




COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ERIC J. REYNOLDS 
Assistant Attorney General

DATE: May 17, 2017

SUBJECT: 22 VAC40-201 – Amend Permanency Regulation

I am in receipt of the attached regulation regarding the state foster care program. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulation is adding language and modifying some of the existing language to this Section - 22 VAC 40-201 - to be consistent with recent changes in state law enacted in response to the federal Preventing Sex Trafficking and Strengthening Families Act of 2014.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act, §§ 2.2-4006 *et seq.* of the Code of Virginia (“APA”) and has not exceeded that authority.

It is my view that this regulation is not exempt from but is subject to the procedures of Article 2 of the APA. If you have any questions or need additional information about these regulations, please contact me at (804) 786-3450.

cc: Kim F. Piner, Esquire
Attachment

DEPARTMENT OF SOCIAL SERVICES

Amend Permanency Regulation

22VAC40-201-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis pursuant to § 63.2-907 of the Code of Virginia to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may be attended by the birth parents or prior custodians and other interested individuals significant to the child and family as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the local board and the adoptive parents of a child with special needs or in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency, and the adoptive parents that sets out the payment and services that will be provided to benefit the child in accordance with Chapter 13 (§ 63.2-1300 et seq.) of Title 63.2 of the Code of Virginia.

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in §§ 63.2-1300 [or] 63.2-1301 B of the Code of Virginia.

"Children's Services Act" or "CSA" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Claim for benefits," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means (i) foster care maintenance, including enhanced maintenance; (ii) the services set forth in a court approved foster care service plan, the foster care services identified in an individual family service plan developed by a family assessment and planning team or other multi-disciplinary team pursuant to the Children's Services Act (§ 2.2-5200 et seq. of the Code of Virginia), or a transitional living plan for independent living services; (iii) the placement of a child through an agreement with the child's parents or guardians, where legal custody remains with the parents or guardians; (iv) foster care prevention services as set out in a prevention service

plan; or (v) placement of a child for adoption when an approved family is outside the locality with the legal custody of the child, in accordance with 42 USC § 671(a)(23).

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team" or "CPMT" means a team appointed by the local governing body 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Concurrent permanency planning" means utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually a reunification with the family, simultaneously with an established alternative permanent plan for the child.

"Department" means the state Department of Social Services.

"Denied," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means the refusal to provide a claim for benefits.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Entrustment agreement" means an agreement that the local board enters into with the parent, parents, or guardian to place the child in foster care either to terminated parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for the care of the child.

"Family assessment and planning team" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved

for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement.

"Foster care maintenance payments" means payments to cover those expenses made on behalf of a child in foster care including the cost of, and the cost of providing, food, clothing, shelter, daily supervision, school supplies, a child's incidentals, reasonable travel to the child's home for visitation and reasonable travel to remain in the school in which the child is enrolled at the time of the placement. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in 42 USC § 675.

"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians. The foster care plan defined in this definition is the case plan referenced in 42 USC § 675.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of casework, treatment, and community services, including but not limited to independent living services, for a planned period of time to a child meeting the requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual family service plan" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Local board" means the local board of social services in each county and city in the Commonwealth required by § 63.2-300 of the Code of Virginia.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs as set out in § 63.2-1301 D of the Code of Virginia.

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in Public Law 113-183 (42 U.S.C. §§671 and 675) when making decisions regarding extracurricular, enrichment and social activities.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Prior family" means the family with whom the child resided, including birth parents, relatives, or other prior custodians, before custody was transferred to or placement made with the child-placing agency.

"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Reasonable and prudent parent standard", in accordance with 42 U.S.C. § 675(10), means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that foster parents and congregate care staff shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"SSI" means Supplemental Security Income.

"Sibling" means each of two or more children having one or more parents in common.

"State pool funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse, or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the visits conducted pursuant to § 63.2-1212 of the Code of Virginia and the written report of the findings made in the course of the visitation . The report is filed in the circuit court in accordance with § 63.2-1212 of the Code of Virginia.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 16 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia Youth may also mean an individual older than the age of 16 years who is the subject of an adoption assistance agreement.

22VAC40-201-35. Reentry into foster care from commitment.

