual abuse records;
- requirement to notify school boards for all employees in founded investigations and notify the individual of this action; and
- training requirements for all CPS staff.

Substantive changes include removing:

- requirement to invalidate reports for substance exposed infant if mother sought counseling;
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Proposed amendments clarify: the definition of mental abuse or neglect; responsibilities for mandated reporting of substance abuse exposure for newborns; release of information to the Military Family Advocacy; release of information when there is a legitimate interest; and release of information while there is a pending criminal investigation.

General changes were made to improve the consistency of terminology used within this regulation, such as the use of the term "electronic recording" versus "audio taping."

Changes were made within sections relative to numbering, order and format to improve the organization and flow of requirements for that section.

Technical changes were made to statutory references to ensure the most current and accurate citation.

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 indicate.

One of the primary advantages to the public and individual private citizens will be a clearer understanding of the processes involved when making a report to CPS and the actions that are taken by CPS. The public will benefit from having CPS staff receiving current, best practice training annually. LDSS will benefit from amendments to the regulation which provide clarity and enhance existing requirements. The public, the Commonwealth and LDSS will benefit from having fewer regulations.

There are no disadvantages to the Commonwealth. LDSS will need to support the training of local staff when the revised regulation is finalized

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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 more restrictive than any applicable federal requirements. The added provision to notify maternal and paternal relatives within 30 days of a removal is the federal requirement and is not more restrictive.

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.

All localities are affected equally; no one locality would be negatively affected by this regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **Mary Walter, 801 E Main Street Richmond, Virginia 23219, (804) 726-7569, fax (804) 726-7499, or mary.walter@dss.virginia.gov.** Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

The proposed changes were drafted and reviewed by members of the CPS Policy Advisory Committee. This committee's membership represents both LDSS and DSS staff. Those persons directly involved included: Gail Davidson (VDSS CPS policy consultant), Monica Hockaday (VDSS CPS policy consultant), Judy Gundy (VDSS Training Services Manager), Cyndi Barker (Fairfax Co. DSS Supervisor), Cherlanda Sidney-Ross (King William DSS Supervisor), Janice Norton-Gregory (Suffolk DSS Supervisor), Sonya Young (Portsmouth DSS Supervisor) and Michelle Bennett (Hopewell DSS Supervisor). Comments were also received from a private attorney in Norfolk, John Oliver.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board	The proposed regulation affects CPS staff at DSS and LDSS, mandated reporters of child abuse and neglect, and children and families in the Commonwealth.
Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	There are 120 LDSS with CPS supervisors and staff that will be affected.
Benefits expected as a result of this regulatory proposal.	The primary impact of this regulation is to provide CPS staff, supervisors and directors clear, concise, current processes and procedures for the responses to child abuse and neglect within their communities and ultimately ensure the continued safety of children in the Commonwealth.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal.	Implementation and enforcement of the proposed regulation will not result in any significant increased cost to the Commonwealth. DSS staff responsible for the implementation and enforcement of the proposed regulation is currently in place within the state.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	There is no projected cost of the changes to the existing regulation on localities.
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs,	There is no projected cost for affected individuals or entities. DSS will be responsible for the implementation and enforcement of the regulatory

<p>including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.</p>	<p>changes and has staff in place that routinely modifies policy and conduct training. DSS has training opportunities available at no cost to the LDSS such as Subject Matter Expert workshops and e-learning courses. DSS provides resource lists of other free opportunities such as national webinars and free educational programs.</p> <p>There are no costs related to the development of real estate for commercial or residential purposes.</p>
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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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

22VAC40-705 was due for a periodic review by February 28, 2013. In lieu of the periodic review, the agency initiated a NOIRA in February 2013, giving notice that a comprehensive review of 22VAC40-705 would begin. There are no alternatives to achieving the goals of this action, other than regulatory.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Small businesses are not impacted by this action. There are no less stringent requirements or alternative regulatory methods available to accomplish this regulatory action. This regulatory action consolidates regulatory requirements by repealing two regulations and incorporating them into 22VAC40-705.

Small business impact review report of findings

In order to minimize the economic impact of regulations on small businesses, please include, pursuant to Code of Virginia § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the

regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

This regulation does not impact small businesses. There is a continued need for the regulation because it helps to protect the health, safety and welfare of children. It does not overlap or conflict with federal or state laws or regulations. The last comprehensive review was in 2009.

Public comment

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

No comments were received following the publication of the NOIRA.

Family impact

Please assess the impact of the proposed 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.

