



COMMONWEALTH of VIRGINIA


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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: Jennifer C. Williamson 
Senior Assistant Attorney General

DATE: July 2, 2019

SUBJECT: Final Stage Review of 22 VAC 40-131
Amend Standards for Licensed Child-Placing Agencies to Comply with
Code Requirements

I have reviewed the attached regulation, which is being amended to comply with Chapters 65, 84 and 446 of the 2019 Acts of Assembly, to determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the specified regulation and whether the specified regulation comports with applicable state law.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code. Consequently, it is my opinion that the State Board has the authority to promulgate this regulation, which is exempt from the provisions of Article 2 of the Administrative Process Act pursuant to Virginia Code § 2.2-4006(A)(4)(a), and the State Board has not exceeded that authority.

If you have any questions, please feel free to call me at 225-3197.

DEPARTMENT OF SOCIAL SERVICES

Amend Standards for Licensed Child Placing Agencies to Comply with the Code

22VAC40-131-80. Licensed capacity and maximum caseload numbers.

A. The licensee shall include in the child-placing agency's caseload and capacity count all children to whom supervision is provided. The supervised children may be placed directly by the licensee or through arrangement or negotiation with another licensed child-placing agency in one of the following settings:

1. A resource home;
2. A foster home;
3. An adoptive home prior to the final order of adoption;
4. A treatment foster home;
5. A short-term foster home;
6. An independent living arrangement; or
7. Licensed children's residential facility.

B. The total approved caseload numbers served by the licensee at any given time shall not exceed the following:

1. Except for licensees that provide treatment foster care, the maximum caseload restrictions shall apply:
 - a. A full-time caseworker shall serve no more than 25 children at any one time.
 - b. Trainees:

(1) A beginning trainee shall serve no more than 10 children at any one time until such time that he has reached his first year anniversary with the licensee; and

(2) A one year experienced trainee shall serve no more than 15 children at any one time until such time that he has reached his second year anniversary with the licensee.

c. The caseload of a less than full-time caseworker shall be proportional to the time spent providing casework services to the licensee.

2. For treatment foster care, the total caseload shall be the sum of the following:

a. A full time caseworker shall have a maximum caseload of 12 children. However, the caseload shall be adjusted downward if:

(1) The caseworker's job responsibilities exceed those listed in caseworker's job description; or

(2) The difficulty of the children served requires more intensive supervision and training of the treatment foster parents.

b. The caseload of a less than full-time caseworker shall be proportional to the time spent providing casework services to the licensee.

c. Trainees:

(1) A beginning trainee shall serve no more than six children at any one time until such time that he has reached his first year anniversary with the licensee;

(2) A one year experienced trainee shall serve no more than nine children at any one time until such time that he has reached his second year anniversary with the licensee.

3. Student Interns: There shall be a maximum of three children in a caseload for a student intern, if any student intern works with the licensee.

C. For licensees that serve both foster care and treatment foster care populations, the licensee shall first consider caseload downward adjustment criteria as specified in subdivisions B 2 a (1) and (2) of this section and, if the criteria does not apply to the caseworker's caseload under consideration then, the licensee shall ensure that the caseworker serving the mixed populations provide services to a maximum of 15 total children; and no more than 10 of those 15 children are served in treatment foster care.

D. The licensee shall include the following children in the capacity count:

1. A child in the custody of the licensee;
2. A child for whom an interlocutory order has been entered and still awaits a final order of adoption to be entered; and
3. A child not in the licensee's custody whose placement is supervised by the licensee.

E. Caseloads shall be reviewed and updated, as appropriate, annually to reflect the time and work necessary to effectively manage each foster or treatment foster care case.

Part VI

Children's Services

22VAC40-131-250. Intake, acceptance, and placement.

A. Prior to any placement of a child the licensee shall secure written authority to make the placement. The written authority for placement shall be maintained in the child's file. The written authority to make placements includes one of the following:

1. A court order, issued by any court of competent jurisdiction, that commits the child to the care of the licensee;

2. A permanent entrustment by the parent or parents or other person having legal custody of the child;
3. A temporary entrustment by the parent or parents or other person having legal custody of the child;
4. A placement agreement from a licensed or authorized child-placing agency having legal custody of the child;
5. A placement agreement signed by the local department of social services having jurisdiction when a noncustodial agreement has been signed between a parent or legal guardian and the local department or another public agency; or
6. A parental agreement whereby for the purpose of placement in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements, the child's parents or guardians have entrusted the child to the local department.

B. Prior to any placement of a child in an independent living arrangement, the licensee shall secure written authority to make the placement. The written authority to place includes one of the following:

1. A court order, issued by any court of competent jurisdiction, that commits the child to the care of the licensee;
2. A permanent entrustment by the parent or parents or other person having legal custody of the child;
3. A temporary entrustment by the parent or parents or other person having legal custody of the child;
4. A placement agreement from a child-placing agency or person having legal custody of the child; or

5. A placement agreement signed by the local department of social services having jurisdiction when a noncustodial agreement has been signed between a parent or legal guardian and the local department or another public agency.