A. In the event the youth was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice (DJJ) and has not attained the age of 18 years, the local board shall resume custody upon the youth's release from commitment, unless

an alternative arrangement for the custody of the youth has been made and communicated in writing to DJJ. At least 90 days prior to the youth's release from commitment on parole supervision the local department shall consult with the court service unit on the youth's return to the locality and collaborate to develop a foster care plan that prepares the youth for successful transition back to the custody of the local department or to an alternative custody arrangement, if applicable. The plan shall identify services necessary for the transition and how the services are to be provided. If an alternative custody arrangement has been identified, such arrangement shall be described in the foster care plan to be considered and approved by the court. Any transfer of custody of the child must be by order of the court.

B. The foster care plan shall be submitted to the court for approval within 45 days of the youth's reentry into foster care. Submission of a petition for approval of the foster care plan to the juvenile and domestic relations district court shall be made in accordance with § 16.1-281 of the Code of Virginia.

22VAC40-201-40. Foster care placements.

A. Within 30 days of the child being placed in the custody of the local board, the local department shall exercise due diligence to identify and notify in writing all adult relatives, including the parents of siblings who have legal custody of such siblings, that the child has been removed and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home. The LDSS may determine it is not in the child's best interest to notify relatives who have a history of domestic violence; have been convicted of barrier crimes as defined in § 63.2-1719 of the Code of Virginia other than those described in subsections E, F, G and H of § 63.2-1721 of the Code of Virginia; or are listed on the Virginia State Police Sex Offender Registry. Additionally, if the birth father is unknown, the local

department shall search the Virginia Birth Father Registry within 30 days of the child entering foster care.

B. The local department shall ensure a child in foster care is placed in an approved home or licensed facility that complies with all applicable federal and state requirements for safety and child well-being. Placements shall be made subject to the requirements of § 63.2-901.1 of the Code of Virginia. The following requirements shall be met when placing a child in an approved home or licensed facility:

1. The local department shall exercise due diligence to locate and assess relatives as a foster home placement for the child, including in emergency situations.
2. The local department shall place the child in the least restrictive, most family like setting consistent with the best interests and needs of the child.
3. The local department shall attempt to place the child in as close proximity as possible to the birth parent's or prior custodian's home to facilitate visitation, provide continuity of connections, and provide educational stability for the child.
4. The local department shall take reasonable steps to place the child with siblings unless such a joint placement would be contrary to the safety or well-being of the child or siblings.
5. The local department shall, when appropriate, consider placement in a dually approved home so that if reunification fails, the placement is the best available placement to provide permanency through adoption for the child.
6. The local department shall not delay or deny placement of a child into a foster family or adoptive placement on the basis of race, color, or national origin of the foster or adoptive parent or child.

7. When a child being placed in foster care is of Native American, Alaskan Eskimo, or Aleut heritage and is a member of a nationally recognized tribe, the local department shall follow all federal laws, regulations, and policies regarding the referral of the child. The local department may contact the Department of Historic Resources for information on contacting Virginia tribes and shall consider tribal culture and connections in the placement and care of a child of Virginia Indian heritage.

8. If a child is placed in a kinship foster placement pursuant to § 63.2-900.1 of the Code of Virginia, the child shall not be removed from the physical custody of the kinship foster parent, provided the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family partnership meeting; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517 of the Code of Virginia.

C. A service worker shall make a preplacement visit to any out-of-home placement to observe the environment where the child will be living and ensure that the placement is safe and capable of meeting the needs of the child. The preplacement visit shall precede the placement date except in cases of emergency. In cases of emergency, the visit shall occur on the same day as the placement.

D. Foster or adoptive homes shall meet standards established by the board and shall be approved by child-placing agencies. Prior to the placement of a child in a licensed child-placing agency (LCPA) foster home, the local department shall verify that the LCPA approved the foster home. Prior to the placement of a child in a children's residential facility, the local department shall verify that the facility is licensed to operate by the appropriate state regulatory authority.

E. Local departments shall receive notice of the approval from the department's office of the ICPC prior to placing a child out of state.

F. When the local department is considering placement of a child in a foster or adoptive home approved by another local department within Virginia, the local department intending to place the child shall consult with the approving local department about the placement of the child and shall also verify that the home is still approved.

G. When a child is moving with a foster or adoptive family from one jurisdiction to another, the local department holding custody shall notify the local department in the jurisdiction to which the foster or adoptive family is moving.

H. When a child moves with a foster or adoptive family from one jurisdiction to another in Virginia, the local department holding custody shall continue supervision of the child unless supervision is transferred to the other local department.

I. A local department may petition the court to transfer custody of a child to another local department when the birth parent or prior custodian has moved to that locality.

J. In planned placement changes or relocation of foster parents, birth parents with residual parental rights or prior custodians and all other relevant parties shall be notified that a placement change or move is being considered if such notification is in the best interest of the child.

