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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)	22 VAC40-201
Regulation title(s)	Permanency Services-Prevention, Foster Care, Adoption, and Independent Living
Action title	Amend Permanency Regulation 2019
Date this document prepared	August 21, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

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 in response to 2019 legislative actions. 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.

Acronyms and Definitions

Please define all acronyms or technical definitions used in the Agency Background Document.

LDSS-local departments of social services

VDSS-Virginia Department of Social Services
OCS-Office of Children's Services

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this regulatory change is changes made to § 63.2-913.1 of the Code of Virginia during the 2019 General Assembly session that require the Board of Social Services to establish a caseload standard in the regulation. Additional legislation actions require review and revision of the regulation consistent with § 63.2-217 of the Code of Virginia which requires the State Board of Social Services to adopt such regulations as may be necessary to carry out the purpose of title 63.2.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must 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 or promulgating entity'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. The 2019 General Assembly session resulted in multiple new requirements:

- 2019 Acts of Assembly Chapter 446 (SB1339) made numerous changes to the laws governing the provisions of foster care services.
- 2019 Acts of Assembly Chapters 677 (HB1730) and 676 (SB1253) require the placement and removal of credit freezes on children in foster care and amending the age range for credit checks on children in foster care.
- 2019 Acts of Assembly Chapter 301 (SB1135) requires LDSS to notify the community services board when it becomes known that a child in foster care has a developmental disability.
- 2019 Acts of Assembly Chapters 282 (HB2014) and 688 (SB1679) amend the Code by including language related to the federal Family First Prevention Services Act and qualified residential treatment programs.
- 2019 Acts of Assembly Chapters 437 (HB2758) and 438 (SB1720) require that relatives who may be eligible to become kinship foster parents be notified of opportunities available through kinship guardianship.

Purpose

Please describe the specific reasons why the agency has determined that this regulation 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.

This regulatory action is needed to amend the existing regulation so that it will be consistent with the Code of Virginia and the changes that become effective in July 2019. This regulation is essential to support the health, safety and permanency of children in foster care and facilitate the provision of foster care services to children and families. The goals of this regulatory action are: 1) amend existing regulation to align with changes made in the 2019 General Assembly session; 2) add new requirements related to the provision of foster care services in accordance with the 2019 Acts of Assembly Chapter 446 (SB1339); and 3) align this regulation with changes to federal law as a result of the 2018 Family First Prevention Services Act.

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 corrections, 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, but is not limited to, changes to regulations on credit freezes, notification of a child with a developmental disability, qualified residential treatment programs, relative search and notification, Commissioner’s placement authority, a foster care complaint system, birth parent engagement, and caseload standards.

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

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

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Please indicate how the public should contact the agency to submit comments on this regulation, including ideas to assist the agency in the development of the regulation 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 regulation.

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

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Written comments must include the name and address of the commenter. Comments may also be submitted 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. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

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

A panel will not be used.