



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department of Social Services
VAC Chapter Number:	22 VAC 40-705
Regulation Title:	Child Protective Services
Action Title:	Implement Differential Response
Date:	February 20, 2002

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summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed.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.

The current child protective services (CPS) regulations are emergency regulations in effect until December 31, 2002. They were enacted to support the statewide implementation of a CPS differential response system. Amendments to the permanent regulations are being proposed to continue to support a differential response. A review of the permanent regulations has also resulted in a few changes due to recent legislation or items requested by the State Board of Social Services to be examined, specifically the child fatality protocol and documentation of all local child protective services requirements.

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, § 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, § 63.1-25 places authority with the Board of Social Services to make rules and regulations consistent with the Virginia Code § 63.1-248.1 et seq. These regulation changes are necessitated by legislation enacted by the 2000 General Assembly session. Chapter 500, 2000 Acts of Assembly made changes to Title 63.1 of the Code of Virginia in § 63.1-248.1 et seq. and required that regulations be promulgated to take effect within 280 days of enactment. The emergency regulations are currently in effect but due to expire December 31, 2002.

These permanent regulations are intended to provide guidance to local departments of social services as they continue to implement statewide a child protective services differential response system and administer locally the overall CPS program.

The Office of the Attorney General has reviewed these regulations and has certified that the agency has the statutory authority to promulgate amended permanent 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.

The major purpose of these amended permanent regulations is to replace the emergency regulations by which the CPS program is currently being administered. Since the implementation of a differential response in Virginia required a thorough review of all the CPS regulations, several items were identified for updating due to changes in legislation, and the review was viewed as an opportunity to strengthen the regulations, particularly in the areas of documentation and child fatality protocols. The State Board of Social Services had noted problems in these areas over the past two years, and amending the regulations to clarify expectations is one step toward correcting the problems.

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.

Overall: Changes to language are made wherever needed to incorporate family assessment as a response to a valid CPS report.

This regulatory action is intended to promote the safety and well being of children within their families in Virginia. Until the enactment of this legislation all valid reports of child abuse or neglect had to be investigated and a finding made as to abuse or neglect by an alleged abuser. The legislation enacted in 2000 and these regulations allow for a response to valid reports of less serious abuse or neglect that is less adversarial and more likely to engage families in services, if needed, to protect their own children. These regulation changes include those required by the differential response legislation. They add a few other changes that are intended to enhance the implementation of a differential response or to reflect recent *Code* changes or meet the requests of State Board.

These permanent regulations are being developed to provide more details regarding determining the most appropriate response to a valid report and providing services to prevent child abuse or neglect. They will replace the emergency regulations and provide other needed changes.

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.

Since the primary changes to the regulations involve the continuing implementation of a differential response system, the advantages and disadvantages of those changes to the regulations are addressed here. The public is generally expected to benefit from a revised CPS system. A premise of the CPS reforms is an increased investment in services and supports for these vulnerable children and families both by state systems and community-based organizations. Primary changes expected with implementation of a differential response system:

- Community Collaboration in family needs assessments and provision of services to CPS families – this can range from involving other community groups and organizations in determining service gaps, to encouraging them to serve on assessment teams, to forging

new or stronger memoranda of understanding with key players, such as health departments or Community Services Boards;

- A Differential Response (DR), rather than just an investigation methodology, for different types of child abuse/neglect reports;
- An emphasis shift from labeling families in need of prevention services to identifying and providing services to promote safe family relationships;
- An intervention shift from disposition focus to building on family strengths and family perception of needs to protect the child;
- Also, a shift to allowing/encouraging worker/family partnerships in most cases (the pilots responded with a family assessment to over two-thirds of their valid reports).

The only expected disadvantage to implementation of a differential response system may be an increased identification of family and individual service needs, as local agencies are better able to partner with families. There was some indication in the pilots of increased need identification, but the statewide impact will take a year or two to determine. In these difficult economic times, meeting any increased needs may prove frustrating for local communities.

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.

Since the major first phase of the implementation of a differential response system will have occurred before these regulations are finalized, no significant fiscal impact is projected for these permanent regulations. Averaged over the five pilot agencies, it was determined that a family assessment and an investigation take approximately the same amount of local worker resources. The state will simply incorporate the changes to the CPS system and will not be requesting additional resources.

The other significant changes, such as adding a protocol for reporting child fatalities to the Board or clarifying documentation of CPS information, will not add any costs to the current administration of the program.

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.

