



COMMONWEALTH of VIRGINIA

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TO: DUKE STOREN, Commissioner
Virginia Department of Social Services

FROM: ELLEN FULMER MALENKE *efm*
Assistant Attorney General

DATE: May 29, 2019

SUBJECT: Regulation Section - 22VAC40-201 (Permanency Services –Prevention,
Foster Care, Adoption and Independent Living)

I am in receipt of the attached regulations. You have asked the Office of the Attorney General to review and determine if the State Board of the Virginia Department of Social Services has the statutory authority to promulgate the proposed regulation and if the proposed regulation comports with applicable state and federal law.

This regulatory action makes changes consistent with the Code of Virginia, specifically the establishment of the Kinship Guardianship Assistance Program, as well as clarifying the procedure for the filing of petitions related to foster care court proceedings. The intent of this proposed action is to make the regulation consistent with the Code of Virginia and federal laws, and to make any other changes the agency deems necessary after comments and review.

It is my opinion that the State Board of DSS has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act (“APA”) and has not exceeded that authority. If you have any questions or need additional information about these regulations, please contact me at 786-4856.

cc: Kim F. Piner, Esquire
Attachment

Project 5722 - Proposed

DEPARTMENT OF SOCIAL SERVICES

Amend Permanency Regulation 2018

22VAC40-201-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis pursuant to § 63.2-907 of the Code of Virginia to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may be attended by the birth parents or prior custodians and other interested individuals significant to the child and family as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the local board and the adoptive parents of a child with special needs or in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency, and the adoptive parents that sets out the payment and services that will be provided to benefit the child in accordance with Chapter 13 (§ 63.2-1300 et seq.) of Title 63.2 of the Code of Virginia.

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoptive home" means any family home selected and approved by a parent, local board, or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in §§ 63.2-1300 or 63.2-1301 B of the Code of Virginia.

"Children's Services Act" or "CSA" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Claim for benefits," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means (i) foster care maintenance, including enhanced maintenance; (ii) the services set forth in a court approved foster care service plan, the foster care services identified in an individual family service plan developed by a family assessment and planning team or other multi-disciplinary team pursuant to the Children's Services Act (§ 2.2-5200 et seq. of the Code of Virginia), or a transitional living plan for independent living services; (iii) the placement of a child through an agreement with the child's parents or guardians, where legal custody remains with the parents or guardians; (iv) foster care prevention services as set out in a prevention service

plan; or (v) placement of a child for adoption when an approved family is outside the locality with the legal custody of the child, in accordance with 42 USC § 671(a)(23).

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team" or "CPMT" means a team appointed by the local governing body pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Concurrent permanency planning" means utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually a reunification with the family, simultaneously with an established alternative permanent plan for the child.

"Department" means the state Department of Social Services.

"Denied," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means the refusal to provide a claim for benefits.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Entrustment agreement" means an agreement that the local board enters into with the parent, parents, or guardian to place the child in foster care either to terminate parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for the care of the child.

"Family assessment and planning team" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved

for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement.

"Foster care maintenance payments" means payments to cover those expenses made on behalf of a child in foster care including the cost of, and the cost of providing, food, clothing, shelter, daily supervision, school supplies, a child's incidentals, reasonable travel to the child's home for visitation, and reasonable travel to remain in the school in which the child is enrolled at the time of the placement. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in 42 USC § 675.

"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians. The foster care plan defined in this definition is the case plan referenced in 42 USC § 675.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of casework, treatment, and community services, including independent living services, for a planned period of time to a child meeting the requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a ~~child~~ person under 21 years of age for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment ~~before 18 years of age~~ prior to such person's 18th birthday.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual family service plan" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Kinship guardian" means the adult relative of a child in a kinship guardianship established in accordance with § 63.2-1305 who has been awarded custody of the child by the court after acting as the child's foster parent.

