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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-705
Regulation title(s)	Child Protective Services
Action title	Amend CPS Regulation to Implement 2017 Legislation
Date this document prepared	August 15, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The proposed regulatory action will amend the 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:

- 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 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;
- 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 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 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.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

Board- State Board of Social Services
 CPS- Child Protective Services
 DSS- Department of Social Services
 LDSS- local department of social services

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’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).

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

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is 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 General Assembly session; 2) add 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

Please 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

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 there are no disadvantages to the public or the Commonwealth, please indicate.

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

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

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

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Any LDSS in a locality with a dense population of active duty military will be particularly affected because of the new requirement to report additional cases to the military Family Advocacy Program representative.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to **E. Nicole Shipp, 801 E. Main St. Richmond, Virginia 23219, (804) 726-7545, (804) 726-7499-FAX**, or e.shipp@dss.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of this stage of this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

<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>There is no additional cost to the state to implement or enforce the proposed regulation other than what was estimated when the change was made in the Code of Virginia in 2017.</p> <p>The Department estimates approximately 605 new CPS assessments/investigations will be needed annually, which would require the equivalent of 20 additional local department positions. The Department also estimates 25 percent of the new reports will result in a child placed in foster care. The total estimated cost is \$3,492,752 funded through general funds (\$2,290,631), title IV-E federal funds (\$957,600) and local match (\$244,521). Funding for this bill was included in the Governor's proposed budget.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>Localities may see an increase in the number of CPS reports for substance-exposed infants due to change in definition of what constitutes a reason to suspect abuse or neglect; however, any projected costs were taken into consideration</p>

	when the Code of Virginia was changed in 2017.
Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.	The proposed regulation affects all local CPS and LDSS staff, mandated reporters of child abuse or neglect, particularly healthcare providers involved in the delivery and care of substance-exposed infants and Armed Forces Family Advocacy Programs.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are approximately 106 hospitals in Virginia where a substance-exposed infant could be born and identified as such. There are approximately 25 military installations in Virginia, all of whom may not have a Family Advocacy Program. There are no small businesses that will be affected.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	a) There are no costs required for compliance by small businesses. b) There are no costs related to the development of real estate for commercial or residential purposes.
Beneficial impact the regulation is designed to produce.	The regulation is designed to produce a beneficial impact on the ability of CPS to respond to the most vulnerable citizens in the Commonwealth- children under the age of two- who are unable to self-protect. The proposed regulation will identify more children and families in the Commonwealth who may benefit from programs and services designed to improve safety and well-being of children.

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 the proposal to consider as the provisions requiring revision already exist in the Code of Virginia. All provisions are related to the Code of Virginia. There are no less intrusive or less costly alternatives for small businesses.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

Small businesses are not impacted by this proposed action. There are no less stringent requirements or alternative regulatory methods available to accomplish this regulatory action.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This proposed regulation is not a result of a periodic review/small business impact review.

(1) This regulation is still needed to provide interpretation and guidance for the CPS program as it helps protect the health, safety and welfare of children. (2) Comments were received in the Town Hall during the NOIRA stage of this regulatory action. The nature of the comments received during the NOIRA stage was in reference to substance-exposed infants. The details of those comments are listed in the Public Comment section of this document and have been taken into consideration. Additionally, VDSS has received feedback from the public, particularly the medical community, on the need to further define what constitutes a substance-exposed infant. There have been specific comments related to the term "affected by substance abuse" as used in §63.2-1509 B. (3) This regulation is comprehensive and includes provisions for all child abuse or neglect complaints except for those that involve caretakers outside of the family, which are found in 22VAC40-730. (4) This regulation does not necessarily overlap or conflict with any state or federal laws or regulations but rather reflects and responds to them. (5) The final stage of the periodic review of this regulation was completed and approved by the Governor in April 2017 and became effective July 1, 2017.