- Overall: Changes to language are made wherever needed to incorporate family assessment as a response to a valid CPS report.
- Section 10: Provides definitions for “differential response” and “family assessment.” (The definition of family assessment can easily be compared to investigation to see what is similar and different about these processes.) Also codifies definition of "valid" that has always been in CPS policy.
- Section 40G4: Reflects a change in *Code* that instructs the juvenile and domestic relations court judge to assign the report on any local department employee to another local department. It deletes the judge's former option to assign the report to the court services unit.
- Section 50A: Adds a time frame for screening complaints.
- Section 50B: Requires an additional decision at intake: which response to make to each report - an investigation or family assessment.
- Section 50E: Encourages memoranda of understanding between local social services agencies and law enforcement agencies, reflecting *Code* cite added in 2000.
- Section 50F4: Adds a requirement for the Department to report child fatalities to the State Board, as requested by the Board.
- Section 50H: Clarifies when an investigation is the required response to a valid report of child abuse or neglect.
- 50H2: Delineates the purpose of a family assessment.
- 60 - 3b: Requires reassignment of a family assessment to investigation if the agency takes emergency custody of the child.
- 70B: Emphasizes collaboration with the family in family assessments.
- 70C: Clarifies required documentation of all information gathered in a family assessment or an investigation, as requested by the Board.
- 80A: Outlines required contacts to be made by the local agency when completing family assessments.
- 90A: Outlines the conditions in which a CPS worker in both family assessments and investigations may enter a home if permitted by a person who resides in the home.
- 90B: Requires the CPS worker to explain orally and in writing the responsibilities and authorities of CPS in order to make the parent or caretaker aware of the benefits and consequences of completing the family assessment or investigation.

- 110: Clarifies the types of assessments required in both the family assessment response and the investigation response.
- 120B & C, 140B5 & D3: These sections address required notifications for the new family assessment response.
- 140C3: Reflects a *Code* change that allows a child's name to be entered in the central registry in situations where the abuse occurred in a designated out of family setting and the parent or guardian was not the abuser only if the parent or guardian is consulted and agrees to the name entry. (Required by legislation enacted in 2000.)
- 150A: Emphasizes planning for services in consultation with the family whenever possible.
- 150B: Addresses the right of families to refuse services offered as the result of a completed family assessment.
- 150C: Notes that court intervention to mandate services may be requested to engage families in needed services to prevent abuse/neglect.
- 180C: Requires local child protective services staff to receive training in order for the agency to become “designated” as a differential response agency.

This regulatory action is intended to promote the safety and well being of children within their families in Virginia. Until the enactment of this legislation, all valid reports of child abuse or neglect had to be investigated and a finding made as to abuse or neglect by an alleged abuser. The new legislation and these regulations allow for a response to valid reports of less serious abuse or neglect that is less adversarial and more likely to engage families in services, if needed, to protect their own children. The current emergency regulations changed only what was required by legislation.

These permanent final regulations are being developed to provide more details regarding safety assessments and determining the most appropriate response to a valid report. The Notice of Intended Regulatory Action (NOIRA) is to replace the emergency regulations and provide other changes required by *Code* or requested by the State Board.

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.

Reform to the child protective services program is occurring across the nation. Virginia has looked at what other states are doing and has piloted reforms in five Virginia

localities for the past five years. The current plan for implementing a differential response for child protective services appears to be the least intrusive and least burdensome method to meet the dual purpose of protecting children and supporting families whenever possible.

Public Comment

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

Although several inquiries for clarification of issues cited in the NOIRA were received, no comments were submitted.

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.

Since the emergency regulations, which are largely reflected in these permanent regulations, have been in effect for several months and very few questions or comments have been raised, this is an indicator of the clarity of the majority of the proposed regulations.

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.

An annual evaluation report on the implementation of the differential response system will be provided to the General Assembly. A review of the regulations will occur as part of that evaluation process. However, if no changes are determined to be needed for the continued effective implementation of the differential response, a formal review of the total CPS regulation will take place in 2005.

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.

The implementation of these emergency regulations will allow for a less adversarial response to many families that experience allegations of child abuse or neglect. It was determined through evaluation of the pilots that families receiving family assessments, rather than investigations, felt more comfortable describing their needs related to keeping their children safe and more receptive to services to enable them to better care for their children. Thus, these regulations to support differential response, as well as the regulation to allow parents to request their child's name be removed from the central registry under certain conditions, strengthen the authority and rights of parents to nurture and supervise their children. The regulations encourage and support self-sufficiency, self-pride, and assumption of responsibility for one's children. They are not expected to significantly impact marital commitment or family income.