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TO: **KARIN CLARK**
Virginia Department of Social Services

FROM: **MICHELLE A. L'HOMMEDIEU** 
Assistant Attorney General

DATE: **July 25, 2022**

SUBJECT: **Exempt Final Regulation – Amend Permanency Regarding Virginia Birth
Father Registry, 22 VAC 40-201-190 (5976/9658)**

I am in receipt of the attached regulation to amend the Virginia Birth Father Registry regulation 22 VAC 40-201-190. You have asked the Office of the Attorney General to review and determine if the State Board of Social Services (“State Board”) has the statutory authority to promulgate this regulation and if it comports with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2. The proposed amendments to the regulation is necessary to reflect the changes to Virginia Code § 63.2-1250 by the adoption of Chapter 377 of the 2022 Acts of Assembly (House Bill 869).

Based on my review, it is my opinion that the State Board has the authority to promulgate the final regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and Executive Order 19 (2022), and has not exceeded that authority. To date, the Board has not yet acted on this regulation; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action. Based on the foregoing, it is my view that the amendments to this regulation are exempt from the procedures of Article 2 of the APA under Virginia Code § 2.2-4006(A)(4)(a). If you have any questions or need additional information about this regulation, please contact me at 786-6005.

cc: Kim F. Piner, Esq.
Attachment

Project 7222 - Final

Department of Social Services

Exempt Permanency Regulatory Action-2022 Legislative Changes

22VAC40-201-190. Virginia Birth Father Registry.

A. The department shall establish and maintain a putative father registry that is a confidential database.

B. A search of the Virginia Birth Father Registry shall be conducted for all adoptions except when the child has been adopted according to the laws of a foreign country or when the child was placed in Virginia from a foreign country for the purpose of adoption in accordance with § 63.2-1104 of the Code of Virginia.

C. Any petitioner who files a petition for termination of parental rights or for an adoption proceeding shall request a search of the Virginia Birth Father Registry. The certificate of search and finding must be filed with the court before an adoption or termination of parental rights proceeding can be concluded.

D. Any man who desires to be notified of an adoption proceeding or termination of parental rights regarding a child that he may have fathered shall register with the Virginia Birth Father Registry.

E. A registration is timely when it is received by the department within:

1. 10 days of the child's birth unless written notice has been provided prior to the child's birth and the time period for registration under subsection 2 below applies or discovery of a misrepresentation has occurred and the time period for registration under subsection 3 applies;

2. 10 days of the date of personal service of the written notice required under subsection F of § 63.2-1250 or within 13 days of the date of such written notice when sent by certified mailing date of such written notice mail with proof of service or express mail with proof of delivery, whichever occurs first; or

3. 10 days upon the registrant's discovery of misrepresentation by the birth mother that led him to believe that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) the child died when in fact the child is alive. However, registration within 10 days of discovery of such misrepresentations shall be considered untimely if 180 days have elapsed from the date the circuit court entered the final order of adoption.

F. The department may require additional information to determine that the individual requesting information from the Virginia Birth Father Registry is eligible to receive information in accordance with § 63.2-1251 of the Code of Virginia.