This regulatory action primarily clarifies instructions to LDSS regarding CPS procedures and incorporates three existing regulations into a single, comprehensive regulation. This regulatory action is not likely to impact the institution of the family and rights of parents in the education, nurturing and supervision of their children, except to the extent the regulation protects children from abuse or neglect. This regulatory action does not directly impact economic self-sufficiency, self pride, and the assumption of responsibility for oneself, one's spouse, and one's children. This action does not directly impact marital commitment nor does it decrease disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

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

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Throughout this regulatory action, several technical changes were made to include:

- General changes were made to improve the consistency of terminology used within this regulation, such as the use of the term “electronic recording” versus “audio taping.”
- Changes were made within sections relative to numbering, order and format to improve the organization and flow of requirements for that section.
- Technical changes were made to statutory references to ensure the most current and accurate citation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		Provides definitions used in CPS.	<p>Add definition for "near fatality". This term is defined in 22VAC40-910-10, and is used in 22VAC40-705-160.</p> <p>Add definition for "response time." This term is added into sections 22VAC40-705-50 and 22VAC40-705-80 to provide clarity for LDSS on timeframes for responding to valid reports of child abuse and neglect</p>
30		Describes types of abuse and neglect.	<p>Restructure the section to incorporate failure to provide necessary medical treatment within other types of physical neglect. Medical neglect is an act of omission and by including it with other acts of omission provides for clarity and understanding. Add a subsection title that is consistent with existing subsections which states that physical neglect may include medical neglect.</p> <p>Expand definition of mental abuse or neglect to include clarification that these acts result in harm to a child's psychological or emotional health or development. This will strengthen existing CPS guidance.</p> <p>Add requirement for professional documentation prior to determining a report to be founded. This will strengthen the existing requirement in CPS guidance.</p>
40		Describes mandated reporting suspicions of child abuse and neglect, reporting of substance exposed infants, other persons who report, anonymous reporters, immunity of reporters, confidentiality of reporters, reports made in bad faith, making a false report, and	<p>In response to exempt regulatory action in 2012 after major changes in § 63.2-1509 of the Code of Virginia, this section is being amended to provide clarity and better understanding of mandated reporting and substance exposed infants.</p> <p>Clarify mandated reporter does not need to make a report if they have actual knowledge one has already been made to</p>

		<p>jurisdiction of local departments.</p>	<p>CPS.</p> <p>Clarify requirement for designated mandated reporters to provide feedback to the original reporter.</p> <p>Clarify timeframe to report abuse or neglect to within 24 hours.</p> <p>Specify penalties for failure to report sexual abuse.</p> <p>Amend section specific to substance exposed newborns to include: clarify that certain facts are sufficient to report a child who is exposed to controlled substances prior to birth; delete reference for providing information when reporting substance exposed newborns as it is repetitive; delete reference to validity of a report unless the mother sought treatment during pregnancy; delete instructions about invalidating a report if the mother sought substance abuse counseling ; and delete instructions for not rendering founded dispositions in substance exposed infant investigations.</p> <p>Add a reference to the definition for substance abuse counseling or treatment from 22VAC40-705-10.</p> <p>Amend the LDSS "shall conduct an investigation or assessment if valid" instead of "may initiate." This is based on the fact that all valid reports shall receive either an investigation or family assessment pursuant to § 63.2-1505 and § 63.2-1506.</p> <p>Delete provision that an anonymous complaint, standing alone, cannot be the basis for a founded investigation. This is redundant, as it is included within the definition of founded in 22VAC40-705-10.</p> <p>Amend "court decides" to say unless "it is proven" as some legal decisions are reached by a jury, not a judge.</p> <p>Clarify that the identity of any reporter shall not be disclosed pursuant to §63.2-1514 (C).</p> <p>Add clarification that a judge may ask the court services unit to evaluate a report if</p>
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			<p>the report involves an employee of a local department pursuant to §63.2-1509.</p> <p>Add instruction for local departments to request the assistance of the Department and the institutions involved in an out of family investigation. This is included in 22VAC40-730 and completes this section regarding the jurisdiction of local departments.</p>
50		Describes actions to be taken when a report is received by CPS.	<p>Delete five day timeframe to determine validity. This is problematic when determining response time based on safety concerns. Validity must be determined upon receipt by the LDSS.</p> <p>Add requirement for reports to be acted upon within the determined response time.</p> <p>Clarify that reasonable diligence must be made to locate a missing child when a report is validated and also when the whereabouts of the subjects are unknown.</p> <p>Clarify that all reports, determined to be valid or not, shall be retained longer if there is a subsequent report. This will allow for history to be preserved for all reports made to CPS.</p> <p>Clarify that the LDSS shall initiate an immediate response with the determined response time.</p> <p>Eliminate reference to either immediate or longer term risk of future harm. Risk of harm refers to the future and safety assessment refers to immediate needs. This adds clarity to the differences between safety and risk.</p>
60		Describes the authorities of LDSS in CPS	<p>Delete all timeframe references for emergency removal. The term "up to 72-96 hours" is not as clear as the actual code, 63.2-1517 (B). The exceptions to the 72 hours are explained further in the CPS guidance manual.</p> <p>Add requirement to exercise due diligence to identify and notify maternal and paternal grandparents when a child has been removed by CPS. Notice to relatives is required by the Social Security Act, Title IV, §471 (a) (29) [42 USC 671].</p>