The service worker shall consider the child's best interest and safety needs when involving the birth parent or prior custodian and all other relevant parties in the decision-making process regarding placement change or notification of the new placement.

K. In the case where an emergency situation requires an immediate placement change, the birth parent with residual parental rights or prior custodian and all other relevant parties shall be notified immediately of the placement change. The local department shall inform the birth parent or prior custodian why the placement change occurred and why the birth parent or prior custodian and all other relevant parties could not be involved in the decision-making process.

22VAC40-201-70. Foster care goals.

A. Foster care goals are established to assure permanency is achieved for the child.

Permissible foster care goals are:

1. Transfer custody of the child to his prior family;
2. Transfer custody of the child to a relative other than his prior family;
3. Finalize adoption of the child;
4. Place the child in permanent foster care;
5. Transition to independent living if the child is admitted to the United States as a refugee or asylee; or is 18 years of age and older; or
6. Place the child in another planned permanent living arrangement in accordance with § 16.1-282.1 A 2 of the Code of Virginia.

B. When the permanency goal is changed to adoption, the local department shall file petitions with the court 30 days prior to the hearing to:

1. Approve the foster care service plan seeking to change the permanency goal to adoption; and
2. Terminate parental rights.

Upon termination of parental rights, the local department shall provide an array of adoption services to support obtaining a finalized adoption.

C. The local department shall engage in concurrent permanency planning in order to achieve timely permanency for the child. Permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated.

D. The goal of another planned permanent living arrangement may be chosen when the court has found that :

1. The child has a severe and chronic emotional, physical, or neurological disabling condition;
2. The child requires long-term residential care for the condition; ~~and~~
3. None of the alternatives listed in clauses (i) through (v) of § 16.1-282.1 A of the Code of Virginia is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child; and
4. The youth is age 16 and older.

E. The goal of permanent foster care may be chosen when the court has found that:

1. The child is placed in a foster home;

2. Has developed a clearly established and documented significant relationship with a foster parent;

3. None of the alternatives listed in clauses (i) through (v) of § 16.1-282.1 A of the Code of Virginia is achievable for the child at the time placement in permanent foster care is approved as the permanent goal for the child; and

4. The youth is age 16 and older.

F. If either the goal of permanent foster care or another planned permanent living arrangement is selected, the local department shall continue to search for relatives and significant individuals as permanent families throughout the child's involvement with the child welfare system. The local department shall continue to continuously evaluate the best interests of the child in light of the changing circumstances of the child and extended family to determine whether a change in goal to return home, placement with relatives, or adoption can achieve permanency.

~~G. F.~~ The goal of independent living services shall only be selected for those children admitted to the United States as a refugee or asylee, or those youth age 18 years leaving foster care and meeting the requirements to receive independent living services, or youth participating in the Fostering Futures program, as described in 22VAC40-201-105. For those youth with this goal, the service worker shall continue diligent efforts to search for a relative or other interested adult who will provide a permanent long-term family relationship for the youth.

22VAC40-201-80. Foster care plans.

A. Every child in foster care longer than 45 days shall have a written foster care plan approved by the court within 60 days of entry into foster care. The foster care plan shall specify the permanency goal and the concurrent permanency goal and shall meet all requirements set forth in federal law or ~~state law~~ § 16.1-282 of the Code of Virginia. ~~In the development of the foster care plan, the local department shall consider input from the child, the birth parents or prior custodians, the foster or adoptive parents, and any other interested individuals, who may include service providers. All of these persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.~~

B. The foster care plan shall be written after the completion of the assessment. Foster care plans shall directly reference how the strengths identified in the foster care assessment will support the plan and the needs to be met to achieve the permanency goal, including the identified concurrent permanency goal, in a timely manner.

C. A plan for visitation with the birth parents or prior custodians and siblings for all children in foster care shall be developed and presented to the court as part of the foster care plan in accordance with § 63.2-900.2 of the Code of Virginia.

22VAC40-201-90. Service delivery.

A. Services shall be provided to support the safety and well-being of the child. Services to children and birth parents or prior custodians shall continue until evidence indicates the services are either not effective to reach the child's goal or no longer necessary because the goal has been achieved, or the birth parent or prior custodian has refused services.

