



townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-201
Regulation title(s)	Permanency Services-Prevention, Foster Care, Adoption and Independent Living
Action title	Amend Permanency Regulation
Date this document prepared	August 17, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Substantive amendments and other changes to this regulation are those required by legislation impacting the Code of Virginia (Code) in 2013 and 2014. Additional substantive changes were made to improve clarity and increase consistency with Code, as well as to improve organization of sections.

Changes due to legislation include the requirement for LDSS to address the needs of youth being released from the DJJ who were in foster care immediately prior to their commitment to DJJ. Also included is a provision limiting when a foster child in a kinship foster placement can be removed from the relative and allowing, under specific circumstances, the restoration of the parental rights of a youth in foster care. This regulatory action removes language listing independent living as a goal for all except a specific group of youth. Changes required by both federal and state law include provisions requiring that LDSS "shall" provide independent living services to youth between the ages of 14 to 18 and for youth 18 to 21 who are eligible and also a requirement that a service plan for a child be approved by the court

within 60 days from the child’s entry into foster care. The 2014 Appropriation Act provision requiring negotiation of adoption assistance agreements by DSS has been added to this regulation.

In order to clarify requirements and improve consistency with Code, throughout the regulation, language regarding “resource families” has been changed to “foster” and “adoptive” families, as Code does not address “resource families.” The approval standards for adoptive parents differ from those for foster parents, only in the parent having a desire to adopt. However, use of the term “resource parent” to mean a family who is approved both to foster and adopt in the regulation goes beyond what is contained in Code. New language is added addressing the timing of medical and dental visits for youth in foster care.

The section of the regulation addressing adoption assistance (22VAC40-160) is being repealed and replaced with a new section, due to extensive changes and necessary reorganization. New requirements address the use of adoption assistance. Finally, in the section addressing non-agency adoptions, an incomplete list of exceptions to the prohibition against the exchange of money or other things of value in the placement or adoption of a child was deleted and reference was made to the Code location of more detailed information.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- AREVA- Adoption Resource Exchange of Virginia
- CSA- Children’s Services Act
- DJJ- Virginia Department of Juvenile Justice
- ICPC- Interstate Compact on the Placement of Children
- LCPA- Licensed Child Placing Agencies
- LDSS- local department of social services
- Title IV-E- the title in the federal Social Security Act that authorizes the use of federal funding for foster care and adoption
- VDSS- Virginia Department of Social Services

Statement of final agency action

Please 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.

The State Board of Social Services approved the final stage and TH03 of 22 VAC 40-201 Permanency Services – Prevention, Foster Care, Adoption and Independent Living, on August 19, 2016.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The legal basis for this action is § 63.2-217 of the Code of Virginia. This statute provides the authority for the State Board of Social Services to adopt regulations as may be necessary to carry out the mandated purposes of the Department of Social Services. Throughout Title 63.2, there are requirements for regulations to be developed to implement permanency services and in Chapters 12 and 13 there are requirements for regulations to address adoption. This regulatory action will provide a comprehensive and accurate structure for the provision of these services.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Permanency regulation, 22 VAC 40-201, encompasses the full range of services for prevention, foster care, adoption and independent living services. The regulation provides LDSS with rules for the provision of child welfare services consistent with the Code of Virginia and federal law. The regulation is necessary for protecting the welfare of children in foster care because it addresses issues such as service planning, notification of relatives, factors to consider in placement, adoption assistance, and many other provisions intended to ensure the wellbeing of the child. The goal of this action is to make the regulation consistent with current Code and federal laws, and to make any other changes deemed necessary to ensure the accuracy and clarity of the regulation.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

Substantive provisions and changes to this regulation include adding language in both the definitions section and the independent living section making youth over 18 being released from DJJ and in foster care immediately prior to their commitment to DJJ eligible to receive independent living services. The regulation also requires, consistent with Code, that LDSS “shall” provide independent living services to youth between the ages of 14 to 18 and for youth 18 to 21 who are eligible.

A provision is added to limit when a foster child in a kinship foster placement can be removed from the relative. Language is added on the timing of medical and dental visits for youth in foster care, and the action removes language listing independent living as a goal for all except a specific group of youth. Language is added requiring the service plan for a child be approved by the court within 60 days from the child’s entry into foster care. In addition, there is language reflecting recent Code changes that will allow, under specific circumstances, the restoration of the parental rights of a youth in foster care. Language was added to clarify that adult relatives of a child “likely to be removed” be notified, in addition to the requirement that adult relatives be notified after removal. The process for collaborating with the foster care child’s school to determine whether the child should continue at the home school or be moved to a new school, consistent with federal requirements, is provided. In section 70, changes clarifying the responsibility for the LDSS relative to establishing permanency for a child in foster care, include the clarification that the LDSS shall continue to search for relatives and to try to establish permanency for a child until such time as it is achieved or it is determined to not be in the child’s best interest even when the goal of permanent foster care, another planned permanent living arrangement, or independent living has been established. Changes to the regulation also require that the LDSS engage in concurrent permanency planning in order to achieve timely permanence for the child. Throughout the regulation,

language regarding “resource families” has been changed to “foster” and “adoptive” families as the Code does not address “resource families.” The approval standards for adoptive parents differ from those for foster parents only in the parent having a desire to adopt. Use of the term “resource parent” to mean a family who is approved both to foster and adopt in the regulation goes beyond what is contained in Code.