			Add requirement to document notifications to relatives and the reasons when these notifications are not made.
70		Describes what information is collected by CPS.	Clarify that all information collected for either an investigation or a family assessment must be documented. This provides clarity for LDSS.
80		Describes required contacts for CPS.	<p>Changes below are in both the section about contacts in a family assessment and contacts in an investigation:</p> <p>Replace antiquated wording regarding documentation of contacts and observations and add that if a contact is not made, the reason shall be documented.</p> <p>Add clarification for interviewing/observing the victim child within the determined response time.</p> <p>Add clarification that all minor siblings residing in the home must be interviewed/observed.</p>
110		Describes safety, risk and dispositional assessments made in CPS.	<p>Clarify that the initial assessment is regarding the safety of a child.</p> <p>Add that in all completed family assessments and investigations, not just founded investigations, a risk assessment will be completed. This is necessary because the actuarial risk assessment tool used by CPS has been validated to assess risk of future maltreatment, regardless of disposition, outcome of allegations or type of response.</p> <p>Incorporate 22VAC40-700-20 regarding assessing levels for founded investigations. These levels are based on the severity of abuse or neglect and are directly correlated to name retention in the Central Registry.</p>
120		Describes the ability to extend or suspend an investigation, the ability to change tracks and the right to a local appeals conference.	<p>Change section title to accurately reflect the requirements contained.</p> <p>Relocate requirement for notification of subjects of complaints, as it more appropriately fits into 22VAC40-705-140 B 4.</p> <p>Add new requirement pursuant to § 63.2-1505 B 5, which allows a sexual abuse investigation or a child death investigation to be suspended until such time that</p>

			<p>reports generated outside the LDSS are received. The reports must be necessary to make a final disposition. The time needed to receive such reports is not counted towards the 45 day timeframe to conduct the investigation. Parents and alleged abuser shall be notified if the investigation is suspended. Upon receipt of necessary records, the LDSS will complete the investigation.</p> <p>Clarify that information gathered during a joint investigation with law enforcement may only be released by LDSS if authorized pursuant to § 63.2-1516.1B.</p>
130		Describes conclusions made in investigations and family assessments.	<p>Reorganize section to reflect decisions and conclusions in three separate sections: unfounded investigations; founded investigations; and family assessments.</p> <p>Incorporate 22VAC40-700-30, name retention in the Central Registry, which is based on levels of founded investigations.</p> <p>Add requirement for level one sexual abuse investigations to be retained by the LDSS for 25 years pursuant to §63.2-1514 A. This specifically pertains to dispositions of investigations made after July 1, 2010.</p> <p>Incorporate 22VAC40-700-30, retention of all case information is affected by any subsequent complaints or reports.</p> <p>Clarify that a certified copy of a court order is required purge a record which is found to have been made in bad faith or with malicious intent.</p>
140		Describes the notifications that are made by CPS at the conclusion of an investigation or family assessment	<p>Add clarification that notifications in this section include notifications for family assessments.</p> <p>Add new requirement for any person who is the subject of a founded investigation and is employed by a school, the local school board shall be notified.</p> <p>Add requirement to notify the Superintendent of Public Instruction regarding any person who is the subject of a founded investigation and holds a license by the Board of Education.</p> <p>Add requirement to inform persons named in a family assessment that they are to be</p>

			<p>advised of their rights in § 63.2-1514 regarding reports made maliciously or in bad faith. This is the same requirement for an unfounded investigation.</p> <p>Change terms "complaint" and "case" to "disposition" for clarity.</p> <p>Incorporate 22VAC40-720 into the section for notifications to Family Advocacy Program.</p>
160		Describes releasing CPS information.	<p>Clarify that reports of child deaths are made to the regional medical examiner.</p> <p>Delete notification to the complainant for an unfounded investigation or family assessment, as it is redundant. This notification is covered in 22VAC40-705-140 D.</p> <p>Clarify that local departments should consider certain factors to determine if a person has a legitimate interest and the ability to disclose information which is in the best interest of the child. Clarify that this list of factors is not inclusive.</p> <p>Relocate requirement that names of complainants shall not be released unless court ordered to be listed with other instances where CPS information shall not be released.</p> <p>Add requirement to prohibit release of information while conducting a joint criminal investigation with law enforcement unless authorized.</p>
180		Describes training requirements for CPS staff.	<p>Add requirement for supervisors to complete skills and policy training.</p> <p>Add requirement for all CPS staff to complete a minimum of 24 hours of annual continuing education or training after completion of initial training mandates.</p>