



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department of Social Services
VAC Chapter Number:	22 VAC 40-730-10 et seq.
Regulation Title:	Investigation of Child Abuse and Neglect in Out of Family Complaints
Action Title:	Implement Joint Investigations
Date:	August 15, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Amendments to this regulation emphasize the joint nature of investigations between local Child Protective Services (CPS) staff and staff in designated out of family settings where child abuse or neglect is alleged to have occurred.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The statutory authority for promulgating this regulation is found in Title 63.1 Welfare (Social Services) of the Code of Virginia. Chapter 12.1, Section 63.1-248 et seq. of the Virginia Code places responsibility for providing protective services for children with the Department of Social Services. Chapter 1, Section 63.1-25 places authority with the Board of Social Services to make rules and regulations consistent with the Virginia Code Section 63.1-248.1 et seq. These regulations are necessitated by legislation enacted by the 2000 General Assembly session.

The Office of the Attorney General has reviewed these regulations and has certified that the agency has the statutory authority to promulgate regulations and that they comport with applicable state and federal laws.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

These regulations affect child abuse and neglect investigations involving staff in designated out of family settings. Designated out of family settings include state licensed and religiously exempt child day centers; regulated family day homes; private and public schools; group residential facilities; and hospitals or institutions. Chapter 854, 2000 Acts of Assembly made changes to Title 63.1 of the Code of Virginia to amend and reenact Section 63.1-248.6 of the Code, in order to emphasize that child protective services designated out of family investigations are to be conducted as joint investigations. These regulations clarify how a facility administrator can participate with the child protective services social worker in the joint investigation involving one or more of the facility's employees, as per Chapter 854.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Changes in the language of this regulation are intended to emphasize the joint nature of designated out of family investigations of child abuse or neglect and to clarify the roles of the parties participating in the investigation.

Section 10: The definitions of "Central Registry" and "Identifying information" are deleted. These terms are not used in this regulation and are unnecessary.

Section 20: A cross reference to 22 VAC 40-705-10 et seq., Child Protective Services, was added.

Section 40: This additional line emphasizes participation by all relevant parties in the joint investigation.

Section 50: These word changes underscore the requirement to involve other professionals in the investigation, even if there is no state regulatory authority to participate.

Section 70: This language addresses the need to involve all relevant parties in the planning of the interviews in a joint investigation.

Sections 80 and 90: Final authority is vested in the CPS agency for determining who will participate in interviews when there appears to be a conflict of interest.

These proposed regulatory changes are essential to comply with the changes to the Code. They replace the emergency regulations.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Local CPS workers will, for the first time, be required to conduct joint out of family investigations with a representative of the appropriate regulatory authority for regulated or religiously exempt child day centers and, in cases where no state regulatory authority exist, the facility administrator or school superintendent. These joint investigations, in designated out of family settings, will be conducted in the least intrusive way by emphasizing the joint or collaborative nature of these investigations.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There is no anticipated additional time or effort required as a result of the proposed amendments to this regulation.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Changes in the language of this regulation are intended to emphasize the joint nature of designated out of family investigations of child abuse or neglect and to clarify the roles of the parties participating in the investigation.

Section 10: The definitions of "Central Registry" and "Identifying information" are deleted. These terms are not used in this regulation and are unnecessary.

Section 20: A cross reference to 22 VAC 40-705-10 et seq., Child Protective Services, was added.

Section 40: This additional line emphasizes participation by all relevant parties in the joint investigation. As a result, CPS investigators will, if there is no apparent conflict of interest in doing so, invite the facility administrator or designee to assist with the planning of the investigation.

Section 50: These word changes underscore the requirement to involve other professionals in the investigation, even if there is no state regulatory authority to participate. Public and private schools are not subject to a state licensing body. This regulation clarifies that the CPS worker shall ask the school administrator to designate a person to participate in the joint investigative process.

Section 70: This language addresses the need to involve all relevant parties in the planning of the interviews in a joint investigation. As a result, this regulation clarifies that the CPS worker shall invite a facility administrator or designee who chooses to participate in the joint

investigation, to assist in developing the plan for investigation, including decisions about who is to be present in interviews.

Sections 80 and 90: These sections clarify that final authority is vested in the CPS agency for determining who will participate in interviews when there appears to be a conflict of interest.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The 2000 General Assembly addressed identified concerns about designated out of family investigations in the least intrusive way by emphasizing the joint or collaborative nature of these investigations. These regulatory changes are considered to be the minimal changes to meet the purposes of the legislative action.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

During the NOIRA comment period, no one made any comments to the Department of Social Services.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Virginia Department of Social Services believes this regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department will initiate a review and re-evaluate this regulation to determine if it should be continued, amended, or terminated no later than three years after this proposed regulation becomes effective. This review will take into consideration any changes to the Code of Virginia that may have occurred in the interim.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These regulatory changes are expected to have minimal, if any, impact on families. From the family's viewpoint, this regulation will not significantly change the way designated out of family CPS investigations are conducted in such settings as schools, child day care centers or other child care facilities. It does not strengthen or erode parental authority. It does provide additional authority to facility staff in these settings for participation in the investigation. These changes do not encourage or discourage self-sufficiency or assumption of responsibility of individuals in families. It does encourage other professionals to take responsibility for participation in these investigations. There is no apparent relation to marital commitments or family income.