Section 160 of the regulation addressing adoption assistance is being repealed and replaced with a new section 161 because changes and necessary reorganization would render this section of the proposed regulation very difficult to read. Language is added to that section about the use of department staff for the negotiation of adoption assistance agreements and addendums. Clarification is provided referencing the submission of the annual affidavit. Language is added regarding the responsibility of the LDSS to notify adoptive families of their right to appeal. Also included are conditions for continuation of adoption assistance beyond the youth’s 18th birthday and termination of adoption assistance prior to the youth’s 18th birthday. The new section includes language that provides clarity regarding eligibility for adoption assistance after finalization. Finally, in the section addressing non-agency adoptions, an incomplete list of exceptions to the prohibition against the exchange of money or other things of value in the placement or adoption of a child was deleted and reference was made to the Code location of more detailed information.

Issues

Please identify the issues associated with the proposed regulatory action, including: 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 indicate.

This action poses no disadvantages to the public or the Commonwealth. This regulatory action amends the Permanency regulation which provides for the safety of children who come into the child welfare system and for children in the Commonwealth who are adopted. In particular this action addresses recent Code changes to improve service delivery for older youth and medical and dental services for foster care youth and clarifies the process for determining adoption assistance eligibility and payment.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements in this regulatory action that exceed applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This regulation impacts LDSS. LDSS are located statewide and no individual locality will be particularly affected.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent 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.

This regulatory action addresses the health and safety of children who have come into foster care and the obligations of the LDSS to work towards reunification and permanency for these children. This regulatory action strengthens the involvement of parents in the foster care process including the requirement that the LDSS provide services to support the reunification of the family and involve the family in decision making about the education and caretaking of their children while in foster care. When reunification is not possible, this regulatory action strengthens the requirements for LDSS to continue to work to locate relatives who may be permanency options for the child, so that the child might exit foster care to a permanent family who will foster the connections with the child’s family of origin. The regulatory actions related to foster care do not directly address or impact marital commitment or disposable family income. The changes related to adoption assistance provide consistency across the state in offering services which assist adoptive families transitioning from foster care and with stabilization as a family. This action provides clarity when negotiating adoption assistance and explains the circumstances which allow for the extension of adoption assistance for youth beyond 18 years of age.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at Proposed stage	What has changed	Rationale for change
10	n/a Definition of “child with special needs” used the word “and” between two Virginia Code (Code) cites.	Added definition of “Local board.” The word “and” was changed to “or”.	Local boards are referenced in the regulation and hold custody of children in foster care. Technical change to avoid confusion from appearing that both Code sections would apply.
20	Subsection 20 C addresses providing services when a child has been found abused or neglected by the court or as determined by the	The words “by the court” were added.	This addition was to clarify that the finding of abused or neglect either be made by the court or determined by the family assessment and

	family assessment and planning team.		planning team.
40	<p>Subsection 40 A addresses locating relatives who may be potential placement options or provide support for the child.</p> <p>Subsection 40 E addresses required approvals by ICPC offices when children are placed across state lines.</p> <p>Subsection 40 F addresses placing children in-state in homes approved by a local department other than the one with custody of the child.</p>	<p>The words “identify and” were added to the first sentence.</p> <p>The new language provides that notice of approval by the receiving state is required. This is confusing and the change at final removes the words “by the receiving state”</p> <p>The word “local” was inadvertently struck in the first sentence at the proposed stage. It is added back into the sentence.</p>	<p>This addition makes the language consistent with federal language which requires states to identify and notify relatives of children taken into custody.</p> <p>When a local department receives an approval from their ICPC office to move a child, it means that both the sending and receiving state have approved the appropriate documents. The language “by the receiving state” made the sentence confusing.</p> <p>The change at final corrects a mistake made at the proposed stage.</p>
50	<p>Section 50 addresses initial activities when a child comes into foster care. The proposed language added a requirement for dental appointments to be scheduled every six months and medical exams at regular intervals.</p>	<p>The proposed provision was struck and new one added related to scheduling a dental appointment if needed and developmentally appropriate.</p>	<p>The language addressing future medical and dental appointments was removed. It is addressed in subsection 90 D. This change keeps section 50 limited to initial activities.</p>
70	<p>Subsection 70 A lists the permissible foster care goals.</p> <p>70 E requires local departments to continue to search for relatives and to assess the best interest of the child.</p>	<p>The list in 70 A is being changed to be identical to the list in § 63.2-906 of the Code of Virginia.</p> <p>Language was added to change the requirement to assess the best interest of the child and the circumstances of the family to determine the best interest of the child “in light of” the changes in the circumstances of the family.</p>	<p>This change helps avoid confusion about the permissible goals for children in foster care.</p> <p>This change keeps the focus of the sentence on the priority which is the best interest of the child.</p>
90	<p>Section 90 addresses service delivery for</p>	<p>The change to this section strikes the word “service”.</p>	<p>The regulation currently refers to “foster care</p>

	children in foster care. 90 F 4 addresses providing the foster care plan to foster parents.	The last sentence in subdivision 90 F 4 is struck.	service plan.” The service plan is a component of the foster care plan. This sentence is about the foster care plan. Since the proposed regulation was developed, a change to the Code of Virginia has made the proposed language unnecessary.
100	Subsection 100 C provides that a local department may offer a program of independent living services that meets the child’s needs and lists the types of services that may be included.	The change to this section removes the provision that offering independent living services is optional. It leaves a list of services that may be included as independent living services.	The language saying a local department “may” offer a program is incorrect. Offering independent living services is mandated in Code.
161	Subdivision 161 C 2 addresses circumstances in which state funded maintenance payments are allowable.	Subdivisions (iii) and (iv) were removed.	It was determined that subdivisions (iii) and (iv) are not required by § 63.2-1301.
161	Subdivision 161 C 3 addresses the purpose of a state-funded special service payment.	The reference to “payment” was changed to “payments.”	A grammatical change was made in this subdivision to address subject-verb agreement.
161	Subdivision 161 C 4 clarifies when non-recurring adoption funds can be utilized and claimed.	Language was added to subdivision 161 C 4 to include timeframes.	The added timeframe is required by 45 CFR 1356.41(e) 2.
161	Subsection 161 E references additional criteria for adoption assistance payments and services.	Subdivision 161 E 1 clarifies that maintenance payments may be either federal or state funded. Language in subdivision 161 E 1 addressing maintenance in adoption assistance not exceeding what a child would have received in foster care, was moved to a new subdivision; 161 E 1 b. The subdivisions were renumbered. Subdivision 161 E 1 e and f were added to address the adoptive parents’ requirement to keep the LDSS informed of circumstances affecting eligibility to continue	The language had not made it clear that it applied to either federal or state funded maintenance. These changes were made to put the language related to the amount of adoption assistance in a separate subdivision. These subdivisions are requirements from 42 USC 673(a)(4)(A).