Public comment

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

Commenter	Comment	Agency response
<p>Virginia Poverty Law Center/ Valerie L'Herrou</p>	<p>1) Asks that the Board keep in mind recommendations and regulations issued by the U.S. Department of Health and Human Services related to the revisions made to CAPTA regarding substance-exposed infants. 2) Collection of substance-exposed infant data is an important piece of CAPTA revisions, and recommends in addition to VDSS that the Department of Health also collect data. 3) Expressed concern that the phrase "affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure" used in CAPTA not be interpreted to include exposure to drugs in utero because mere exposure is not indicative of maternal substance abuse, which is required by CAPTA. 4) Expressed concern that reporting guidelines for substance-exposed infants may discourage women from seeking prenatal and postnatal care. 5) Shared recommendations from the Barriers to Treatment of Substance-Exposed Infants Workgroup.</p>	<p>1) VDSS has adhered to Program Instruction (ACFY-CB-PI-17-02) issued by the U.S. Department of Health and Human Services. 2) Data collection is a function of existing automated data systems. In the 2018 General Assembly session, House Bill 1157 and Senate Bill 389 recommend the Virginia Department of Health serve as the lead agency in the Commonwealth regarding substance-exposed infants. 3) CPS Guidance Manual and Division of Family Services training will provide additional clarification of all the details of § 63.2-1509 (B) of the Code of Virginia. 4) The law requires a Family Assessment response for substance-exposed infant reports unless there are extenuating circumstances. The LDSS makes no finding of abuse or neglect in the Family Assessment response. 5) VDSS actively participated in the Barriers to Treatment of Substance-Exposed Infants Workgroup and is aware of legislative recommendations.</p>
<p>March of Dimes/ Christine Keppel</p>	<p>1) Offered support of amending provisions regarding substance-exposed infants. 2) Asks that terms be clarified, particularly as they relate to coding purposes and data collection. 3) Requests that substance-exposed infants data collection begin during pregnancy and track both mother and child outcomes.</p>	<p>VDSS is continuously working to improve the automated data system in order to provide a comprehensive picture of substance-exposed infants in Virginia.</p>

Family impact

Please assess the impact of this 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.

This regulatory action primarily clarifies instructions to LDSS regarding CPS procedures and incorporates changes made to the Code of Virginia by the General Assembly in 2017 and 2018. This regulatory action is not likely to impact the institution of the family and the rights of parents in the education, nurturing and supervision of their children, except to the extent the regulation protects children from abuse or neglect. This regulation does not directly impact economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse and one’s children. This action does not erode marital commitment nor affect disposable family income.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		Provides definitions used in CPS.	<p>Delete the definition for “certified substance abuse counselor” and “licensed substance abuse treatment provider” as they are no 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”, “Founded”, “Monitoring”, “Multidisciplinary teams”, “Reasonable diligence”, “Report”, “Response time”, and “Valid report or complaint”.</p>
20		General policy regarding CPS	Repeal this subsection as it is considered

		reports and complaints.	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 provide requirements for when a local department receives a complaint that is outside of their jurisdiction.</p>
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.	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

			<p>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.	<p>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.</p> <p>Adds clarifying language for when the identity of the persons reporting incidents of child abuse or neglect can be released to law enforcement.</p>

If an existing regulation or regulations (or parts thereof) are being repealed and replaced by one or more new regulations, please use the following chart:

Current chapter-section number	Proposed new chapter-section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements

If a new regulation is being promulgated, that is not replacing an existing regulation, please use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation is identical to the emergency regulation, please choose and fill out the appropriate chart template from the choices above. In this case "current section number" or "current chapter-section number" would refer to the **pre-emergency** regulation.

If the proposed regulation is intended to replace an emergency regulation, and the proposed regulation includes changes since the emergency regulation, please create two charts: 1) a chart describing changes from the **pre-emergency** regulation to the proposed regulation as described in the paragraph above, and 2) a chart describing changes from the **emergency** regulation to the proposed regulation. For the second chart please use the following title: "Changes from the Emergency Regulation." In this case "current section number" or "current chapter-section number" would refer to the **emergency** regulation.