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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40 -211
Regulation title	Resource, Foster and Adoptive Family Home Approval Standards
Action title	Establish new Resource, Foster and Adoptive Family Home Approval Standards for Local Departments of Social Services
Date this document prepared	February 15, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The new regulation for resource, foster and adoptive family homes providers approved by local departments of social services will ensure compliance with changes to federal and state laws and regulations regarding resource, foster and adoptive family homes. In addition, the new regulation will create consistency between providers approved by local departments of social services and licensed child placing agencies. This consistency is an action step of the Performance Improvement Plan (PIP) generated by Child and Family Services Review.

Major substantive provisions include: updating definitions and requirements to be consistent with other social services regulations and applicable approval requirements that fall under the purview of other State agencies; mandating training for resource, foster and adoptive homes; requiring a narrative home study report; creating one set of standards for the approval of all types of family home providers (i.e.; resource, foster and adoptive) to streamline the process of approval; requiring proof of provider approval to be maintained in the child's file; updating the safety requirements through increasing the standards for the home of the provider and requirements for criminal background checks.

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., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The state legal authority to promulgate the new Resource, Foster and Adoptive Family Home Approval Standards regulation, can be found in §§ 63.2-217, 63.2-319, and 63.2-901.1 of the Code of Virginia.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The purpose of the proposed action is to adopt a new regulation specific to the approval requirements for resource, foster and adoptive family homes providers approved by local departments of social services. The new regulation will ensure compliance with changes to federal and state laws and regulations regarding resource, foster and adoptive family homes. Adherence to these standards are essential to protect the health, safety and welfare of families and children who are part of our foster care system.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Substantive provisions include: changes to definitions in order to establish consistency with the Code of Virginia and other social services regulations; adding a definition of approval and redefining what "fully approved provider" means; requiring a Department of Motor Vehicles check on applicants; updating barrier crimes standards for providers; mandating new training requirements for providers; updating acceptable child sleeping arrangements, the capacity in each home, medical requirements for providers, gun and ammunition safety in a providers home, home study requirements, applicant grievance procedures, and fire safety; redefining the approval of a provider to mean the approval of a home as a resource, foster and adoptive home simultaneously; adding new requirements for criminal background checks and Child Abuse and Neglect Information System central registry searches; and updating the provider reapproval requirements. In addition, the new regulation will include changes and updates that will ensure consistency between regulations for approval of local departments of social services and private child placing agency resource, foster and adoptive homes as per The Program Improvement Plan of the Virginia Department of Social Services. These provisions will include: increasing the number of interviews with prospective applicants; requiring resource information from the provider prior to approval; procedures for continuing approval when household members change; and requiring sharing of information about the provider if the provider was previously approved by another agency.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The public is expected to benefit from this new regulation, as it strengthens the safety requirements for the providers who care for the vulnerable children placed into the Commonwealth’s foster care system. It also strengthens the authority of the local departments of social services to hear all applicant grievances and make the final decision as to who will be approved as a resource, foster or adoptive home provider. Finally, these new regulations will benefit the local departments of social services and individuals providing care for children in foster care by ensuring that the regulations are consistent with state and federal law and other related social services regulations. These regulations also have a fiscal impact due to the increased requirements designed to assure that the individuals chosen to care for the children in Virginia can provide safe and nurturing homes for children.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The total projected cost to the state for FY 2007 is \$5,230,707 (\$3,049,967 GF and \$1,488,422 NGF) and for FY 2008 and thereafter is \$4,820,934 (\$2,804,103 GF and \$1,406,468 NGF). These costs are inclusive of completing background checks of everyone in the home age eighteen and over, raising the minimum number of face to face visits, and the costs of training. The IV-E federal grant is assigned to the non-general fund portion of the total expenses based on random moment sampling as a part of the cost allocation process. This cost estimate is consistent with that included in PIP. There will be more background checks conducted in FY 2007 as this is a new requirement. This will then be ongoing expenditures.</p>
<p>Projected cost of the regulation on localities</p>	<p>The required local match is \$692,317 in FY 2007 and \$610,363 in FY 2008 and thereafter. These costs are inclusive of completing background checks of everyone in the home age eighteen and over, raising the minimum number of face to face visits, and the costs of training.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Local departments of social services are the most affected by this regulation.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses</p>	<p>There are currently 120 local departments in the Commonwealth that approve and monitor several thousand foster homes across the state. These are</p>