C. Prior to the provision of independent living services to any person who was in foster care on his 18th birthday and has not yet reached 21 years of age, the licensee shall enter into a written contractual agreement with the person 18 years of age to 21 years of age and such contractual agreement shall specify the terms and conditions of the person's receipt of independent living services.

D. Prior to placement of a child for adoption, the licensee shall secure written authority to make the placement. The written authority shall be in the form of one of the following:

1. An order issued by a court of competent jurisdiction documenting the termination of parental rights and responsibilities of each parent;
2. A notarized entrustment agreement signed by the parent or parents or other person having legal custody of the child; or
3. An order issued by a court of competent jurisdiction approving the transfer of the child's custody from one agency to another.

E. The licensee shall petition the court for approval of a temporary entrustment agreement.

1. For a temporary entrustment written for less than 90 days, the licensee shall file the petition with the court within a reasonable period of time and not to exceed 89 days after the execution of the agreement if the child is not returned to his home within that 90-day period.
2. For a temporary entrustment written for 90 days or longer or for an unspecified period of time, the licensee shall file the petition with the court within a reasonable period of

time and not to exceed 30 days after execution of the agreement if the agreement does not provide for termination of all parental rights with respect to the child.

F. A licensee certified by the Department of Education as a school for children with disabilities shall for the purpose of placement of the child in its special education program enter into a placement agreement, signed by the parent or other person having legal custody of the child. The placement agreement shall meet the requirements of this section. The licensee is not required to take custody of the child placed in its special education program.

G. Prior to accepting a child for placement in a foster care home, treatment foster care home, short-term foster care home, or an independent living arrangement, the licensee shall gather, review, and document the following information in the child's file:

1. The reason the placement is requested, and if the child coming into placement is less than one year old, a brief report on his living situation unless this placement directly follows his discharge from the hospital;
2. A list of services requested by the placing agency, parent, or other individual having legal custody of the child;
3. Current information on the child's:
 - a. Health:
 - (1) For a newborn child coming into foster care directly following hospital discharge, the discharge summary shall be accepted as the admission examination; or
 - (2) For a child under one year old, the admission examination shall consist of a hospital summary and a physician-signed report of interim care no older than 30 days that documents the absence of abnormalities or if abnormalities are present, the report shall contain an explanation of abnormalities observed;

- b. Behavior in the home or other previous living situation;
 - c. Current school grade level, as appropriate;
 - d. Day care or nursery school, as appropriate;
 - e. Adjustment to school, day care, or nursery school;
 - f. Current medication, prescription and nonprescription, including the names, dosages, and instructions for all medication being taken by the child, and reasons for taking each medication;
 - g. Emotional and psychological needs and problems of the child, if any, including information concerning professional treatment needed or received to meet the needs or problems;
 - h. Strengths, skills, interests, and talents;
 - i. Permanency planning goal including the date of planned achievement; and
 - j. Emergency contact supports including the names, addresses, and telephone numbers for designated emergency contacts, parents, if appropriate, or other person having legal custody of the child, and the agency placing the child with the licensee;
4. For treatment foster care placements, a list of the strengths and needs of the child's birth family;
5. The dates and names of persons involved in making preplacement visits;
6. The dates and names of persons involved in staffing the child's case;
7. The reason the child was accepted for placement; and
8. The date the acceptance decision was made.

H. The licensee shall review and consider all information collected on the child prior to recommending the type of home best suited to the child. The recommendation and rationale shall be documented in the child's file.

I. The licensee shall consider the following when making the decision whether to place a child in a foster home, treatment foster care home, or short-term foster care home:

1. The prospective foster family's specific skills, abilities, and attitudes necessary to (i) effectively work with the child; (ii) ensure implementation of the child's service plan; and (iii) provide effective behavior support techniques, crisis intervention, crisis stabilization, and supportive counseling;
2. The prospective foster family's ability to meet the needs and preferences of the child;
3. The prospective foster family's willingness to access resources required to meet the needs of the child; and
4. The prospective foster family's willingness and ability to work with the child's family.

J. Prior to placement of a child in a family home, the licensee shall assist the prospective foster family with making an informed decision as to whether that particular child is appropriate for them.

K. The licensee shall document in the child's file the reasons a particular home was selected for the child, including the matching factors considered for the selection decision.

L. Except when the placement of the child is an emergency placement, the licensee shall interview the child and his parent or legal guardian prior to the child's placement. If, for valid reasons, the interview was not completed prior to placement, the licensee shall document in the child's file the reasons why the interview was not completed within the required time frame.

M. Except when the placement of the child is an emergency placement, the licensee shall prepare the child for placement and arrange a preplacement visit for the child in the prospective home. If a preplacement visit did not take place prior to the child's placement, the reasons why it did not occur shall be documented in the child's file.

