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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22 VAC40-705
VAC Chapter title(s)	Child Protective Services
Action title	Amend CPS Regulation to Implement 2017-2018 Legislation
Date this document prepared	June 17, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The final regulatory action amends the Child Protective Services (CPS) regulation provisions and adds new requirements to comply with the Code of Virginia and applicable federal law.

The substantive changes include:

- Deleting definitions for “certified substance abuse counselor” and “licensed substance abuse treatment practitioner” and amending the definition for “Family Advocacy Program representative”;
- Adding a definition for “plan of safe care” as it relates to substance-exposed infants;
- Repealing 22VAC40-705-20. General policy regarding complaints or reports of child abuse or neglect;

- Amending the requirements for health care providers to report substance-exposed infants to align with legislative changes made during the 2017 session of the General Assembly;
- Adding a requirement to conduct a family assessment for substance-exposed infant reports and creating a plan of safe care;
- Adding a requirement to notify the Armed Forces Family Advocacy Program representative when any report is received and of the final outcomes of any investigation or family assessment regarding a dependent child of an active duty military member;
- Adding a requirement to see any victim child less than two years of age within 24 hours of receiving a valid CPS report;
- Adding a requirement to comply with any court order to release information from a child abuse or neglect case record;
- Amending the provisions for handling a complaint of child abuse by a local department of social services (LDSS) without jurisdiction; and
- Amending the provisions for notifying the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect by incorporating legislative changes made during the 2018 session of the General Assembly.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Board—State Board of Social Services

CPS—Child Protective Services

DSS—Department of Social Services

LDSS—local department of social services

Statement of Final Agency Action

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.

On June 17, 2020, the State Board of Social Services approved the final action to amend the Child Protective Services regulation.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to information reported on the Agency Background Document submitted for the previous stage.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The most relevant citations for amending the provisions regarding substance-exposed infants are Chapters 176 and 428 of the 2017 Acts of Assembly (House Bill 1786 and Senate Bill 1086). Citations for amending provisions related to active duty members of the United States Armed Forces are Chapters 88 and 142 of the 2017 Acts of Assembly (House Bill 2279 and Senate Bill 1164). The citation for adding a new provision which proposes a 24-hour CPS response to reports alleging abuse or neglect of a child under the age of two is based on Chapter 604 of the 2017 Acts of Assembly (Senate Bill 868). The citation for adding a new requirement to notify the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect is based on Chapter 5 and 209 of the 2018 Acts of Assembly (House Bill 389 and Senate Bill 183).

Section 63.2-217 of the Code of Virginia gives the State Board of Social Services (Board) the responsibility to make rules and regulations to carry out the purposes of social services. Section 63.2- 1501 et seq. provides the authority for the CPS program.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

This regulatory action is needed to amend the existing regulation so that it will be consistent with the Code of Virginia and the changes which became effective in July 2017 and July 2018. This regulatory action will provide clear guidance for LDSS regarding the receipt and response to suspected child abuse or neglect complaints and reports. This regulation is essential to protect the health, safety and welfare of children at risk for child abuse or neglect. The goals of this regulatory action are: 1) amend existing regulation to comport with changes made in the 2017 and 2018 sessions of the General Assembly; 2) add a new response requirement for children less than two years of age as required by Chapter 604 of the 2017 Acts of Assembly; and 3) clarify and strengthen the CPS program while balancing the rights of alleged abusers with protecting children and families.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The proposed regulatory action will amend existing Child Protective Services (CPS) regulation provisions and add new provisions which will comport the regulation to the Code of Virginia and applicable federal law.

The substantive changes include adding:

- Definition for “plan of safe care” as it relates to substance-exposed infants;
- Requirement to conduct a family assessment for substance-exposed infant reports and creating a plan of safe care;
- Requirement to notify the Armed Forces Family Advocacy Program representative when any report is received and also the final outcomes of any investigation or family assessment regarding a dependent child of an active duty military member;
- Requirement to see any victim child less than two years of age within 24 hours of receiving a valid CPS report; and
- Requirement to comply with any court order to release information from a child abuse or neglect case record.

The substantive changes include deleting:

- Definitions for “certified substance abuse counselor” and “licensed substance abuse treatment practitioner” and amending the definition for “Family Advocacy Program representative”.