		receiving maintenance payments and the circumstances under which payments would cease.	
161	Subdivision 161 E 2 a states that the types of payments that are appropriate are included in Chapter F of the guidance manual. Subdivision 161 E 2 b (3) addresses circumstances, to include financial income, of the adoptive family.	The current subdivision E 2 a language is deleted to remove reference to the guidance manual and the remainder of the list is renumbered. Deleted language in subdivision E 2 b (3) to remove unnecessary language and make the sentence clearer. The sentence is about considering the circumstances of the adoptive family including, but not limited to, income.	The reference to the guidance manual results in guidance being incorporated by reference into the regulation. Guidance can change frequently and should not be incorporated into the regulation. The sentence was re-organized to provide clarity.
161	Subdivision 161 E 3 addresses the maximum cost of non-recurring expenses.	Language was added to subdivision 161 E 3 to include reference to federally allowable nonrecurring expense amount.	Language was added to be consistent with federal law.
161*	Subsection 161 G addresses when an adoption assistance agreement is entered into and the parties involved in the agreement.	Unnecessary language was removed to make the subsection clearer. In addition, language is added requiring adoption assistance agreements to be negotiated by a representative of VDSS	Language was added to provide consistency with the requirements of the Appropriation Act related to using adoption negotiators.
161*	Subsection 161 H addresses the requirements related to the adoption assistance agreement when a child is deemed eligible for adoption assistance prior to the adoption being finalized.	Subdivision H 1 was deleted and the remainder of the list renumbered.	It was determined that the language in subdivision H 1 was more appropriate in guidance than regulation.
161	Subsection 161 I references application for adoption assistance after final order of adoption and the use of state funds.	Language in subsection I was changed from "state adoption assistance" to "state-funded maintenance payments" to be more precise.	Language was made more precise.
161	Section 161 K addresses the modification of adoption assistance agreements.	Language was removed which stated that the provisions being specified must still meet the requirements of subsections C and D. .	It was determined that the reference to prior subsections was unnecessary.
161	Subdivision 161 L 5	Language referencing	This language was

	references services to prevent disruption- post adoption services.	“placement” was removed.	removed because it implies the adoptive home is a “placement”.
161	Subdivision 161 N 1 lists the reasons adoption assistance payments can be terminated prior to the child’s 18 th birthday.	The word “financial” was removed from subdivision N 1.	Language was removed to clarify that “support” is not limited to financial support and to make the statement consistent with federal law.
Documents Incorporated by Reference		Struck Chapters E and F of the Virginia Department of Social Services Child and Family Services Manual as documents incorporated by reference.	The general references to guidance manuals have been removed from the regulation to prevent them from becoming documents incorporated by reference. Guidance manuals are frequently updated and having old manual language with the force and effect of law can create confusion.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

No comments were received.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Throughout the regulation		The term “child-placing agency” is used to mean both LCPA and LDSS.	Reference to LCPA is deleted in some places and replaced with local department or, when appropriate, local board. This regulation is for LDSS. A separate regulation addresses LCPA. The term “child-placing agency” remains in the regulation for subjects the LCPA regulation

		<p>The term “resource family” is used to signify that the family is approved as a both a foster and adoptive family.</p>	<p>does not address. The change permits clear distinction between the authorities and responsibilities of the LDSS who have custody of the children they serve and the majority of LCPA who do not.</p> <p>The term “resource family” is removed and other adjustments to language are made to ensure consistency with Code definitions of foster and adoptive parents.</p> <p>Language is added to clarify that adoption assistance payments are made to individuals who meet federal and state requirements to receive such payments. Changes also clarify payments may be made to an individual other than the adoptive parent.</p>
<p>10</p>		<p>Definition of “child with special needs” refers to meeting the definitions set forth in §§ 63.2-1300 and 63.2-1301 of the Code of Virginia.</p> <p>“Concurrent permanency planning” is defined as “a sequential, structured approach to case management which requires working towards a permanency goal (usually reunification) while at the same time establishing and working towards an alternative permanency plan.”</p> <p>The definition for “dual approval process” includes a summarized list of approval requirements.</p>	<p>Deletes the definition of “Adoption Manual” and “Foster Care Manual.” They are no longer used in the regulation.</p> <p>Expands the definition of adoption assistance to clarify the need to conform to federal and state law.</p> <p>Changes the definition to say meeting the definition of special need in §§ 63.2-1300 “or” in 63.2-1301. This is a technical change to avoid confusion.</p> <p>Amends the definition of “concurrent permanency planning” to clarify meaning and intent. The revised definition emphasizes that reasonable efforts must be made to reunite the child with the family while at the same time working towards an alternative permanency plan.</p> <p>Changes “dual approval process” to “dually approved” to be consistent with the Foster and Adoptive Home Approval Standards for Local Departments of Social Services regulation (22 VAC 40-211). Also, removes requirements for approval which are addressed comprehensively in the Foster and Adoptive Home Approval regulation.</p>

