



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

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**TO:** DUKE STOREN, Commissioner  
Virginia Department of Social Services

**FROM:** ELLEN FULMER MALENKE *(signature)*  
Assistant Attorney General

**DATE:** July 12, 2019

**SUBJECT:** Exempt Regulation Section - 22VAC40-141 (Licensing Standards for Independent Foster Homes)

I am in receipt of the attached regulation. 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 serves to bring the licensing standards for independent foster homes into conformity with § 63.2-100 of the Code of Virginia, to comply with Chapter 297 of the 2019 Acts of Assembly (HB 2542, effective July 1, 2109). The legislation amended the definition of an independent foster home.

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.

Further, it is my view that this regulation is exempt from the procedures of Article 2 of the APA pursuant to Virginia Code § 2.2-4006(A)(4)(a). 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 6004 - Final**

**DEPARTMENT OF SOCIAL SERVICES**

**Amend Definition to Comply with Code Requirements**

Part I

Definitions and Authority

**22VAC40-141-10. Definitions.**

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

"Assistant" means an individual 18 years of age or older who is selected by the independent foster parent to assist the provider in the care and supervision of the children in the home.

"Child" means any individual less than 18 years of age.

"Child with special needs" means a child with diagnosed physical, mental, or emotional disabilities such as, but not limited to, cerebral palsy, sensory impairment, learning disabilities, behavior disorders, chronic illnesses, a deficit in social functioning, mental retardation or emotional disturbance and who may require special monitoring or specialized programs, interventions or facilities.

"Commissioner" means the Commissioner of the Department of Social Services, his designee, or authorized representative.

"Department" means the Virginia Department of Social Services.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual (i) maintains business, professional, family, and community relationships which are characterized by honesty, fairness, truthfulness and

dependability and (ii) has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, guide, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective character and reputation references.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and; (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8 ~~of the Code of Virginia;~~ and (iii) a home in which are received only children who are the subject of a properly executed power of attorney pursuant to Chapter 10 (§ 20-166 et seq.) of Title 20.

"Infant" means any child from birth up to 16 months of age.

"Major injuries, illnesses and accidents" means injuries, illnesses or accidents that require emergency medical care or treatment.

"Parent" means the legal parent or parents or legal guardians of the child.

"Placing agreement" means the written agreement signed by the child's parents or guardians and the independent foster home parents in which the parents or guardians authorize the child's placement in the independent foster home for a period of 180 days or fewer. The placing agreement specifies the rights and responsibilities of each party but does not transfer legal custody to the independent foster home parent. The agreement addresses acquisition of, and consent for, any medical treatment needed by the child; financial responsibility for the placement; visitation with the child's family; and if appropriate to the child's age, unauthorized

absences from the home. The parents or guardians may withdraw the placing agreement at any time during the placement period.

"Provider" means independent foster parents who give 24-hour substitute family care, room and board, and services for up to eight children who reside in the provider's home as members of the household. A provider may be a husband and wife.

"Temporary entrustment agreement" means the agreement signed by the child's parents or guardians and the licensed independent foster parent in which the parents or guardians temporarily confer physical and legal custody of their child to the licensed provider for less than 180 days. The temporary entrustment agreement specifies the rights and obligations of the child, the parents or guardians and the provider, includes the responsibilities of the parents for financial support, and grants authority for medical care of the child. Temporary entrustment agreements may be withdrawn by the parents or guardians at any time during the 180-day period. Placements for longer than 90 days must be approved by the local juvenile and domestic relations court.

"Time-out" means a discipline technique in which a child is moved for a brief time away from the stimulation and reinforcement of ongoing activities and other children to allow the child to regain composure when losing self-control.