The substantive changes include repealing:

- 22VAC40-705-20. General policy regarding complaints or reports of child abuse or neglect;

The substantive changes include amending:

- Provisions for reporting of substance-exposed infants by health care providers by incorporating the changes made in the Code of Virginia during the 2017 session of the General Assembly, which became effective July 1, 2017;
- Provisions for handling a complaint of child abuse by a LDSS without jurisdiction; and
- Provisions for notifying the Superintendent of Public Instruction when individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect by incorporating the changes made in the Code of Virginia during the 2018 session of the General Assembly, which became effective July 1, 2018.

Issues

Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

One of the primary advantages to the public and individual private citizens will be a clearer understanding of the processes involved when making a report to CPS and the actions that are taken by CPS. Overall, LDSS will benefit from amendments to the regulation which provides clarity for legislative changes made in 2017 and 2018.

Other advantages include establishing a priority response to suspected child abuse or neglect of children less than two years of age.

Notification to the Armed Forces Family Advocacy Program in all cases involving a military dependent provides opportunity to address CPS and non-CPS related child matters involving this population. This specific requirement can increase the community response to the military but will also require additional resources to effectively address the increased reporting of these children.

There are no disadvantages to the Commonwealth.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no requirements of the proposal that are more restrictive than applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Hunter Anderson, Virginia Tech CPAP	1) Expressed support of the amended CPS regulation. 2) Understands need to comply with laws related to substance-exposed infants. 3) Asks to reevaluate the barriers to treatment for substance-exposed infants. 4) Expressed support of 24 hour response to reports involving children under the age of two year.	1) VDSS appreciates Mr. Anderson’s support of the proposed amendments to the CPS regulation. 2) VDSS appreciates Mr. Anderson’s understanding of the need to comply with laws related to substance-exposed infants. 3) VDSS is continuing to address the barriers to treatment for substance-exposed infants through our participation in the statewide legislative workgroup, Pathways to Coordinated Care, led by the Virginia Department of Health.

		4) VDSS appreciates Mr. Anderson’s support of a 24-hour response to reports involving children under the age of two.
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Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
10		Updates definition of “disposition.”	“Disposition” means the determination of whether or not child abuse or neglect occurred and which identifies the individual responsible for the abuse or neglect of the child.	Corrects grammatical error but does not change the overall meaning of the regulation.
40		Updates reference to § 63.2-1509 B of the Code of Virginia regarding the identification and reporting of a newborn who may have been exposed to a controlled substance prior to birth.	Clarifies that a “reason to suspect” is based on a “subsection” of § 63.2-1509 B of the Code of Virginia and that this “subsection” requires the development of a written discharge plan under protocols established by the hospital pursuant to § 32.1-127 B 6 of the Code of Virginia.	This change was not substantive. It merely changed the wording to more closely mirror the language in Virginia Code in order to avoid a potential conflict between the protocol developed by the hospital and the current language of the regulation.
50		Updates language regarding the recording and retention of reports and complaints that are not valid.	A record of all reports and complaints made to a local department or to the department that were not valid, shall be purged one year after the date of the report or complaint unless a subsequent report of complaint is made.	Replaces word “invalid” because there is not a definition of an invalid report in the regulation. This change was not substantive.

		Updates reference to § 63.2-1503 N of the Code of Virginia regarding the transmission of information about reports involving children of active duty members to family advocacy representatives of the United States Armed Forces.	Pursuant to § 63.2-1503 N of the Code of Virginia, the local department shall transmit information regarding reports, complaints, family assessments and investigations involving children of active duty members of the United States Armed Forces or members of their household to family advocacy representatives of the United States Armed Forces.	This change was not substantive. It merely changed the wording to more closely mirror the language in Virginia Code but does not change the overall meaning of the regulation.
140		Updates reference to § 63.2-1503 N of the Code of Virginia regarding the transmission of information about reports involving children of active duty members to family advocacy representatives of the United States Armed Forces.	Pursuant to § 63.2-1503 N of the Code of Virginia, the local department shall transmit information regarding all reports, complaints, family assessments, and investigations involving active duty members of the United States Armed Forces or members of their household, including information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglecter to Family Advocacy Program representatives of the United States Armed Forces. This notification shall be made immediately.	This change was not substantive. It merely changed the wording to more closely mirror the language in Virginia Code but does not change the overall meaning of the regulation.
160		Updates reference to § 63.2-1526 of the Code of Virginia regarding the release of the local department's records when the alleged abuser or neglecter has appealed the	In cases of abuse or neglect in which the person who is the subject of the founded report or complaint has appealed the finding and has submitted a written request for the	This change was not substantive. It merely changed the wording to more closely mirror the language in Virginia Code but does not change the overall meaning of the regulation.