		<p>There is no definition for “Entrustment Agreement.”</p> <p>The definition of “foster care” includes reference to “children under the care and placement of the local board who have not been removed from their homes.”</p> <p>The definition of “foster care maintenance payments” includes a partial list of what these funds cover.</p> <p>A definition for “foster care placement” is provided.</p> <p>A definition of “service plan” is provided which includes the written document that describes the programs, services, and other support... offered to the child and his parents.</p> <p>Youth exiting DJJ are not mentioned.</p> <p>There is no definition of “local board.”</p>	<p>Adds the definition of “Entrustment Agreement,” as this is another pathway in which a child can be placed in foster care and in which parental rights can be terminated.</p> <p>Adds language to “Foster care” to clarify that children placed through non-custodial agreements are in foster care. The term “non-custodial” references children who remain in their parents’ legal custody while being in foster care and is more familiar to LDSS staff.</p> <p>Adds more detailed language to “Foster care maintenance payments,” specifying what these funds cover to ensure consistency with the federal definition.</p> <p>Deletes the definition of “Foster care placement.” This definition was removed from the Code several years ago when most references to non-custodial placements were removed.</p> <p>Replaces “Service plan” with “Foster care plan” to clarify the purpose of the document. The foster care plan addresses placement of the child and progress towards permanency goals, as well as services to be provided to the child and family as required by Title IV-E 42 U.S.C. 675.</p> <p>Adds language to “Independent living services” to include certain youth exiting from DJJ as being eligible to receive IL services.</p> <p>Deletes “local department” and replaces it with “child placing agency” in the definition of “Investigation” to be consistent with the definitions of “child placing agency” and “local department.”</p> <p>Adds a definition of “Local board.”</p> <p>Amends the definition of “Nonrecurring expenses” to reference the Code to ensure accuracy.</p>
--	--	--	---

		<p>The Permanency Planning Indicator (PPI) tool is described as a tool used in concurrent planning.</p> <p>Currently refers to visits subsequent to the entry of an interlocutory order.</p>	<p>Deletes “Permanency planning indicator” as this term is no longer used in the regulation. The use of this assessment instrument is not mandated.</p> <p>Deletes definition of “Resource family” as this term is no longer used in the regulation.</p> <p>Amends the definition of “Step-parent adoption” to include a birth or adoptive parent to clarify.</p> <p>Deletes inaccurate language from the definition of “Visitation and report.”</p> <p>Amends the definition of “Youth” to include individuals over the age of 16 who are the subject of an adoption assistance agreement.</p>
<p>20</p>		<p>Currently the language simply states that services shall be available to the birth parents or custodians to prevent the need for foster care.</p> <p>The LDSS should consider a wrap-around plan of care prior to removing a child from his home.</p> <p>The LDSS is required to</p>	<p>In subsection C, adds criteria for eligibility for foster care prevention services to increase consistency with the Code. Emphasis on the provision of prevention services is intended to support and strengthen efforts on the part of the LDSS to work with families before entry of the child into foster care is required. Additionally, proposed language better identifies which children are members of the mandated population for access of CSA funding and IV-E administrative funds (reasonable candidates.) Language is added ensuring that the finding that the child is in need of services is made by the court.</p> <p>In subsection G, adds the requirement that the LDSS develop a written plan for the implementation of wrap around services prior to removing a child from his home and provide services to address identified needs as long as the risk of removal continues. In the event that the child cannot be safely maintained in the home, the LDSS will document why services considered and provided were not sufficient. This change is intended to clarify requirements regarding the provision of prevention services.</p> <p>In subsection H, clarifies that adult</p>

		notify relatives if child is removed.	<p>relatives are to be notified when a child is likely to be removed and adds that the LDSS will explain the options for the relatives to participate in the care and placement of the child. Notification of relatives may yield options which would eliminate the need for the child to enter foster care, Additionally, by involving relatives at this point, LDSS will be better able to assess each for potential to serve as a foster parent for the child should the child enter foster care which is consistent with federal law. The requirement to notify relatives before entry into foster care and after entry into foster care is intended to bring attention to the requirement that both be done, not one or the other.</p> <p>Information about notifying relatives after a child is removed is moved to section 40, subsection A.</p>
30		<p>Former foster care youth who are committed to DJJ re-enter foster care when they are released.</p> <p>A foster care plan has to be submitted to the court for approval of a noncustodial agreement.</p>	<p>Language in subsection A related to youth leaving DJJ is deleted and a new section, 35, is added. Section 35 addresses actions the LDSS, in collaboration with the court services unit, needs to take to develop a transition plan which identifies needed services and how they are to be provided.</p> <p>Subsection B, clarifies requirements relative to entrustment agreements, including the requirement to submit a petition for approval to the juvenile and domestic relations court.</p> <p>Subsection C, clarifies requirements relative to non-custodial agreements, including the requirement to submit a petition for approval to the juvenile and domestic relations court. The time frame for submitting the plan to the court was changed from 60 to 45 days. This change results from 2013 legislation to bring the timing of foster care hearings into compliance with federal requirements. The 2013 legislation had a delayed implementation date to allow for data system changes by the courts.</p>
30	35	See proposed changes in 30.	A new section, 35, "Re-entry into foster care from commitment" is added to clarify LDSS responsibilities relative to this population.