<p>affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>the entities that will implement the regulation.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>The required local match is \$692,317 in FY 2007 and \$610,363 in FY 2008 and thereafter. These costs are inclusive of completing background checks of everyone in the home age eighteen and over, raising the minimum number of face to face visits, and the costs of training.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There are no viable alternatives to creating a new regulation. The current Standards and Regulations for Agency Approved Providers (22 VAC-770) are being repealed in a separate action due to the fact that they include dated, generic provisions that apply to all providers (child care, foster family homes, adoptive family homes and adult services) and such a format is no longer effective. The new regulation creates consistency between public and private agency approval requirements thus ensuring compliance with the PIP.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This regulation does not impact small businesses; however, it is intended to help children find safe, stable and permanent homes which ultimately benefits society as a whole.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Susan Clark, Director, Galax Department of Social Services	"We will want to comment on the new regulations as they are written."	Ms. Clark was included in the Virginia Department of Social Services workgroup that assisted in drafting the new regulations.

Family impact

Please assess the 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.

These new regulations will allow families who foster or adopt children in foster care to receive better training and support for managing the children placed in their homes. By doing so, children's placements will become more stable thus allowing children the safety and security of a family home within which to reside.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
	22 VAC 40-211-10		This section defines the terms used in the regulation including: adoptive parent; adult; approval; caretaker; child; child placing agency; child abuse and neglect information system; Commissioner; corporal punishment; Department; foster parent; infant; local department; parent; provider; and, resource parent.
	22 VAC 40-211-20		"Approval of Provider Homes" This section ensures an effort to increase permanency and reduce the number of placements. When applicants are approved in accordance with these standards, they are approved as foster families, adoptive families and resource families. If the provider cannot meet the standards in this regulation and cannot obtain a variance, the local

		<p>department of social services, (LDSS) shall not approve the provider. These standards also apply to homes that care for young adults age 18-21 and to adoptive homes until the final order of adoption is issued.</p>
	<p>22 VAC 40-211-30</p>	<p>“ Background Checks and Health Standards”</p> <p>This section ensures adequate safety precautions are taken to protect children in custody. These requirements include that:</p> <p>Applicants must be 21 years of age. Applicants and other adult caretakers or individuals serving in a caretaker role or individuals in the home who reach age 18 must undergo a criminal background check pursuant to §63.2-1721 and convictions listed in §63.2-1719 will preclude approval.</p> <p>LDSS shall ask applicants about criminal behavior and child abuse and neglect allegations in Virginia and other states.</p> <p>Applicants shall not have a founded record in the central registry check. All criminal record check documentation will be maintained in the applicant’s file.</p> <p>LDSS must obtain a Department of Motor Vehicle Driver Record check on Applicants or other individuals expected to transport children and may consider the results of the check in the decision to approve the home.</p> <p>All Applicants and other household members shall submit a statement from the local health department or licensed physician that he is believed to be free of tuberculosis.</p> <p>Applicants shall submit the results of a physical examination which was conducted within twelve months prior to approval stating each provider is physically and mentally capable of parenting a child.</p> <p>If Applicants do not meet the standards and cannot obtain a variance, the applicant shall not be approved as a provider.</p>

	<p>22 VAC 40-211-40</p>		<p>“Home Study Requirements”</p> <p>This section ensures that each local department utilizes the same criteria for the approval process. The approval criteria include:</p> <p>Applicants to be a provider must complete an application according to Department requirements and on Department approved forms to be considered for a home study.</p> <p>The LDSS shall conduct the home study and shall document the home study in a narrative format that is signed and dated by the individual completing the home study and the supervisor.</p> <p>LDSS shall ask if the applicant previously applied to or was approved by another agency or LDSS and shall have the applicant sign a “request to release information” to obtain information about any previous applications. Information obtained shall be used to consider approval of the applicant. LDSS shall conduct a minimum of three face-to-face visits with the applicant. One must be in the applicants’ home. One must be with the couple (unless a single person is applying) and one must be with all family members who reside in the home.</p> <p>The LDSS shall obtain at least three references on the applicant and shall obtain the applicants employment history.</p> <p>The LDSS shall use the interviews and references to assess and document in the home study if the applicant is knowledgeable about providing care for children; is able to sustain a positive relationship with children; is capable of handling emergencies in a reliable manner; is able to communicate and follow instructions to ensure the safety and protection of children; demonstrates a capacity to love and nurture the child; can accept the child without expecting him to resolve the providers family problems; and if married, shows marital stability.</p>
	<p>22 VAC 40-211-50</p>		<p>“Approval period and documentation of approval”</p> <p>This section is intended to ensure compliance with Title IV-E regulations for those children receiving Title IV-E funding and placed in foster homes.</p>