		finding and requested the record in writing.	local department's records in accordance with § 63.2-1526 of the Code of Virginia, the local department shall not disclose or release to such person the following information (i) the name of the person reporting incidents of child abuse or neglect, (ii) any information that may endanger the well-being of a child if such information or records are disclosed or released, (iii) information that pertains to the identify of a collateral witness or any other person if such disclosure may endanger his life or safety; or (iv) information that is otherwise prohibited from being disclosed or released by state or federal law or regulation.	
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Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
10		Provides definitions used in CPS.	Delete the definition for “certified substance abuse counselor” and “licensed substance abuse treatment provider” as they are no

			<p>longer used in 22VAC40-705-40 as it relates to substance-exposed infants.</p> <p>Clarify that “Family Advocacy Program representative” is referenced in 22VAC40- 705-50.</p> <p>Add definition of “plan of safe care” which is required in 22VAC40-705-40 when responding to substance-exposed infant reports. This helps distinguish the difference between a safety plan and a plan of safe care.</p> <p>Clarified the following definitions, without making substantive changes, at the request of the Office of the Attorney General: “Administrative appeal rights”, “Appellant”, “Case record”, “Child abuse and neglect information system”, “Complaint”, “Differential response system”, “Disposition”, “Founded”, “Monitoring”, “Multidisciplinary teams”, “Reasonable diligence”, “Report”, “Response time”, and “Valid report or complaint”.</p>
20		General policy regarding CPS reports and complaints.	Repeal this subsection as it is considered a statement of general policy, not regulation.
40		Describes mandated reporting of child abuse or neglect, including substance- exposed infants.	<p>Due to changes in Code of Virginia which were effective July 2017, several changes include:</p> <ul style="list-style-type: none"> • The definition of what constitutes a reason to suspect a child is a substance-exposed infant has changed. • There are now only three circumstances that healthcare providers must report to CPS. • The substance use while pregnant includes abuse of legal and illegal substances. • The CPS response must be a family assessment. • CPS must develop a plan of safe care. <p>Due to inconsistencies between Code and Regulation, an amendment was made to clarify that only a local department of jurisdiction can validate a complaint of child abuse and to</p>

			provide requirements for when a local department receives a complaint that is outside of their jurisdiction.
50		Describes actions to be taken when a report is received by CPS.	<p>Deleted redundant language of validity requirements to make the regulation easier to understand.</p> <p>Add requirement to respond to substance-exposed infants with a family assessment unless an investigation is required by law.</p> <p>Add new requirement to notify the Armed Forces Family Advocacy Program on all reports, regardless of CPS validity or substantiation to allow for services through the military to be initiated in a timelier manner when needed.</p>
80		Describes required contacts for CPS reports.	Add requirement to see any victim child in either a family assessment or investigation, within 24 hours of receiving the report. This will enhance the response for the most vulnerable children who are at increased risk for abuse or neglect
140		Describes notifications that are made by CPS at the conclusion of an investigation or family assessment.	<p>Due to changes in Code of Virginia which were effective July 2018, amend the provisions to require the LDSS to immediately notify the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect. Additionally, the amendment requires the LDSS to immediately notify the Superintendent of Public Instruction if the founded complaint is dismissed on administrative appeal.</p> <p>Amend requirement to require immediate notification to the Armed Forces Family Advocacy Program on all reports, regardless of disposition to allow for services through the military to be initiated in a timelier manner when needed. This amendment is necessary because of changes in the Code of Virginia.</p>
150		Describes services to be offered to families after the completion of a family assessment or investigation.	Removing "and/or" and replacing with "and" to be consistent with all Regulation.

160		Describes releasing CPS information.	Add clarification that when a court orders release of information, the local agency can challenge such request and if unsuccessful, they must comply with the court order. Adds clarifying language for when the identity of the persons reporting incidents of child abuse or neglect can be released to law enforcement.
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