			<p>In subsection B, adds information about the requirement to submit a petition for the approval of a new foster care plan for a youth re-entering foster care.</p>
<p>40</p>		<p>The requirement to notify adult relatives after a child comes in to foster care is in section 20, foster care prevention services.</p> <p>The LDSS shall ensure that a child in foster care is placed in a licensed or approved home or facility.</p> <p>The LDSS must make diligent efforts to place siblings together.</p> <p>Only children of Native American heritage are addressed.</p> <p>Local departments shall receive approval from the department's office of the ICPC prior to placing a child out of state.</p>	<p>Adds subsection A to provide that adult relatives will be notified when a child has been removed and the LDSS will explain the options for the relatives to participate in the care and placement of the child. This is consistent with federal law.</p> <p>Subsequent subsections are renumbered.</p> <p>Rearranges language in subsection B to correctly indicate that facilities are licensed and homes are approved.</p> <p>Adds provision to subdivision B 4 to clarify that efforts should be made to place siblings together, unless it is contrary to the safety or well-being of the child or siblings. This makes it clear that justification for not placing siblings together is required; as the expectation is that they will be placed together.</p> <p>In subdivision B 7, Alaskan Eskimo and Aleut are added to the tribe members LDSS must be aware of and follow federal laws and regulations when they are at risk of coming into care. This is consistent with federal guidance.</p> <p>Adds a new subdivision 8 setting out the conditions under which a LDSS can remove a child in a kinship foster care placement. This is a new requirement as a result of Code change in 2014, which restricts LDSS authority to move a child in foster care out of kinship care placement with a relative except under certain conditions.</p> <p>Rewrites subsection D to improve flow. There is no change in intent.</p> <p>Adds language to subsection E to clarify that notice of the approval is needed from ICPC prior to placing a child out of state.</p>

		<p>When a child is to be placed in another LDSS jurisdiction, the LDSS placing the child should notify the other local department.</p> <p>When a foster or adoptive family is moving from one jurisdiction to another, the LDSS holding custody shall notify the department in the new jurisdiction.</p> <p>In the case of an emergency placement, birth parents and all other relevant parties are to be notified immediately.</p>	<p>Adds language to subsection F to clarify that when a LDSS is considering placement of a child in foster care in a foster or adoptive home which was approved by another LDSS, the placement is to be discussed with the approving LDSS. The intention of this change is to clarify which LDSS is responsible for consulting with the other to ensure that the needs of all the children in the home are considered before a new placement is made.</p> <p>Adds language to G to clarify that the subsection is referring to when a foster or adoptive family is moving with a child in foster care placed in the home. Procedures for foster families to be approved by a new LDSS are administrative; the requirement here is specific to ensuring that the child in foster care continues to be appropriately cared for and the placement continues to be monitored.</p> <p>Rewrites subsection J and removes the designation of subdivision J 1 and 2. What was designated as 2 has been renamed subdivision K. These changes improve flow with no change in intent.</p> <p>Subsection K, clarifies that an emergency placement change is when an emergency situation requires an immediate placement change.</p>
50		<p>The LDSS must refer the child for all financial benefits to which the child may be eligible.</p> <p>The regulation does not address dental appointments.</p> <p>This section only touches on collaboration with local school divisions.</p>	<p>Subsection B, clarifies that the LDSS must assess the child for IV-E eligibility. This is the local practice; the regulation is being updated to clarify this requirement.</p> <p>Adds a provision to subsection C that a dental appointment should be scheduled for a child if it is needed and is developmentally appropriate.</p> <p>Adds new language to subsection D and new subdivisions 3, 4 and 5 addressing joint decision making between the school division and the LDSS related to: transportation decisions; the need for documentation of the jointly made decisions; and that the process of making a decision about a school should not delay</p>

		<p>The regulation does not include any requirement regarding notification of the child's status change.</p>	<p>the placement of a child in a new residence. This procedure is consistent with state and federal law enacted approximately three years ago.</p> <p>A new subsection E is added which provides that written notification must be given within 72 hours to the school principal and superintendent and that the principal will be notified of the status of parental rights. The intention of this requirement is to ensure that the school has sufficient information immediately to protect the child if necessary. It also creates an opportunity for collaboration between the school and the LDSS at the point that the child enters foster care.</p>
60		<p>The regulation addresses assessment for service planning and assessment for the development of permanency goals, but does not explicitly distinguish between the two types of assessment.</p> <p>The initial foster care assessment results in the establishment of a permanency goal. The subsection references use of the PPI to assist in determining if a concurrent plan should be selected.</p>	<p>Subsection A adds language that the assessment process is an opportunity for shared decision making with parents and that the assessments shall be used to help establish permanency goals and to inform the development of service plans. This section was edited to refer primarily to service planning and the monitoring of services being provided.</p> <p>Subsection B was deleted and information about selection of permanency goals was moved to section 70, Foster care goals. Language also is deleted in this subsection which refers to the PPI, an assessment instrument which is not mandated. Subsequent subsections were renumbered.</p> <p>Language is added to subsection E to clarify that assessment is ongoing and the effectiveness of services provided is evaluated.</p> <p>Current subsection D is relocated to a new subsection F to improve the flow of the section.</p>
70		<p>Current regulation addresses priority of goals.</p>	<p>Amendments in this section are intended to clarify the responsibilities of the LDSS relative to establishing permanency for a child in foster care. The information about the prioritization of goals was deleted, as it is not consistent with the Code. The names of the permanency goals were also revised to improve consistency with the Code.</p>