			<p>Providers are approved for a 24-month period. The approval certificate or letter must be in the providers file and must contain the type of approval, dates when the approval became effective and date it will lapse, the gender and age of children who may be placed, the number of children who may be placed in the home and the signature and title of the person approving the home and the supervisor.</p> <p>Provider approval documentation is to be placed in the child's file including providers approved by another LDSS and the child-placing agency's (CPA) license if the home is under the auspices of the CPA.</p>
	<p>22 VAC 40-211-60</p>		<p>"Training"</p> <p>This section ensures that all providers receive adequate training.</p> <p>LDSS shall provide pre-service training to providers based on core competencies defined by the Department and a Department approved curriculum.</p> <p>LDSS must ensure providers receive annual on-going training that is based on the needs of the child and families. Training may be structured to include multiple types of training modalities (for example, on-line foster parent training courses; seminars and conferences).</p> <p>Providers are required to attend training.</p> <p>Providers are fully approved if all other requirements are met and the provider is enrolled in the next pre-service or in-service training available.</p> <p>Providers must sign a written agreement that they will attend training.</p> <p>A provider's approval shall be revoked if they do not attend the training.</p> <p>Providers shall not be charged fees for required training.</p>
	<p>22 VAC 40-211-70</p>		<p>"Standards for the home of the provider"</p> <p>This section is to ensure that children have sufficient personal space.</p> <p>The home shall have appropriate space and furnishings for each child including:</p>

			<p>space for personal belongings; accessible basin and toilet facilities; comfortable sleeping furnishings and adequate lighting; first floor sleeping space if the child cannot climb stairs unassisted; space for recreation; space and equipment to prepare food and store food; rooms used by children shall have heat and ventilation; doors and windows used for ventilation shall have screens; a working telephone in the home; compliance with all local ordinances.</p> <p>No more than 4 children shall share a bedroom. There shall be 70 square feet for one child and 50 square feet per child in a room shared by two or more.</p> <p>Children over infancy age shall not share a bed. Bedroom accommodations for children over infancy shall be based on the assessment of the particular needs of the child.</p> <p>Children over age two shall not share a bedroom with an adult unless the LDSS approves and documents a plan allowing the child to share the room due to documented needs, disabilities or other specified conditions.</p> <p>Children under age five with significant and documented disabilities shall not sleep on the top bunk of bunk beds.</p> <p>Home and grounds shall be free of litter and present no safety hazards.</p> <p>The provider shall permit a fire inspection by appropriate authorities if requested by the LDSS.</p> <p>Providers shall have written evacuation plans and shall review the plan with each new child placed in the home.</p> <p>Attics or basements used by children shall have two emergency exist that lead directly outside.</p> <p>Possession of firearms must comply with federal and state laws and local ordinances. Firearms and other weapons shall be stored in a locked cabinet with safety mechanisms activated. Ammunition shall be stored</p>
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<p>22 VAC 40-211-80</p>			<p>"Standards of Care"</p> <p>This section is to ensure that local departments are adhering to the mandates of the Multi-Ethnic Placement Act (MEPA). In addition, this section ensures that providers have documented emergency procedures and safety strategies.</p> <p>Providers shall not discriminate based on age, race, color, sex, national origin, religion,</p>

