



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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## MEMORANDUM

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

**FROM:** Jennifer C. Williamson  
Senior Assistant Attorney General

**DATE:** July 13, 2022

**SUBJECT:** Exempt Final Stage Review of 22VAC40-211-140  
Foster and Adoptive Home Approval Standards

I have reviewed the attached regulation, which is being promulgated to comply with Chapters 561 and 562 of the 2022 Acts of Assembly. 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.

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. It is my opinion the State Board has the authority to promulgate this regulation and has not exceeded that authority. Pursuant to Chapters 561 and 562 of the 2022 Acts of Assembly, this regulation is exempt from the procedures of Article 2 of the Virginia Administrative Process Act.

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

**Project 7224 - Final**

**Department of Social Services**

**Foster and Adoptive Home Approval Standards-Update for 2022 Legislative Changes 22VAC40-211-140. Kinship foster parent appeals and notice.**

Pursuant to §§ 63.2-900.1 and 63.2-915 of the Code of Virginia, any relative, as defined in § 63.2-900.1, whose request to become a kinship foster parent is denied shall have the right to file an appeal with the Commissioner.

A. If a relative's request to become a kinship foster parent is denied, the local board shall provide the relative with the written notification of the decision by mail to the last known address of the relative within 14 calendar days of the denial and a copy of the written notification shall be mailed to the Office of Appeals and Fair Hearings. The notification shall include (i) a clear and specific explanation of the reasons for such denial, (ii) a statement that such denial is appealable pursuant to § 63.2-915 of the Code of Virginia, (iii) information regarding the procedure for filing such appeal, and (iv) contact information for the Office of Appeals and Fair Hearings.

B. If the relative chooses to appeal the denial, they must contact the Office of Appeals and Fair Hearings and disclose their intent to appeal. The relative's intent to appeal must be in writing and received by the Office of Appeals and Fair Hearings in no more than 30 calendar days from the date on the written notification from the local board.

C. Upon timely receipt of the relative's written notice of their intent to appeal the decision of the local board, the Office of Appeals & Fair Hearings shall accept the appeal and send a request to the local board for all documents related to the denial of the relative. The Office of Appeals and Fair Hearings will notify the relative in writing of the hearing date at least 10 calendar days prior to the hearing.

D. A hearing shall be conducted by the Office of Appeals and Fair Hearings as soon as practicable and the relative shall be afforded the opportunity to testify on their behalf and produce witness testimony. The Office of Appeals and Fair Hearings shall render a decision in no more than 90 calendar days from the date of receipt of the relative's written notice of their intent to appeal.

E. The Office of Appeals and Fair Hearings will notify the relative and the local board of the outcome of the appeal in writing. The decision of the local board may either be sustained or reversed. If the decision of the local board is reversed, the local board shall respond in writing to the Office of Appeals and Fair Hearings within 14 calendar days and confirm that the relative's request to become a kinship foster parent has been conditionally approved, so long as all approval requirements are completed timely, pursuant to law and policy.