		<p>Section 70 does not address concurrent permanency planning.</p> <p>The regulation provides requirements for the LDSs when the goal of independent living is selected.</p> <p>Continued work towards permanency when a child is in permanent foster care or another planned permanent living arrangement status is not addressed in the regulation.</p> <p>In subsection A, independent living is listed as an allowable goal for a child in foster care.</p>	<p>Subsection C regarding permanent foster care is deleted, as the information it contains is not consistent with Code. A new subsection C provides that the LDSS will engage in concurrent permanency planning in order to achieve timely permanency for the child. This is consistent with expected local practice, and is intended to emphasize the requirement for LDSS to establish permanency for children in foster care.</p> <p>Subsection D regarding independent living as a foster care goal is deleted, as it is now a permissible goal only for a select population. Subsequent subsections were renumbered.</p> <p>Existing language in Subsection E is renumbered as subsection D and language is added to ensure the local board has first considered other goals prior to selecting the goal of another planned permanent living arrangement.</p> <p>New language in subsection E requires that if permanent foster care or another permanent planned living arrangement is selected, the LDSS must continue to search for relatives and significant individuals for the child and continue to evaluate the best interest. This change emphasizes the importance of establishing permanency for children in foster care. Although allowable goals, neither permanent foster care nor another planned living arrangement establish permanency for foster care children. They are a temporary status throughout which the child remains in foster care.</p> <p>Language from the prior subsection F is moved to subsection C to improve flow with no change in intent.</p> <p>New subsection F reflects a Code change that the goal of independent living is only selected for those children who were admitted to the United States as asylees or refugees, or for those youth over 18 leaving foster care and meeting the requirements to receive independent living services. New language is added that if the goal of independent living is selected, the</p>
--	--	---	---

			LDSS will continue to search for relatives and significant individuals who will provide permanency for the youth.
80		<p>Current regulation does not specify a specific time to get the foster care plan to court.</p> <p>A visitation plan is not required if visitation is not in the best interest of the child.</p>	<p>New provisions in subsection A state that the foster care plan must be approved by the court within 60 days of entry into foster care. This is consistent with a Code change which became effective July 1, 2014. The term “foster care plan” replaces “service plan” to clarify that the plan which is submitted to court for foster care cases includes information about both services and efforts to establish permanency. Amendments in subsection A expand on who may be included in decision making.</p> <p>Language is deleted in subsection C which provided that a plan for visits with birth parents, former caretakers, and siblings were not necessary if not in the best interest of the child. The court will make the determination that visitation is not in the best interest of the child, based on information provided in the foster care plan. The development of a visitation plan is required by the Code of Virginia.</p>
90		<p>Subsection A addresses services to the child and others in a coordinated and collaborative system.</p> <p>The requirement of timely notification does not specify to whom notification should be made.</p> <p>Subsection C requires that services continue until an assessment indicates they are no longer needed.</p>	<p>Subsection A now provides that services must support the safety and well-being of the child and continue until evidence indicates they are not effective, no longer necessary, or the parent or prior custodian has refused services. This provision comes from current subsection C, which is deleted in this action. Subsequent subsections were renumbered.</p> <p>In subsection B, new language is added to clarify that LDSS must notify birth parents or prior custodians of placement changes, hearings and meetings regarding the child, assessments and case progress, and be responsive to the requests of the child and birth parents or prior custodians.</p> <p>In the renumbered subsection C, language is deleted resulting in the language from D moving up to subsection C. That language is amended to clarify the services may be provided to relatives or other interested individuals who are assessed to be potential permanency options for the child.</p>

		<p>The schedule of medical and dental visits is not addressed.</p> <p>The regulation notes that information about the child is confidential, but does not address the responsibilities of the foster and adoptive parents regarding confidentiality.</p> <p>Foster and adoptive parents must be given appropriate sections of the foster care plan.</p> <p>Subdivision F 6 refers to a “contingency” fund while referencing a section of the Code which allows for liability insurance for foster parents.</p>	<p>A new subsection D is added which addresses health, dental and other types of screenings and the schedules to be followed, which will be described in the guidance manual. These requirements address well-being needs of children in foster care and are consistent with Medicaid guidelines and coverage.</p> <p>Subsection F is reorganized to improve flow with no change in intent except where noted here.</p> <p>Subdivision F 3 is amended to clarify that the foster and adoptive parents shall keep information about the child confidential.</p> <p>In subdivision F 4, the words “appropriate sections” are deleted and the instruction becomes to give copies of the service plan to foster and adoptive parents. Language is struck which stated only information in the plans which is prohibited by Code from release should be withheld from the foster and adoptive parents. This sentence was struck because of Code changes since the development of the regulation.</p> <p>Subdivision F 6 clarifies that VDSS provides a fund to reimburse local department foster and adoptive parents for damages to property caused by children placed in their homes. VDSS does not provide liability insurance.</p>
100		<p>Independent living services may be provided to all youth ages 14 to 18 and may be provided until the youth reaches age 21.</p> <p>Subsection G provides that only a youth who discontinued services after 18 but prior to 21 can request resumption of</p>	<p>Subsection B clarifies that Independent Living services are to be provided to youth ages 14 to 18 and also be provided to any person between 18 and 21 who is transitioning from foster care. This is consistent with Code changes from the 2014 and 2015 General Assembly sessions.</p> <p>Subsection G is amended to clarify the criteria for the resumption of independent living services for youth. Additionally, the LDSS responsibility to notify youth in writing of their right to request restoration</p>