B. Permanency planning for children and birth parents or prior custodians shall be an inclusive process providing full disclosure to the birth parents or prior custodians of the establishment of a concurrent permanency goal and the implications of concurrent permanency planning for the child and birth parents or prior custodians. Local departments shall notify the birth parents or prior custodians concerning placement changes, hearings and meetings regarding the child, and assessments of needs and case progress and shall be responsive to the requests of the child and birth parents or prior custodians.

C. In order to ensure that permanency is achieved for the child, services may be provided to relatives or other interested individuals who are assessed to be potential permanency options for the child and may continue until an assessment indicates the services are no longer necessary.

D. Developmental and medical examinations shall be provided for the child in foster care in accordance with the Virginia Department of Medical Assistance Services' Early Periodic Screening Diagnosis and Treatment (EPSDT) schedule in the Virginia EPSDT Periodicity Chart. Dental examinations shall be provided for the child in accordance with the American Academy of Pediatric Dentistry's Periodicity and Anticipatory Guidance Recommendations (Dental Health Guidelines-Ages 0-18 Years, Recommendations for Preventive Pediatric Dental Care (AAPD Reference Manual 2002-2003)) as determined by the Virginia Department of Medical Assistance Services. As indicated through assessment, appropriate health care services shall include trauma, developmental, mental health, psychosocial, and substance abuse services and

treatments. Local departments shall follow the protocols for appropriate and effective use of psychotropic medications for children in foster care disseminated by the department.

E. All children in foster care shall have a face-to-face contact with an approved service worker at least once per calendar month regardless of the child's permanency goal or placement. More than 50% of each child's visits shall be in his place of residency.

1. The purpose of the visits shall be to assess the child's progress, needs, adjustment to placement, and other significant information related to the health, safety, and well-being of the child.
2. The visits shall be made by individuals who meet the department's requirements consistent with 42 USC § 622(b).

F. The local department shall enter into a placement agreement developed by the department with the foster or adoptive parents. As required by § 63.2-900 of the Code of Virginia, the placement agreement shall include, at a minimum, a code of ethics and mutual responsibilities for all parties to the agreement.

1. Services to prevent placement disruptions shall be provided to the foster and adoptive parents.
2. Foster and adoptive parents who have children placed with them shall be contacted by a service worker as often as needed in accordance with 22VAC40-211-100 to assess service needs and progress.
3. Foster and adoptive parents shall be given full factual information about the child, including but not limited to, circumstances that led to the child's removal and complete educational, medical, and behavioral information. All information shall be kept confidential by the foster and adoptive parents.
4. Foster and adoptive parents shall be given the foster care plan.

5. Respite care for foster and adoptive parents may be provided on an emergency or planned basis.

6. The department shall make funds available to provide reimbursement to local departments' foster parents for damages to property caused by children placed in the home. Provision of reimbursement is contingent upon the availability of funds.

G. Pursuant to § 63.2-904 of the Code of Virginia, the local department shall implement policies and procedures to support normalcy for children in foster care. Foster parents, group home and residential providers shall make day to day decisions regarding a child's participation in age-appropriate extracurricular, enrichment, cultural, and social activities based upon the reasonable and prudent parent standard and in accordance with the agreement entered into between the provider and LDSS.

1. Pursuant to USC 671(a)(10)(B), the department shall ensure that foster parents and group home and residential providers are trained in normalcy and how to use and apply the reasonable and prudent parent standard. Each group home and residential provider shall designate at least 1 official staff member on-site to be the caregiver who is authorized to apply the reasonable and prudent parent standard.

2. No other policy or procedure shall interfere with the ability to implement normalcy.

22VAC40-201-100. Providing independent living services: services for youth age 14 and older.

A. Independent living services shall be identified by the youth; foster or adoptive family; local department; service providers; legal community; and other interested individuals and shall be included in the service plan. Input from the youth in assembling these individuals and developing the services is required.

B. Independent living services shall be provided to all youth ages 14 to 18 years and shall be offered to any person between 18 and 21 years of age who is in the process of transitioning from foster care to self-sufficiency.

C. Independent living services include education, vocational training, employment, mental and physical health services, transportation, housing, financial support, daily living skills, counseling, and development of permanent connections with adults.

D. Local departments shall assess the youth's independent living skills and needs and incorporate the assessment results into the youth's service plan.

E. A youth placed in foster care before the age of 18 years who turned 18 prior to July 1, 2016, may continue to receive independent living services from the local department between the ages of 18 and 21 years if:

1. The youth is making progress in an educational or vocational program, has employment, or is in a treatment or training program; and
2. The youth agrees to participate with the local department in (i) developing a service agreement and (ii) signing the service agreement. The service agreement shall require, ~~at a minimum, that the youth's living arrangement shall be approved by the local department~~ and that the youth shall cooperate with all services; or
3. The youth is in permanent foster care and is making progress in an educational or vocational program, has employment, or is in a treatment or training program.

