



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40-130
Regulation title	Minimum Standards for Licensed Private Child-Placing Agencies
Action title	Adopt new standards for licensed private child-placing agencies
Date this document prepared	June 17, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

This is a joint regulatory action to repeal the existing regulation, 22 VAC 40-130, and establish a new regulation, 22 VAC 40-131, for licensed private child-placing agencies. The purpose of the regulatory action is to protect children under the age of 18, for whom home-placements are pending; or home-placements have been made in approved foster care homes, therapeutic foster care homes, respite care homes and adoptive-homes up until the time the adoption is finalized by the court.

The proposed action to adopt a new regulation is intended to improve clarity of the regulation; incorporate current requirements of federal and state law; align home approvals, supervision, and monitoring practices and responsibilities of private child-placing agencies with public child-placing agencies; relieve intrusive and burdensome language; and provide greater protection for children in care.

The repeal of the existing regulation and adoption of a new regulation is the most efficient and effective way to make the necessary changes to achieve clarity, consistency, and protection of children. The existing regulation became effective in August of 1989. Repeal of the existing regulation and adoption of a new regulation will allow greater flexibility to adjust the structure, format, and language. This flexibility will allow for clarified language to improve understanding and interpretation leading to enhanced compliance and enforcement.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Sections 63.2-217 and 63.2-1734 of the Code of Virginia (Code) requires the State Board of Social Services (Board) to adopt regulations necessary or desirable to carry out the provisions of Title 63.2 and to include in the regulation provisions to ensure that activities, services, and facilities provided by licensees are conducive to the welfare of the children under custody or control of the licensee. Section 63.2-1701 provides legal authority to the Board for licensure of child-placing agencies.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Code mandates that the Board promulgate regulations governing the operations of child welfare agencies, which include child-placing agencies. The proposed regulation provides criteria and requirements for the Department of Social Services (DSS) to evaluate licensees to ensure that activities, services, and facilities provided are conducive to the welfare of the children.

There have been three separate failed attempts to adopt a revised regulation for the licensure of private child-placing agencies since the existing regulation, 22 VAC 40-130, became effective in August of 1989. Since the current regulation was enacted there have been many changes in federal and state law and practice, including the Virginia's Children's Services System Transformation, that are not included in the current regulation.

Repeal of the existing regulation and adoption of a new regulation will allow greater flexibility to adjust the structure, format, and language of the regulation. This flexibility will allow for clarified language to improve understanding and interpretation leading to enhanced compliance and enforcement and to the creation of requirements conducive to greater protection of the health, safety, and welfare of children in care.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The new regulation will incorporate requirements pertaining to licensed child-placing agencies to include, but not be limited to: (1) redefining terms related to programs and services; (2) enhancing the regulatory structure for programs and services for foster care, treatment foster care, respite care, independent living arrangements and domestic and inter-country adoptions; (3) enhancing provision of services to children who move into Virginia or are placed outside of Virginia under the interstate compact for the placement of

children; (4) establishing consistency between the new regulation and existing regulations and guidance pertaining to public child-placing agencies for training of home providers, home study requirements, approval of home providers and re-evaluation of providers and the providers' home environments; and (5) addressing requirements of federal and state law pertaining to child placement that have become effective since 1989, including the Virginia's Children's Services System Transformation; and (6) enhancing staff development.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The current regulation, Minimum Standards for Licensed Private Child-Placing Agencies, effective in August of 1989, was reviewed by DSS and the child-placing regulation review committee and found inadequate to cover the services and programs being offered by private licensed child-placing agencies.

They determined that it is in the best interest of the health, safety, and welfare of children in care to repeal the existing regulation and adopt a new regulation.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

Section 63.2-1734 mandates that regulations shall be developed in consultation with representatives of the affected entities. DSS established a regulatory advisory panel (RAP) for the review and development of the proposed regulation. The RAP includes active participation of stakeholders such as private child-placing agency licensees, local departments of social services (LDSS) and public child-placing departments, DSS representation, and other interested stakeholders. During RAP meetings, the revision committee will review each section of 22 VAC 40-130, Minimum Standards for Licensed Child-Placing Agencies, and other necessary regulations and laws.

Public hearings will be held for 22 VAC 40-131 when the proposed regulation is published.

Family impact

Assess the potential impact of the proposed 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.

The proposed regulation respects the institution of the family and strengthens the authority and rights of parents whose children are placed into approved provider foster and adoptive family homes. It emphasizes the child-placing agency's responsibility to: (1) include biological parents in service planning and other decisions made for their children; (2) ensure that school-aged children are enrolled in school; and (3) regularly monitor the child's placement and adjustment.

The proposed regulation clarifies the roles, rights, and responsibilities of foster, treatment foster care, respite, and adoptive families and provides for adherence to the Board-approved Code of Ethics and Mutual Responsibilities, which includes responsibilities for meeting the needs of placed children and inclusion of parents in the child's life by encouraging visitation as appropriate.

The proposed regulation may increase disposable family income by requiring agencies to assess adoption assistance for adoptive families who qualify and discuss and agree upon the fees that will be charged for adoptive home studies.