"Kinship guardianship" means a relationship established in accordance with § 63.2-1305 between a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended to be permanent and self-sustaining as evidenced by the transfer by the court to the adult relative of the child of the authority necessary to ensure the protection.

education, care and control, and custody of the child and the authority for decision making for the child.

"Kinship Guardianship Assistance Agreement" means a written agreement, binding on the parties to the agreement, between the agency and the prospective relative custodian(s) of the minor child that specifies the nature and the amount of any payments and assistance to be provided under such agreement, and stipulates that the agreement shall remain in effect regardless of the State in which the relative custodian resides.

"Kinship Guardianship Assistance payment" means a money payment provided to a relative custodian on behalf of a child that was discharged from foster care to the relative's custody in accordance with the requirements of Virginia Code § 63.2-1305.

"Kinship Guardianship Assistance Program" means a program consistent with 42 U.S.C. § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1305, payments to eligible individuals who have received custody of a relative child of whom they had been the foster parents.

"Local board" means the local board of social services in each county and city in the Commonwealth required by § 63.2-300 of the Code of Virginia.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or

guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs as set out in § 63.2-1301 D of the Code of Virginia or the expenses of a kinship guardian directly related to obtaining legal custody of the child subject to 42 U.S.C. § 673(d)(1)(D).

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in Public Law 113-183 (42 USC §§ 671 and 675) when making decisions regarding extracurricular, enrichment, and social activities.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Prior family" means the family with whom the child resided, including birth parents, relatives, or prior custodians, before custody was transferred to or placement made with the child-placing agency.

"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Reasonable and prudent parent standard," in accordance with 42 USC § 675(10), means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that foster parents and congregate care staff shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"Sibling" means each of two or more children having one or more parents in common.

"SSI" means Supplemental Security Income.

"State pool funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the visits conducted pursuant to § 63.2-1212 of the Code of Virginia and the written report of the findings made in the course of the visitation. The report is filed in the circuit court in accordance with § 63.2-1212 of the Code of Virginia.

"Voluntary placement" means the placement of a child in foster care with the agreement of the child's parent through a non-custodial foster care or entrustment agreement.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 14 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia. "Youth" may also mean an individual older than the age of 16 years who is the subject of an adoption assistance agreement or kinship guardianship assistance agreement.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. Facilitate a meeting prior to the development of the foster care service plan and foster care service plan review to ensure participation and consider input from the child, the birth parents or prior custodians, the foster or adoptive parents, and any other interested individuals, who may include service providers, in the development of the service plan and service plan review. All youth 14 years of age and older shall be given the opportunity to choose up to two people to attend the meeting who are not the foster parent or caseworker. All of these persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

2. File petitions in accordance with subsection L and the requirements for the type of hearing.

3. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the service worker shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

4. Inform the court of reasonable efforts made to achieve concurrent permanency goals.

5. Document the appropriateness of the placement, including the continued appropriateness of an out-of-state placement if applicable.

6. Ensure the child or youth is present for the permanency planning hearing unless the court determines this not to be in the child's best interest.

B. The child or youth shall be consulted in an age-appropriate manner about his permanency plan at the permanency planning hearing and subsequent administrative panel reviews.

C. An administrative panel review shall be held six months after a permanency planning hearing when the goal of permanent foster care has been approved by the court. A foster care review hearing will be held annually. The child will continue to have administrative panel reviews or review hearings every six months until the child reaches age 18 years.

D. The local department shall invite the child; the child's birth parents or prior custodians when appropriate; and the child's foster or adoptive parents, placement providers, guardian ad litem, court appointed special advocate, relatives, and service providers to participate in the administrative panel reviews.

E. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. Individuals who were invited, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

F. A supervisory review is required every six months for youth ages 18 to 21 years who are receiving independent living services only.

G. An administrative panel review is required every six months for Fostering Futures program participants unless a court review is held.