F. A youth age 16 years and older is eligible to live in an independent living arrangement provided the local department utilizes the independent living arrangement placement criteria developed by the department to determine that such an arrangement is in the youth's best interest. An eligible youth may receive an independent living stipend to assist him with the costs

of maintenance. The eligibility criteria for receiving an independent living stipend will be developed by the department.

G. Any person who was committed or entrusted to a local department, turned 18 prior to July 1, 2016, and chooses to discontinue receiving independent living services after age 18 years may request a resumption of independent living services provided that (i) the person has not yet reached 21 years of age and (ii) the person has entered into a written agreement, less than 60 days after independent living services have been discontinued, with the local board regarding the terms and conditions of his receipt of independent living services. Local departments shall provide any person who chooses to leave foster care or terminate independent living services before his 21st birthday written notice of his right to request restoration of independent living services in accordance with § 63.2-905.1 of the Code of Virginia by including such written notice in the person's transition plan.

H. Local departments shall assist eligible youth in applying for educational and vocational financial assistance. Educational and vocational specific funding sources shall be used prior to using other sources.

I. Local departments shall provide independent living services to any person between 18 and 21 years of age who:

1. Turned 18 prior to July 1, 2016;
- 2.-4. Was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice;
- 3.-2. Is in the process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency; and
- 4.-3. Provides written notice of his intent to receive independent living services and enters into a written agreement which sets forth the terms and conditions for the

provision of independent living services with the local board within 60 days of his release from commitment.

J. Every six months a supervisory review of service plans for youth receiving independent living services after age 18 shall be conducted to assure the effectiveness of service provision.

K. All youth who have been in care 6 months or more and turn 18 while in foster care shall receive a certified copy of their birth certificate, social security card, health insurance information, medical records, and his state issued identification/driver's license.

L. The LDSS shall run annual credit checks on all youth in foster care who are age 14 and older. The LDSS shall assist the youth in resolving any discrepancies in the youth's credit report. The LDSS shall assist youth in foster care over the age of 18 in obtaining his annual credit report.

22VAC40-201-105. Foster care for youth age 18-21 (Fostering Futures).

- A. Foster care services shall be provided to youth who turn 18 years of age while still in foster care on or after July 1, 2016 until they reach 21 years of age if they qualify and have chosen to participate in the Fostering Futures program.
- B. Youth who qualify for Fostering Futures are those youth who (i) turn 18 on or after July 1, 2016 and were in foster care in the custody of a local Virginia Department of Social Services but have not yet turned 21, including those that were in foster care under an entrustment; and (ii) are
 - a. Completing secondary education or an equivalent credential;
 - b. Enrolled in an institution that provides post-secondary or vocational education;

- c. Participating in a program or activity designed to promote employment or remove barriers to employment;
 - d. Employed at least 80 hours a month; or
 - e. Incapable of doing any of the activities described in (a) through (d) due to a medical condition, which incapability is supported by regularly updated information in the program participant's case plan.
- C. Fostering Futures participants are eligible for independent living services as well as placement services; placements in congregate care are not allowable.
- D. Entry into the Fostering Futures Program is considered a new foster care episode and the youth shall be evaluated for title IV-E funding/eligibility upon entering the program.
- E. There is no limit to the number of times a youth may exit and re-enter Fostering Futures prior to his 21st birthday.
- F. Youth in foster care who are committed to DJJ prior to age 18, turn 18 on or after July 1, 2016, and are not yet 21, are eligible to enter Fostering Futures upon discharge from commitment.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. Facilitate a meeting prior to the development of the foster care plan/review, to ensure participation from ~~consider input from~~ the child, the birth parents or prior custodians, the foster or adoptive parents, and any other interested individuals, who may include service providers, in the development of the plan. All youth age 14 and older shall be given the opportunity to choose up to two people to attend the planning meeting who are not their

foster parent or caseworker. All of these persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

2. File petitions in accordance with the requirements for the type of hearing.

3. ~~2.~~ Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the service worker shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

4. ~~3.~~ Inform the court of reasonable efforts made to achieve concurrent permanency goals.

5. ~~4.~~ Document the appropriateness of the placement, including the continued appropriateness of an out of state placement if applicable.

6. ~~5.~~ Ensure the child/youth is present for the permanency planning hearing unless the court determines this not to be in the child's best interest.