		<p>services.</p> <p>Independent Living Services were not available to youth exiting DJJ after age 18 until the law was changed. This population is not addressed in the regulation.</p>	<p>of independent living services is added. This requirement is consistent with changes made to the Code and intended to ensure that youth make informed decisions about discontinuing services or choosing not to take advantage of services available to them.</p> <p>A new subsection I sets out the requirements for provision of independent living services to youth who are being released from DJJ and who were in foster care immediately prior to being committed to DJJ. This new section is also the result of Code changes over the 2013 and 2014 General Assembly sessions.</p>
<p>110</p>		<p>Current language requires the LDSS to explain to the child why individuals who the child wishes to have participate in the hearing will not be participating.</p> <p>The regulation references independent living as a goal as well as permanent foster care requiring administrative panel reviews and does not address annual court hearings.</p> <p>Adoption progress reports are not addressed specifically in the regulation.</p>	<p>In subdivision A 2, the term “child placing agency” is replaced with “service worker” to clarify the individual as opposed to the entity that will work with the child.</p> <p>In subdivision A 3, language implying there may not be a concurrent goal for a child is deleted. Concurrent planning should be utilized on all foster care cases to ensure timeliness to permanency for every child.</p> <p>Subsection B is rewritten to clarify that administrative panel reviews are to be held every six months, alternating with an annual foster care review hearing when the goal of permanent foster care has been approved by the court. Independent living is no longer an allowable goal. The annual court review is a federal requirement.</p> <p>In subsection C, “other interested parties” is deleted and replaced with “relatives” and “service providers” as persons to be invited to an administrative panel review. “Other interested parties” is not clear enough direction and the addition of relatives specifically as persons to be invited is consistent with VDSS’ emphasis on family engagement and the recognition that relatives are resources for the child.</p> <p>A new subsection G is added to clarify that adoption progress reports will be written and entered into the automated child welfare data system every six months in addition to an annual foster care review hearing when the goal of adoption has</p>

		Restoration of parental rights is not addressed in the regulation.	been approved by the court. A new subsection H is added providing that parental rights may be restored for certain children in accordance with § 16.1-283.2. This is required due to a change in the Code in 2014.
120		Subsection C requires the LDSS to reimburse foster parents for expenses paid on behalf of the child.	Subsection C is deleted, as this information is not needed in the regulation. Local departments use financial agreements to outline the responsibilities and requirements regarding reimbursement for expenses paid on behalf of foster children. Subsequent subsections were renumbered. Subsection D is amended by deleting the references to the IV-E Manual and the Adoption manual. The referenced manuals are outdated.
130		Foster care cases are closed when a voluntary placement agreement is revoked.	In subsection A, the term “voluntary placement agreement” was replaced with “temporary entrustment or non-custodial agreements,” the correct terms used for voluntary placements by parents.
140		The LDSS director may grant approval for a child in foster care to travel out of state. Subsection C provides that an employee can be a resource parent for another LDSS or LCPA. The transition of youth from DJJ back to LDSS custody is not addressed.	In subsection A, a new provision allows the director to designate someone in addition to himself to grant approval for a child to travel out-of-state and out-of-country. Subsection C is amended to clarify that a local employee cannot be a foster parent to a child in the custody of that agency. The current language is confusing because the LDSS who is the employer may have custody of a child placed with a LCPA. If it is in the best interest of the child that the particular employee be the foster parent, the custody of the child may be transferred to another LDSS. A new subsection F adds language requiring the LDSS to work collaboratively with the court services unit to develop a plan for the child to successfully transition back to the community.
150		Currently AREVA is not explained. The regulation simply states AREVA’s purpose is to increase opportunities for adoption. Current language implies	Subsection A adds the definition of “AREVA” for clarity and removes “special needs” from the subdivision A2.

		<p>the listings are only for children with special needs.</p> <p>Current language does not address a timeframe for registration.</p>	<p>A new subsection B adds language requiring foster care youth with the goal of adoption and termination of parental rights to be registered with AREVA within 60 days of termination of parental rights.</p>
160			<p>The entire section is repealed. The reorganization and changes to this section would make it difficult for individuals to follow. A new section 161 is added for proper flow and description of the use of adoption assistance.</p>
161		<p>Subsection A in 160 describes who executes the adoption assistance agreement and that they must use the form developed by the VDSS.</p> <p>Subsection B in 160 describes how a child is determined to have special needs through reference to the definitions section of the regulation and contains specific exceptions to the eligibility that were not consistent with Code.</p> <p>Subsection C in 160 describes for types of allowable adoption assistance.</p> <p>Subdivision C 4 did not include a timeframe for filing claims for nonrecurring expenses.</p> <p>Subsection D in 160 provides for negotiating with the adoptive parents considering the child's special needs and circumstances of the family. This information is</p>	<p>Subsection A addresses the purpose of adoption assistance.</p> <p>Subsection B describes how the child is determined to have a special need and provides references to state and federal code.</p> <p>Subsection C specifies the types of payments and services that may be included in an adoption assistance agreement. It was determined that subdivisions C 2 (iii) and (iv) are not required by § 63.2-1301 and they were removed.</p> <p>A timeframe was added to Subdivision C 4 as required by 45 CFR 1356.41 (e) 2.</p> <p>Subsection D requires that children who meet Title IV-E requirements or are receiving state funded maintenance payments and who have a special medical need which meets the requirements used by the Virginia Department of Medical Assistance Services, have a statement in</p>