N. A summary of the preplacement interview and results of the preplacement visit shall be documented in the child's file.

O. Within 30 days of the placement of the child in a foster care home, treatment foster care home, short-term foster care home, or an independent living arrangement, or prior to the completion of the adoptive placement agreement, the licensee shall place in the file of the child a written assessment that contains all required elements specified in 22VAC40-131-250 G.

P. The licensee shall place siblings together in the same foster home whenever possible unless placement together is clearly not in the best interest of each child.

Q. When the licensee accepts a child for placement from another child-placing agency that retains custody of the child, the licensee shall, before placing the child:

1. Sign the placement agreement as the recipient of the child; and
2. Ensure that the placement agreement has been signed by the representatives from each child-placing agency who has the authority to commit the child-placing agency to the provisions contained in the agreement.

R. When the licensee accepts a child for placement from a parent or other individual having legal custody of the child, the licensee shall:

1. Obtain an entrustment agreement and follow the requirements as set forth in §§ 63.2-903 and 63.2-1817 of the Code of Virginia;
2. Explain the licensee's foster care program;

3. Collect information for the intake and social history and document the information obtained under each respective heading;
4. Provide the parent or other individual having legal custody of the child or youth with information about the licensee's services;
5. Provide an explanation of the service planning process and the licensee's case work responsibilities;
6. Discuss with the parent or other individual having legal custody of the child:
 - a. Long-term and short-term goals for the child, including estimated dates of accomplishment for each goal;
 - b. Objectives for each goal;
 - c. Responsibilities of all parties for accomplishing the goals and objectives for the child;
 - d. Involvement in service planning for the child;
 - e. Plans for visitation with the child; and
 - f. Plans for financial support for the child; and
7. Document in the child's file the reactions of the parents or other persons to each topic discussed with them.

S. The licensee shall cooperate with the placing agency and custodian to ensure that the placing agency and custodian have access to the child at all times.

T. The licensee shall develop a system of support for foster parents and assign designated staff to be on call to foster parents on a 24-hour, seven day a week basis.

U. The Commissioner shall have the authority to place, remove, or direct the placement or removal of any child who is under the supervision and control of a local board or licensed child-

placing agency. Pursuant to such authority, the Commissioner shall remove or direct the removal of any child placed by a local board or licensed child-placing agency in a foster home or children's residential facility that fails to comply with any state or federal requirements intended to protect the child's health, safety, or well-being.

22VAC40-131-490. Adoption counseling and services for birth parents.

A. Except in the case of intercountry adoption, the licensee who holds custody of a child shall offer counseling services to the birth mother, or if reasonably available, to both birth parents contemplating the placement of their child for adoption. The counseling services shall include a discussion about:

1. The parent's decision to place the child was not made under duress and to ensure the decision to place the child is a firm decision;
2. The impact of such a decision;
3. The reasons for contemplating the decision to place the child for adoption; and
4. Alternatives to adoption including:
 - a. Services available to assist the family in staying together, if staying together is in the best interests of both the child and family;
 - b. Foster care for the child; and
 - c. The child's placement with relatives.

B. Except in the case of intercountry adoption, the licensee shall offer additional counseling sessions as needed by the birth parents.

C. Except in the case of intercountry adoption and prior to accepting a child for adoption placement, the licensee shall provide the birth parents with an explanation of:

1. Adoption services provided;

2. Adoption policies and procedures, including the adoption process; and

3. The rights and responsibilities of all parties in the adoption process.

D. The licensee shall document in the record of the birth mother or child to whom the counseling services were provided if:

1. The licensee did not provide counseling services as required, the reason shall be documented.

2. Counseling was provided to the birth father, such counseling services shall be documented.

~~E. When a child's birth parents and the prospective adoptive parents have entered into a written post-adoption contact and communication agreement, the licensee sponsoring the adoption shall:~~

~~1. Review the written post-adoption contact and communication agreement; and~~

~~2. Provide to the court the licensee's written recommendation indicating whether:~~

~~a. The post-adoption contact and communication agreement represents the best interests of the child; and~~

~~b. The licensee recommends approval of the agreement.~~

22VAC40-131-495. Post-Adoption contact and communication agreement.

A. Unless parental rights of the birth parents have been terminated, the licensee may inform the birth parents and shall inform the adoptive parents that they may enter into a written post-adoption contact and communication agreement, as described in § 63.2-1220.2 of the Code of Virginia.

B. The licensee shall inform the child, if he is 14 years of age or older, that he may consent to a post-adoption contact and communication agreement, as described in § 63.2-1220.2 of the Code of Virginia.

C. When a child's birth parents and the prospective adoptive parents have entered into a written post-adoption contact and communication agreement, and the child age 14 or older has given consent, the licensee shall:

1. Review the written post-adoption contact and communication agreement; and

2. Provide to the court the licensee's written recommendation indicating whether:

a. The post-adoption contact and communication agreement represents the best interests of the child; and

b. The licensee recommends approval of the agreement.