B. The youth shall be consulted in an age-appropriate manner about his permanency plan at the permanency planning hearing and subsequent administrative panel reviews.

C. ~~B.~~ An administrative panel review shall be held six months after a permanency planning hearing when the goal of permanent foster care has been approved by the court . A foster care review hearing will be held annually. The child will continue to have administrative panel reviews or review hearings every six months until the child reaches age 18 years.

D. ~~C.~~ The local department shall invite the child; the birth parents or prior custodians when appropriate; and the child's foster or adoptive parents, placement providers, guardian ad litem, court appointed special advocate (CASA), relatives; and service providers to participate in the administrative panel reviews.

E. D. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. Individuals who were invited, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

E. E. A supervisory review is required every six months for youth ages 18 to 21 who are receiving independent living services only.

G. An administrative panel review is required every six months for Fostering Futures participants unless a court review is held.

H. F. In accordance with § 16.1-242.1 of the Code of Virginia, when a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

I. G. An adoption progress report shall be prepared every six months after a permanency planning hearing when the goal of adoption has been approved by the court. The adoption progress report shall be entered into the automated child welfare data system. The child will continue to have annual review hearings in addition to adoption progress reports until a final order of adoption is issued or the child reaches age 18 years.

J. H. If a child is in the custody of the local department and a preadoptive family has not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent in accordance with § 16.1-283.2 of the Code of Virginia.

K. If a child has been in foster care for 15 out of the last 22 months, the LDSS shall file a petition to terminate the parental rights.

22VAC40-201-130. Closing the foster care case.

A. Foster care cases are closed or transferred to another service category under the following circumstances:

1. When the foster care child turns 18 years of age and objects to continuing to receive foster care services for which he is eligible
2. When the court releases the child from the local department's custody prior to the age of 18 years;
3. When a temporary entrustment or noncustodial agreement has expired, been revoked, or been terminated by the court;
4. When the foster care child is committed to the Department of Juvenile Justice; or
5. When the final order of adoption is issued.

B. When the foster care case is closed for services, the case record shall be maintained according to the record retention schedules established by the Library of Virginia.

C. Any foster care youth who has reached age 18 years has the right to request information from his records in accordance with state law.

22VAC40-201-140. Other foster care requirements.

~~A. The director of a local department or his designee may grant approval for a child to travel out-of-state and out-of-country. The approval must be in writing and maintained in the child's file.~~

A. Pursuant to § 63.2-908 of the Code of Virginia, a foster parent may consent to a marriage or entry into the military if the child has been placed with him through a permanent foster care agreement that has been approved by the court.

B. C. An employee of a local department, including a relative, cannot serve as a foster, adoptive, or licensed child-placing agency parent for a child in the custody of that local department. In the event it is in the child's best interest that a local employee be the foster parent, the child's custody may be transferred to another local department.

C. D. The child of a foster child remains the responsibility of his parent, unless custody has been removed by the court.

1. The child is not subject to requirements for foster care plans, reviews, or hearings. However, the needs and safety of the child shall be considered and documented in the foster care plan for the foster child (parent).

2. The child is eligible for maintenance payments in accordance with 42 USC § 675(4)(B) and Medicaid in accordance with 42 USC § 672(h).

E. When a child in foster care is committed to the Department of Juvenile Justice , the local department no longer has custody or placement and care responsibility for the child. As long as the discharge or release plan for the child is to return to the local department prior to reaching age 18 years, the local department shall maintain a connection with the child .

F. At least 90 days prior to a youth's release from commitment to the Department of Juvenile Justice, the local department shall:

1. Consult with the court services unit concerning the youth's return to the locality; and
2. Work collaboratively with the court services unit to develop a plan for the youth's successful transition back to the community, which will identify the services necessary to facilitate the transition and will describe how the services will be provided.

22VAC40-201-161. Adoption assistance.

A. The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs.

B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs in accordance with §§ 63.2-1300 and 63.2-1301 of the Code of Virginia and meet the following criteria:

1. Be younger than 18 years of age and meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 USC § 673); or
2. Be younger than 18 years of age and in the placement and care of a child-placing agency at the time the petition for adoption is filed and be placed by the child-placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the foster parents have filed a petition for adoption under § 63.2-1229 of the Code of Virginia.

