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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-201
Regulation title(s)	Permanency Services-Prevention, Foster Care, Adoption, and Independent Living
Action title	Amend Permanency Regulation 2018
Date this document prepared	August 15, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Subject matter and intent

Please describe briefly the subject matter, intent, and goals of the planned regulatory action.

The permanency regulation, 22VAC40-201, provides standards for local departments of social services (LDSS) for prevention, foster care, adoption, and independent living services. This regulatory action makes changes consistent with the Code of Virginia, specifically the establishment of the Kinship Guardianship Assistance Program, as well as clarifying the procedure for the filing of petitions related to foster care court proceedings. The intent of this action is to make the regulation consistent with the Code of Virginia and federal laws, and to make any other changes the agency deems necessary after comments and review.

Legal basis

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

The state’s legal basis for this action is § 63.2-217 of the Code of Virginia that requires the State Board of Social Services to adopt such regulations as may be necessary to carry out the purpose of title 63.2. This regulatory action to 22VAC40-201 is to comply with the 2018 Acts of Assembly Chapters 769 and 770 (HB 1333 and SB 636) establishing the Kinship Guardianship Assistance Program in the Code of Virginia and the 2016 Acts of Assembly Chapter 704 (SB417). This regulatory action will provide comprehensive and accurate direction regarding the Kinship Guardianship Assistance Program as well as clarifying the procedure for the filing of petitions related to foster care court proceedings.

Purpose

Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.

The proposed action is to update this regulation to incorporate the Kinship Guardianship Assistance Program that went into effect July 1, 2018. The Kinship Guardianship Assistance Program provides an additional permanency option for youth in foster care. In order for the youth and relative to be eligible for the program the youth must (1) be in foster care and have been placed in the relative foster home for six consecutive months, (2) the goals of return home and adoption must have been ruled out, and (3) the relative must be willing to accept custody of the youth. The program allows the relative custodians to continue to receive financial support in the form of maintenance payments after custody is transferred and the youth is discharged from foster care. This allows the youth to achieve permanency while providing the necessary support and services to the youth and relative to ensure that the youth does not return the foster care.

Additionally, the proposed action will update the regulation to outline the types of petitions allowed by the Code of Virginia to be completed by the designated non-attorney employee of the LDSS.

Substance

Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

This regulatory action will incorporate technical information, language and processes necessary to ensure consistency with the Code of Virginia, federal legislation, and requirements that have been passed into law since the introduction of the current Permanency Services regulation. This regulatory action includes adding a new section that will outline the Kinship Guardianship Assistance Program. The section will include eligibility criteria, the process by which the maintenance payments will be negotiated, and the annual review process. Additionally, information will be incorporated regarding the types of petitions that may be completed by the designated non-attorney employee of the LDSS.

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.

There are no other alternatives to the proposed regulatory action, as the action is necessary to make the regulation consistent with state law.

Public participation

Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is _____; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **Em Parente, 801 East Main Street, 11th Floor, Richmond, Virginia 23219, 804-726-7499, and email em.parente@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 day of the public comment period.

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

A panel will not be used.