



**Virginia  
Regulatory  
Town Hall**

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Virginia Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-705
<b>Regulation Title:</b>	Child Protective Services
<b>Action Title:</b>	Comprehensive Review
<b>Date:</b>	May 9, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this review of the regulations is to strengthen the regulations, particularly in the areas of case documentation and child fatality protocols. Problems have been noted in both these areas in the past year, and amending the regulations to clarify expectations would be one step toward correcting the problems.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

The Code of Virginia § 63.1-25 places authority with the Board of Social Services to make regulations "to carry out the true purpose and intent of this title." § 63.2-248 et seq. places responsibility for providing protective services to children (CPS) with the Department of Social Services. The proposed regulatory action is in regard to the child protective services regulations.

The decision to make regulatory changes was based on both statistical and anecdotal information. In January 1999, the regional CPS staff conducted an extensive case review. A follow up study was done in 2000. Both revealed a lack of documentation of critical case information. The greatest concerns in the last review, even with some amelioration of the documentation issues originally identified: 11% of alleged abusers were not informed of the right to tape the interview, 13% were not informed of the right to refuse entry to the CPS worker, and 26% were not informed of the right to a predispositional conference.

Additionally, the thorough review by the Board of child fatalities since 1998 has revealed important information regarding policy and practice. The Board thinks the child fatality protocol needs to be enhanced in regulation, and the enhanced regulation will lead to clearer guidance for localities.

The Board members believe that the regulations need to be strengthened and clarified in the area of case documentation. Enforcement of current requirements in regulation has been a problem, partly because a new case documentation system (OASIS) was instituted soon after major regulatory changes in 1998. With the regulations now three years old and the information system two years old, the timing is practical to revisit the directions provided in regulation.

A clearly defined child fatality protocol should facilitate the sharing of vital information by localities with the Department of Social Services and the Board.

The Board will also examine the regulations enacted in 1998 that largely address the due process rights of alleged abusers and how adherence to those rights is documented.

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

There is a specific regulation {22 VAC 40-705-50(E)(3)} that addresses reporting of child fatalities to the Department of Social Services. However, case documentation is mentioned specifically in a number of regulations and alluded to in many sections. Consideration will be given to how to make the regulations more prescriptive so that the expectations for local agencies are clear.

Notations on sections of 22 VAC 40-705-10 expected to be affected:

705-50F: This section would be amended to add a fatality protocol that includes reporting to the Board.

705-80B: Audiotaping of the child and alleged abuser were found to be major areas lacking either compliance with policy or consistent documentation of compliance. This section needs to be re-examined for intent and clarity.

705-90: The issue of documentation of informing all parties about the purpose of the investigation and their rights and responsibilities has been addressed somewhat in the emergency regulations for implementation of differential response. However, this was a major concern in the case review and and requires additional review.

705-120: Informing all parties of findings and documenting those notifications remains a high priority, and the documentation requirements will be examined for clarity.

705-140: This section also addresses required notifications, but the primary issue for re-examination is the predispositional consultation. The case review showed this regulation being inconsistently applied, possibly due to the complicated timelines. Therefore, the Board wants to determine whether changes are needed to this regulation to simplify or clarify.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

It is the desire of the Department of Social Services and of the State Board of Social Services to improve the Child Protective Services delivery system without making it overly burdensome or more expensive to local departments and taxpayers. The purpose of this regulatory action is to clarify and define the parameters of the regulations in regard to at least two areas of concern: reporting child fatalities and case record documentation. The Board believes regulatory review and change is necessary.

## Family Impact Statement

*Please provide a preliminary analysis of the potential 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.*

1) All CPS regulations are intended to strengthen the authority and rights of parents to provide adequate care to their children, while maintaining the safety of those children. Any amendment to the regulations will give significant attention to these issues.

- 2) Any new or amended regulations will also be proposed with the intent of supporting parents' responsibilities toward their children.
- 3) & 4) Any impact on the individual's marital commitment or income will be secondary to the impact intended on the parent/child relationship.