H. In accordance with § 16.1-242.1 of the Code of Virginia, when a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

I. An adoption progress report shall be prepared every six months after a permanency planning hearing when the goal of adoption has been approved by the court. The adoption progress report shall be entered into the automated child welfare data system. The child will

continue to have annual review hearings in addition to adoption progress reports until a final order of adoption is issued or the child reaches age 18 years.

J. If a child is in the custody of the local department and a preadoptive family has not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent in accordance with § 16.1-283.2 of the Code of Virginia.

K. If a child has been in foster care 15 out of the last 22 months or if the parent of a child in foster care has been convicted of an offense as outlined in § 63.2-910.2 of the Code of Virginia, the local department shall file a petition to terminate the parental rights and concurrently identify, recruit, process and approve a qualified family for adoption of the child, unless certain exceptions, as outlined in § 63.2-910.2, are met.

L. Designated non-attorney employees of a local department may only file petitions that are outlined in this subsection. All other petitions must be filed by an attorney, including petitions for the termination of parental rights. In accordance with §§ 16.1-260, 54.1-3900, and 63.2-332 of the Code of Virginia, non-attorney employees of a local department may only do the following:

1. Initiate a case on behalf of the local department by appearing before an intake officer, and
2. Complete, sign and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review hearings, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, and motions for a rule to show cause.

22VAC40-201-165. Kinship Guardianship Assistance Program.

A. The purpose of the Kinship Guardianship Assistance Program is to facilitate placements with relatives and ensure permanency for children for whom adoption or reunification are not appropriate permanency options.

B. A child is eligible for the Kinship Guardianship Assistance Program if:

1. The child has been removed from his home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child;

2. The child was eligible for foster care maintenance payments under 42 U.S.C. § 672 or under state law while residing for at least six consecutive months in the home of the prospective kinship guardian;

3. Reunification or adoption are not appropriate permanency options for the child;

4. The child demonstrates a strong attachment to the prospective kinship guardian, and the prospective kinship guardian has a strong commitment to caring permanently for the child; and

5. The child has been consulted regarding the kinship guardianship if the child is 14 years of age or older.

C. If a child does not meet the eligibility criteria set forth in subsection B but has a sibling who meets such criteria, the child may be placed in the same kinship guardianship with his eligible sibling, in accordance with 42 U.S.C. § 6712(a)(31), if the local department and kinship guardian agree that such placement is appropriate. In such cases, kinship guardianship may be paid on behalf of each sibling so placed.

D. Kinship Guardianship Assistance payments may not exceed the foster care maintenance payment, either IV-E or state funded, which would have been paid on behalf of the child if the child had remained in a foster home. Once the kinship guardianship assistance agreement becomes effective in accordance with subsection H, foster care payments will cease and kinship guardianship assistance payments will begin. Kinship guardianship assistance payments include the following, where appropriate:

1. Title IV-E maintenance payments, if the child meets federal eligibility requirements.

2. State funded maintenance payments, when the local department determines that the child does not meet the requirements in § 473 of title IV-E of the Social Security Act (42 U.S.C. § 673).

3. Non-recurring expense payments associated with the costs of obtaining legal custody of the child, when a Kinship Guardianship Assistance Agreement is completed prior to legal custody transfer to the kinship guardian. Claims for non-recurring expense payments must be filed within two years of the date that legal custody transferred to the kinship guardian.~~(This #3 should be deleted because non-recurring payments are not, by definition, part of the recurring kinship assistance payment. Also, these expense payments are only for covering costs associated with obtaining legal custody of the child.)~~

E. The local department shall inform the prospective kinship guardian whether the child is eligible for Medicaid in relation to the Kinship Guardianship Assistance Agreement. For the child who meets the requirements in § 473 of title IV-E of the Social Security Act (42 U.S.C. § 673), Medicaid shall be included in the Kinship Guardianship Assistance Agreement.