			<p>political beliefs, and sexual orientation of disability of family status.</p> <p>Providers shall have a plan for emergency assistance including access to responsible adults who can serve in the caretakers' role in case of an emergency.</p> <p>If planned or long-term absences are required, the provider must notify the LDSS who shall approve any substitute arrangements for the child.</p> <p>Providers shall ensure that adequate care and supervision are provided, that children receive appropriate meals and snacks, and that children are provided with meals that are in accordance with special diets or religious preferences.</p> <p>Adequate drinking water shall always be available.</p> <p>Meals shall be nutritionally balanced.</p> <p>Providers and adults transporting children shall show proof of a valid driver's license and automobile liability insurance and shall use child restraint devices in accordance with state law.</p> <p>Vehicles used to transport children shall have valid license and inspections stickers.</p> <p>Providers shall have the name and telephone number of the child's physician easily accessible and shall have first aid supplies accessible.</p> <p>Medicines and drugs shall be kept separate from foods except those that need refrigeration.</p> <p>Providers shall record all medications prescribed for children and report any adverse side effects.</p> <p>Providers must ensure they can be responsive to the special medical needs, including environmental sensitivities, of the child.</p> <p>Providers shall establish rules that encourage desired behaviors and discourage undesired behaviors.</p> <p>Providers shall not use corporal punishment</p>
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	22 VAC 40-211-90		<p>“Provider Agreements”</p> <p>This section ensures that accurate and up-to-date information is maintained on all children in custody.</p> <p>LDSS shall require providers keep written legible information on children in care including:</p> <ul style="list-style-type: none"> identifying information; the name of the case worker; names of individuals authorized to pick up the child; medical information about the child; school-related documentation; names of persons able to visit the child; a copy of the service plan and a copy of the placement agreement. <p>LDSS shall require providers immediately report suspected abuse, neglect or exploitation of a child to the LDSS or to the Department’s hot line.</p> <p>LDSS shall require providers keep the LDSS informed of any changes in the household that may affect approval of the provider. If the provider moves to a new locality, the LDSS will determine continued compliance with the standards.</p> <p>LDSS shall explain confidentiality requirements to providers and require providers keep all information about the child, his family and their circumstances confidential.</p> <p>Providers will sign a confidentiality agreement that shall be kept in the child file.</p> <p>LDSS shall have access to all child records.</p>
	22 VAC 40-211-100		<p>“Allowable Variance”</p> <p>This section allows local departments to use discretion in placement decisions.</p>

			<p>Providers may receive a variance on any standard if the variance does not jeopardize the safety and proper care of the child or violate federal or state law or local ordinance.</p> <p>Providers granted variances who comply with all other requirements are considered fully approved.</p>
	22 VAC 40-211-110		<p>“Emergency approval of providers”</p> <p>This section makes allowances for emergency situations.</p> <p>Providers may be granted emergency approval when the placement is in the home of the child’s relative or friend; the court orders the emergency placement, the child is placed under the 72-hour emergency removal authority or the parents request placements or services in an emergency.</p> <p>Prior to placement of a child in an emergency home, a criminal background check and central registry search must be conducted.</p> <p>Offenses pursuant to §63.2-1719 will preclude placement of the child.</p>
	22 VAC 40-211-120		<p>“Provider Monitoring”</p> <p>This section establishes a visitation standard for providers.</p> <p>The LDSS representative shall visit the providers home as necessary but at least semi-annually.</p>
	22 VAC 40-211-130		<p>“Reapproval of providers”</p> <p>This section establishes the process for reapproval.</p> <p>Providers shall be reapproved prior to the last day of the month of the current approval period if the provider and home meet all standards.</p> <p>If a provider does not meet all standards and the LDSS has not granted a variance, the LDSS shall not reapprove the provider and shall remove the children currently placed in the home.</p> <p>Central registry searches shall be completed at each reapproval on all adult household members.</p> <p>Criminal background checks shall be</p>

			<p>completed at every other reapproval or earlier if the LDSS has reason to require such a check.</p> <p>Additional tuberculosis tests are required only if there is evidence of exposure or the provider develops chronic respiratory symptoms.</p> <p>The reapproval process shall be documented in a narrative format, identifying any changes in the provider's marital status, health, household or any other standards that effect the provider's ability to provide a safe and nurturing home for children.</p> <p>The reapproval shall be signed and dated by the individual completing the reapproval process and the supervisor.</p>
	<p>22 VAC 40-211-140</p>		<p>"Provider's Right to Grieve"</p> <p>This section ensures that applicants have a grievance process.</p> <p>The applicant to become a provider shall have the right to grieve the actions of the LDSS to the local board on issues related to their application to become a provider.</p> <p>Decisions on the placement of children are not subject to grievance.</p>