



Virginia
Regulatory
Town Hall

Emergency Regulation Agency Background Document

| | |
|----------------------------|--|
| Agency Name: | Virginia Department of Social Services |
| VAC Chapter Number: | 22 VAC 40-730-10 et seq. |
| Regulation Title: | Investigation of Child Abuse and Neglect in Out of Family Complaints |
| Action Title: | Implement Joint Investigations |
| Date: | August 16, 2000 |

Section 9-6.14:4.1(C)(5) of the Administrative Process Act allows for the adoption of emergency regulations. Please refer to the APA, Executive Order Twenty-Four (98), and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the emergency regulation submission package.

Emergency Preamble

Please provide a statement that the emergency regulation is necessary and provide detail of the nature of the emergency. Section 9-6.14:4.1(C)(5) of the Administrative Process Act states that an "emergency situation" means: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. The statement should also identify that the regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

Please include a brief summary of the emergency action. There is no need to state each provision or amendment.

Chapter 854, 2000 Acts of Assembly made changes to Title 63.1 of the Code of Virginia to amend and reenact § 63.1-248.6 of the Code. It further required that the State Board of Social Services should promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment. This regulation is not otherwise exempt under the provisions of § 9-6.14.1(c)(4).

The major change to the Code emphasizes that child protective services out of family investigations are to be conducted as *joint* investigations in cases involving an employee

at a private or state operated hospital, institution or other facility, or an employee of a school board. It also requires that regulations for conducting these investigations be approved by the State Board *in consultation with the Departments of Education, Health, Medical Assistance Services, Mental Health, Mental Retardation and Substance Abuse Services, Juvenile Justice and Corrections*. The input of these agencies has been solicited in the development process.

Basis

Please identify the state and/or federal source of legal authority to promulgate the emergency regulation. The discussion of this emergency statutory authority should: 1) describe its scope; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. Full citations of legal authority and web site addresses, if available for locating the text of the cited authority, should be provided.

Please provide a statement that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

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

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

Substance

Please detail any changes, other than strictly editorial changes, that would be implemented. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Please provide a cross-walk which includes citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of Virginians. The statement should also delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

- Overall: Most changes in language are intended to emphasize the joint nature of out of family investigations of child abuse or neglect or to clarify roles of the parties participating in the investigation.
 - Section 10: The changes to the definition of “Central Registry” simply bring this definition into conformity with that definition in other CPS regulations. The definition of “Participate” is intended to explain the joint nature of these investigations.
 - Section 40: This additional line emphasizes participation by all relevant parties in the joint investigation.
 - Section 50: These word changes underscore the requirement to involve other professionals in the investigation, even if there is no state regulatory authority to participate.
 - Section 70: This language addresses the need to involve all relevant parties in the planning of the interviews in a joint investigation.
 - Sections 80 and 90: Final authority is vested in the CPS agency for determining who will participate in interviews when there appears to be a conflict of interest.
 - Section 100: An editorial change.

These proposed regulatory changes are essential to comply with the changes to the Code. This Act of the Assembly also requires that the Commissioner of Social Services report to the General Assembly with recommendations for further changes to the CPS out of family investigation process by September 30, 2000. Thus, the permanent final regulations are expected to delineate and clarify further changes to this investigative process.

Alternatives

Please describe the specific alternatives that were considered and the rationale used by the agency to select the least burdensome or intrusive method to meet the essential purpose of the action.

It appears that in the most recent session the General Assembly tried to address identified concerns about out of family investigations in the least intrusive way by simply emphasizing the joint or collaborative nature of these investigations. These regulatory changes are considered to be the minimal changes to meet the purposes of the legislative action.

There are more radical changes to out of family investigations being considered, but these will not be known until the report to the General Assembly in September.

Family Impact Statement

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

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