		<p>in subsection F of the proposed regulation.</p> <p>Subsection E in 160 discusses three types of payments that may be made for eligible children.</p> <p>Subsection F in 160 indicates the timeframe for execution and signing of the adoption assistance agreement, as well as what is specified on the</p>	<p>the adoption assistance agreement that indicates that status. The current regulation does not address ensuring the agreement has a statement regarding the special medical need.</p> <p>Subsection E adds additional criteria for the maintenance, service, and nonrecurring expense payments, including:</p> <ul style="list-style-type: none"> • The requirement that payments and services be negotiated by a VDSS representative; • That the amount of maintenance payments shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster home; • Circumstances under which a maintenance payment can be increased or decreased; • The responsibility of the adoptive parents to keep the agency informed if they are no longer legally responsible or if the youth is no longer receiving support from the adoptive parents; • The circumstances under which the maintenance payment shall terminate; • That service payments must be tied to the special needs of the child and circumstances of the adoptive parents; • That service payments must be time-limited based on the needs of the child; • The specific types of services that the payments may cover; • How special services are used with Medicaid; • That the special service payments are to be separated on the agreement; • Specific limitations related to limitations of non-recurring expenses; • That payments for non-recurring payments may begin as soon as the child is placed in the home and the agreement is signed; and • That the adoptive parent can request an addendums to the adoption assistance agreement. <p>Subsection F requires that adoption assistance payments and services be negotiated by a representative of VDSS and requires documentation of requests to be considered in the negotiation process. It requires that available family and community resources be considered</p>
--	--	--	--

		<p>agreements and that the agreement remains in effect regardless of the state to which the adoptive parents may relocate. This information is in subsection H of the proposed regulation.</p> <p>Subsection G in 160 indicates that procedures for establishing eligibility after finalization are the same procedures as before finalization. This information is located in subsection I in the proposed regulation.</p> <p>Subsection H in 160 addresses the required use of an annual affidavit. This is addressed in subsection J of the proposed regulation.</p> <p>Subsection I in 160 specifies the actions the LDSS are responsible for after the agreement is signed.</p> <p>Subsection J in 160 indicates the conditions in which assistance could continue beyond the youth's 18th birthday until the child reached the age of 21. This is addressed in subsection M of the proposed regulation.</p>	<p>as a supplement or alternative to an adoption assistance payment. The requirement to consider other family and community resources is in subsection D in the current regulation. The requirement for adoption assistance payments and services to be negotiated by a VDSS representative is not addressed in the current regulation.</p> <p>Subsection G provides that adoption assistance agreements shall be executed by the local board and in this process utilize the adoptive assistance agreement form developed by VDSS. This subsection also indicates that adoption assistance agreements will be entered into by the local board, the adoptive parents and, when appropriate, the LCPA.</p> <p>Subsection H provides a required timeframe for execution and signing of the adoption assistance agreement, as well as what must be specified on the agreements and that the agreement is to remain in effect regardless of the state to which the adoptive parents may relocate. This information is located in subsection F of the current regulation.</p> <p>Subsection I establishes that applications for adoption assistance made after finalization can only be considered for state funded adoption assistance and that applications must be submitted within one year of the diagnosis of the condition that establishes a special need. This is addressed in subsection G of the current regulation.</p> <p>Subsection J clarifies the adoptive parents' responsibilities in submission of adoption assistance affidavit. This is addressed in subsection H of the current regulation.</p>
--	--	--	--

		<p>Subsection K in 160 addresses when an agreement may be terminated prior to the youth's 18th birthday. This is addressed in subsection N in the proposed regulation.</p> <p>Subsection L of 160 addresses appeals and the requirements of LDSS in notifying the adoptive parents of their right to appeal. This is addressed in subsection O of the proposed regulation.</p>	<p>Subsection K indicates the provisions under which an adoption assistance agreement may be modified when the LDSS and adoptive parents agree and that modification is negotiated by a representative of VDSS. This subsection also requires that an addendum be signed and dated by the LDSS and adoptive parents. The current regulation does not address how and when to modify an agreements or addendums.</p> <p>Subsection L lists the responsibilities of the LDSS for payments and services, which include:</p> <ul style="list-style-type: none"> • Discussing with the adoptive parents the child's unique needs and their ability to meet the child's needs; • Assisting the adoptive parents when requested in coordinating services to meet the child's special needs related to adoption assistance; • Providing services to prevent placement disruption; and, • Providing training when requested to adoptive parents with an already established curriculum or identify potential training sources to assist adoptive families. <p>Subsection M indicates the conditions when assistance can continue beyond the youth's 18th birthday until the child reaches the age of 21. This is addressed in subsection J of the current regulation.</p> <p>Subsection N addresses when an agreement may be terminated prior to the youth's 18th birthday. This is addressed in subsection K of the current regulation.</p> <p>Subsection O addresses appeals and the requirements of LDSS in notifying the adoptive parents of their right to appeal. This is addressed in subsection L of the current regulation.</p>
170		<p>Title of this section is currently "Child placing agency's responsibilities for consent in non-agency adoptive placements."</p>	<p>The title of this section is changed to remove reference to consent, which is not addressed in this section.</p> <p>In subsection A, a Code cite is removed that is not applicable to this section.</p>

		Subdivisions C1 through C5 is a partial list of exceptions for reporting findings to the Commissioner.	<p>Subdivision A 1 provides that the manner in which a family receives a child for adoption will have no bearing on the assessment. Language is added that if asked by the court for a home study, a written report is to be provided.</p> <p>In subsection C, language is added referencing the Code cite for when the child placing agency suspects a violation in the placement or adoption of a child. The incomplete list of exceptions in subdivisions C1 through C5 was removed.</p>
200			<p>In subsection A, “foster care and adoption” worker is changed to “service” worker. This is the terminology used in the guidance manuals.</p> <p>Subsection B language is deleted. VDSS no longer uses the individual training needs assessment process.</p> <p>Subsection C is renumbered and makes the same change to refer to “service” worker.</p>
Documents Incorporated by Reference		Chapters E and F of the Virginia Department of Social Services Child and Family Services Manual are documents incorporated by reference.	See changes to Section 161. The guidance manuals are no longer referenced and documents incorporated by reference are stricken. Making reference to chapters of the Child and Family Services Manual would result in making the entire manual have the force and effect of law and that was not what was intended.