F. Additional criteria for the payments and services specified in subsection D of this section are as follows:

1. A maintenance payment, whether under title IV-E or state funded, shall be approved for a child who is eligible for kinship guardianship assistance unless the kinship guardian indicates, or it is determined through negotiation, that the payment is not needed.

a. The amount of all payments shall be negotiated by a representative of the department with the kinship guardian, taking into consideration the needs of the child and circumstances of the kinship guardian.

b. The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period, if the child had remained in a foster family home.

c. The maintenance payments shall not be reduced below the amount specified in the Kinship Guardianship Assistance Agreement without the concurrence of the kinship guardian or a statewide reduction in maintenance rates.

d. The maintenance payment specified in the Kinship Guardianship Assistance Agreement may only be increased if the child is already receiving the maximum amount allowed and (i) the child reaches an age at which the foster care maintenance rate would increase or (ii) statewide increases are approved for foster care maintenance rates.

e. The kinship guardian shall be required under the Kinship Guardianship Assistance Agreement to keep the local department informed of the circumstances that would make them ineligible for a maintenance payment or eligible for a different amount of maintenance payment than that specified in the Kinship Guardianship Assistance Agreement.

2. Children who are living with a kinship guardian participating in the Kinship Guardianship Assistance Program are eligible for foster care services under § 63.2-905, including a full range of casework, treatment, and community services. The kinship guardian may request services through the Family Assessment and Planning Team (FAPT) in accordance with state and local policies and procedures.

3. The kinship guardian shall be reimbursed, upon request, for the nonrecurring expenses of obtaining legal custody of the child. The total amount of reimbursement shall be based on actual costs and shall not exceed the amount established by federal law. Claims for non-recurring expense payments must be filed within two years of the date that legal custody transferred to the kinship guardian.

4. When the kinship guardian declines a specific payment or agrees to a reduced payment amount and their family circumstances or the child's needs change, the kinship guardian may request a change to the agreement and an addendum to the Kinship Guardianship Assistance Agreement may be negotiated. The requirements for addendums to an existing Kinship Guardianship Assistance Agreement are in subsection K of this section.

G. All Kinship Guardianship Assistance payments and agreements shall be negotiated with the kinship guardian by a representative of the department, taking into consideration the needs of the child, the circumstances of the family, and the limitations specified in subsections B, C, D, and E of this section. Documentation supporting the requests for payments shall be provided by the kinship guardian and shall be considered in the negotiation of the Kinship Guardianship Assistance Agreement. Income shall not be the sole factor in considering the family's circumstances during the negotiations. Available family and community resources shall be explored as an alternative or supplement to the Kinship Guardianship Assistance payment.

H. A Kinship Guardianship Assistance Agreement shall be entered into by the local board and the kinship guardian for a child who has been determined eligible for kinship guardianship assistance. Local departments shall use the Kinship Guardianship Assistance Agreement form provided by the department.

I. The Kinship Guardianship Assistance Agreement shall:

1. Be signed prior to legal custody transfer of the child to the kinship guardian;
2. Specify the payment types and monthly amounts to be provided;
3. Become effective on the date that the judge signs the court order transferring legal custody of the child to the kinship guardian; and

4. Absent modification or revocation of the kinship guardianship, remain in effect and governed by the laws of the Commonwealth of Virginia regardless of the state to which the kinship guardian may relocate.

J. The kinship guardian shall:

1. Annually submit a signed kinship guardianship assistance affidavit to the local department by the date the Kinship Guardianship Assistance Agreement was effective; and

2. Report changes in circumstances to the local department as outlined in the Kinship Guardianship Assistance Agreement.

K. Kinship Guardianship Assistance Agreements may be modified beyond the original provisions of the agreement to the extent provided by law when the local department and the kinship guardian agree in writing to new or renewed provisions in an addendum signed and dated by the local department and the kinship guardian. The local departments shall use the addendum form provided by the department and the changes to the agreement shall be negotiated by a representative of the department.

