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Exempt Action: Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22VAC40-201
VAC Chapter title(s)	Permanency Services-Prevention, Foster Care, Adoption and Independent Living
Action title	Exempt Permanency Regulatory Action-2022 Legislative Changes
Final agency action date	August 18, 2022
Date this document prepared	August 17, 2022

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action is necessary to implement the requirements of legislation passed during the 2022 session of the Virginia General Assembly and to conform the existing regulation to current state law.

Chapter 377 (HB 869) of the 2022 Acts of Assembly amends current Code related to notification and timely registration requirements of the Virginia Birth Father Registry. Current regulations require that when the whereabouts of a birth father are reasonably ascertainable, the child-placing agency must provide written notice to a birth father regarding the existence of an adoption plan and the availability of registration with the Virginia Birth Father Registry. Proposed regulatory changes include amendments that allow for the written notice to a birth father to be provided by certified mail with proof of service or express mail with proof of delivery to the birth father's last known address.

Additional regulatory changes include a provision that specifies when written notice is provided to a birth father before the birth of the child, the registration with the Virginia Birth Father Registry will be considered untimely if it is received by the Virginia Department of Social Services more than 10 days after the personal service of the written notice or more than 13 days after the certified or express mailing date of the written notice, whichever occurs first, and a provision that specifies when the mother has misrepresented to the father that she terminated the pregnancy, miscarried, or the child died when the child is alive, the father has 10 days to register upon discovering the misrepresentation unless 180 days have elapsed from the date the circuit court entered the Final Order Adoption. This time frame aligns with § 63.2-1216 of the Code of Virginia, which prohibits any challenges to an adoption for any reason if 180 days have elapsed from the date the circuit court entered the Final Order of Adoption.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”

Section 63.2-217 of the Code of Virginia gives the State Board of Social Services the responsibility to make rules and regulations to administer social services in the Commonwealth under Chapter 9 (63.2-900 et seq.) of Title 63.2 of the Code of Virginia.

Chapter 377 (HB 869) of the 2022 Acts of Assembly modified a current mandate in both Virginia Code and Virginia Administrative Code related to notification and timely registration requirements of the Virginia Birth Father Registry.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On August 17, 2022, the State Board of Social Services approved the exempt action to amend 22VAC40-201, Permanency Services-Prevention, Foster Care, Adoption, and Independent Living.