C. Adoption assistance may include the following payments or services where appropriate:

1. Title IV-E maintenance payments if the child meets federal eligibility requirements.
2. State-funded maintenance payments when the local department determines that (i) the child does not meet the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673);[and] (ii) the child is a child with special needs [pursuant to § 63.2-1301 (B)].
3. [State-funded] special service [payments] used to help meet the child's physical, mental, emotional, or dental needs[(i)] when the child is in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, [(ii)] when the child meets the criteria of a child with special needs set out in § 63.2-1300 of

the Code of Virginia, and [(iii)] when the adoptive parents are capable of providing permanent family relationships needed by the child in all respects except financial.

4. Nonrecurring expense payments when an adoption assistance agreement is entered into prior to [or at the time of] the finalization of the adoption. [Claims for nonrecurring expense payments must be filed within 2 years of the date of the final decree of adoption.]

D. For the child who meets the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673) or who is receiving state-funded maintenance payments and has a special medical need as specified in § 32.1-325 of the Code of Virginia and in the Virginia DSS Medicaid Eligibility manual, M0310.102 2b, the adoption assistance agreement shall include a statement indicating the child's Medicaid eligibility status.

E. Additional criteria for the payments and services specified in subsection C of this section are as follows:

1. A maintenance payment , whether under Title IV-E or state-funded, shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates, or it is determined through negotiation, that the payment is not needed.

a. The amount of all payments shall be negotiated by a representative of the department with the adoptive parents, taking into consideration the needs of the child and circumstances of the adoptive parents.

b. The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home.

c. The maintenance payments shall not be reduced below the amount specified in the adoption assistance agreement without the concurrence of the adoptive parents or a state-wide reduction.

d. The maintenance payment specified in the adoption assistance agreement may only be increased if the child is already receiving the maximum amount allowed] and (i) the child reaches an age at which the foster care maintenance rate would increase, or (ii) statewide increases are approved for foster care maintenance rates.

e. The adoptive parents shall be required under the adoption assistance agreement to keep the local department informed of the circumstances which would make them ineligible for a maintenance payment, or eligible for a different amount of maintenance payment than that specified in the adoption assistance agreement.

f. Maintenance payments shall cease being made to the adoptive parents for the child, who has not yet reached the age of 18, if (i) the adoptive parents are no longer legally responsible for the support of the child, or (ii) the child is no longer receiving any support from the adoptive parents.

2. The special service payment shall be directly related to the child's special needs listed on the adoption assistance agreement. Special service payments shall be time limited based on the needs of the child and can be modified beyond the original provision of the agreement when the local department and the adoptive parents agree to the modification in a signed and dated addendum. Subsection K of this section addresses addendums to an existing agreement.

a. [.]

]. A special service payment may be used for a child eligible for Medicaid to supplement payments not covered by Medicaid.

[b]. Payments for special services are negotiated by a representative of the department with the adoptive parents, taking into consideration:

(1) The special needs of the child;

(2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and

(3) The circumstances of the adoptive family ,including, but not limited to, the family's income.]

[c]. The rate of payment shall not exceed the prevailing [] rate [for the provision of such special services within the child's community].

[d]. The special services adoption assistance payments shall be separate and distinct from the maintenance payments and nonrecurring expenses on the adoption assistance form.

3. The adoptive parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.

a. The total amount of reimbursement [shall be] based on actual costs and shall not exceed \$2,000 per child per placement [or an amount established by federal law].

b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.

c. Nonrecurring expenses include those items set out in § 63.2-1301 D of the Code of Virginia.

4. When the adoptive parents decline a specific payment or agree to a reduced payment amount and their family circumstances or the child's needs change, the adoptive parents

may request a change to the agreement and an addendum to the adoption assistance agreement can be negotiated. The requirements for addendums to an existing adoption assistance agreement are in subsection K of this section.

F. All adoption assistance payments, services, and agreements shall be negotiated with the adoptive parents by a representative of the department, taking into consideration the needs of the child, the circumstances of the family, and the limitations specified in subsections B, C, and E of this section. Documentation supporting the requests for payments and services shall be provided by the adoptive parents and for consideration in the negotiation of the adoption assistance agreement. Income shall not be the sole factor in considering the family's circumstances during the negotiations. Available family and community resources shall be explored as an alternative or supplement to the adoption assistance payment.

G. An adoption assistance agreement shall be entered into by the local board and the adoptive parents for a child who has been determined eligible for adoption assistance. Local departments shall use the adoption assistance agreement form developed by the department. In cases in which the child is in the custody of a licensed child-placing agency, the agreement shall be entered into by the local board, the licensed child-placing agency, and the adoptive parents. All adoption assistance agreements shall be negotiated by a representative of the department.