L. The Kinship Guardianship Assistance Agreement and any amendments may name an appropriate person to act as a successor legal guardian to provide care and guardianship in the event of death or incapacitation of the relative guardian. The successor guardian must be named in the agreement or addendum prior to the kinship guardian's death or incapacitation. The successor guardian does not need to be a relative or licensed as a foster parent to receive the Kinship Guardianship Assistance payment. Before the successor guardian may receive the Kinship Guardianship Assistance payments, the following requirements shall be met:

1. A new amendment to the Kinship Guardianship Assistance Agreement will need to be completed, outlining the terms of the kinship guardianship assistance and responsibilities of the

successor guardian. The amendment to the Kinship Guardianship Assistance Agreement must specify that the agency will pay the total cost of non-recurring expenses associated with obtaining legal guardianship of the child to the extent that the total cost does not exceed the amount authorized by federal law;

2. The successor guardian must complete a fingerprint based criminal background check and a central registry check of the successor guardian and all other adults living in the successor guardian's home; and

3. The successor guardian must obtain legal custody of the child.

M. The local department is responsible for the following:

1. Maintaining payments identified in the Kinship Guardianship Assistance Agreement and any addendum in effect, regardless of where the family resides;

2. Notifying kinship guardians who are receiving Kinship Guardianship Assistance payments that the annual affidavit is due;

3. Assisting the kinship guardian in coordinating services to meet the child's needs upon request;

4. Managing requests for changes in Kinship Guardianship Assistance payments and foster care services from the kinship guardian; and

5. Notifying the kinship guardians of a suspension or termination in payments or foster care services.

N. The Kinship Guardianship Assistance Agreement shall be terminated when the child reaches the age of 18 years, unless:

1. The child has a physical or mental disability that was present at the time of the custody transfer or a physical or mental disability that is related to a hereditary tendency, congenital

problem, or birth injury and the local department determines the child requires ongoing treatment and intervention. The Kinship Guardianship Assistance payment may be continued by amending the original Kinship Guardianship Assistance Agreement or completing an addendum. The terms of the agreement or addendum may be for any period after the child's 18th birthday up to the child's 21st birthday; or

2. The child was subject to a Kinship Guardianship Assistance Agreement that became effective after the child reached the age of 16. In addition, the child shall meet at least one of the following participation criteria:

a. Completing secondary education or an equivalent credential;

b. Enrolled in an institution that provides post-secondary or vocational education;

c. Participating in a program or activity designed to promote employment or remove barriers to employment;

d. Employed at least 80 hours per month; or

e. Is incapable of doing any of the activities described in the preceding subdivisions of this subsection due to a medical condition, which incapability is supported by regularly updated information in the program participant's case record.

O. The Kinship Guardianship Assistance Agreement shall not be terminated before the child's 18th birthday without the consent of the kinship guardian unless:

1. The kinship guardian adopts the child subsequent to the Kinship Guardianship Assistance Agreement and transfer of legal custody. The local department and kinship guardian shall negotiate adoption assistance payments independently from any negotiated terms of the Kinship Guardianship Assistance Agreement.

2. The kinship guardian requests in writing that the agreement ends.

3. The kinship guardian fails to comply with the annual review process.
4. The kinship guardian is no longer legally responsible for the care of the child.
5. The kinship guardian is not providing any financial support for the child.
6. The kinship guardian dies or becomes incapacitated. If a successor legal guardian is named in the Kinship Guardianship Assistance Agreement or amendments prior to the kinship guardian's death or incapacitation, then Kinship Guardianship Assistance payments may continue to the successor legal guardian under the requirements outlined in subsection L.
7. The kinship guardian and the local department agree in writing to terminate the agreement.

P. Local boards of social services are responsible for informing kinship guardians in writing of their right to appeal decisions relating to the child's eligibility for the Kinship Guardianship Assistance Program and decisions relating to payments within 30 days of receiving written notice of such decisions. In accordance with § 63.2-915 of the Code of Virginia, applicants for and recipients of the Kinship Guardianship Assistance Program shall have the right to appeal these decisions by a local board or licensed child-placing agency in granting, denying, changing or discontinuing Kinship Guardianship Assistance payments.