H. When a child is determined to be eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement shall:

1. ;

1. Be signed prior to or at the time of entry of the final order of adoption;

[2]. Specify the payment types, monthly amounts, special services to be provided; and

[3]. Remain in effect [and governed by the laws of the Commonwealth of Virginia] regardless of the state to which the adoptive parents may relocate.

I. Application for adoption assistance after finalization of the adoption shall be for [state-funded maintenance payments] as set out in § 63.2-1301 B of the Code of Virginia. The application for adoption assistance shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs.

J. The adoptive parents shall annually submit a signed adoption assistance affidavit to the local department by the end of the month in which the adoption assistance agreement was effective [pursuant to § 63.2-1302 C].

K. Adoption assistance agreements may be modified beyond the original provisions of the agreement to the extent provided by law when the local department and the adoptive parents agree in writing to [new or renewed] special services or provisions in an addendum signed and dated by the local department and the adoptive parents. The local departments shall use the addendum form provided by the department and the changes to the agreement shall be negotiated by a representative of the department. [.]

L. The local department is responsible for:

1. Maintaining payments and services identified in the adoption assistance agreement and any addendum in effect, regardless of where the family resides;
2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due;
3. Discussing with the adoptive parents the child's unique needs and their ability to manage the needs of the child;
4. Assisting the adoptive parents in coordinating services to meet the child's special needs related to adoption assistance upon request;
5. Providing services to prevent disruption and strengthen family well-being, when requested by the adoptive parents; and

6. Providing training, when requested, to the adoptive parents as part of an already established local department curriculum. If the local department does not provide the necessary training when requested, the local department shall identify potential training sources and assist the adoptive parent in accessing the training.

M. Adoption assistance shall be terminated when the child reaches the age of 18 years unless:

1. The child has a physical or mental disability or an educational delay resulting from the child's disability that warrants continuation of the adoption assistance. If a child has a physical or mental disability that warrants continuation of the adoption assistance, the adoption assistance payments may continue until the child reaches the age of 21 years if the local department and adoptive parents sign an addendum to the agreement to extend the agreement to the specified age. If the sole reason for continuing the agreement beyond the age of 18 years is educational delay, then state-funded adoption assistance may continue until the youth graduates from high school or until the youth's 21st birthday, whichever is earlier, if the local department and the adoptive parents sign an addendum to the agreement to extend the agreement to the end of the month of high school graduation or until the youth's 21st birthday, whichever is earlier; or

2. The initial adoption assistance agreement became effective on or after the youth's 16 birthday and the youth turned 18 on or after July 1, 2016. Adoption assistance may continue until the youth reaches 21 if one of the following criteria is met:

a. Completing secondary education or an equivalent credential;

b. Enrolled in an institution that provides post-secondary or vocational education;

- c. Participating in a program or activity designed to promote employment or remove barriers to employment;
- d. Employed at least 80 hours a month; or
- e. Are incapable of doing any of the activities described in (a) through (d) due to a medical condition, which incapability is supported by regularly updated information in the program participant's case plan.

N. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:

1. The child is no longer receiving support from the adoptive parents; or
2. The adoptive parents are no longer legally responsible for the support of the child.

O. Local boards of social services are responsible for informing adoptive parents in writing of their right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. In accordance with § 63.2-1304 of the Code of Virginia applicants for, and recipients of, adoption assistance shall have the right to appeal adoption assistance decisions by a local board or licensed child-placing agency in granting, denying, changing, or discontinuing adoption assistance.

FORMS (22VAC40-201)

Virginia Application for Adoption Assistance, 032-04-0093-00-eng (eff. 3/2012)

Virginia Adoption Assistance Agreement, 032-04-0090-00-eng (eff. 7/2014)

Addendum to Adoption Assistance Agreement, 032-04-0086-00-eng (eff. 3/2012)

Adoptee Application for Disclosure (and Guidelines Regarding the Application), 032-02-0018-03-eng (eff. 8/2013)

DOCUMENTS INCORPORATED BY REFERENCE

Medicaid Eligibility Manual, M0310, Non-IV-E Adoption Assistance, Virginia Department of Social Services

Virginia EPSDT Periodicity Chart, Virginia Department of Medical Assistance Services

Periodicity and Anticipatory Guidance Recommendations, AAPD/ADA/AAP Guidelines, Dental Health Guidelines - Ages 0 - 18 Years, Recommendations for Preventive Pediatric Dental Care (AAPD Reference Manual 2002-2003)

