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## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	22 VAC40-201
<b>VAC Chapter title(s)</b>	Permanency Services-Prevention, Foster Care, Adoption, and Independent Living
<b>Action title</b>	Amend Permanency Regulation 2019
<b>Date this document prepared</b>	August 19, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The permanency regulation, 22VAC40-201, provides standards for local departments of social services (LDSS) for prevention, foster care, adoption, and independent living services. This regulatory action makes changes in response to 2019 and 2020 legislation. The intent of this action is to make the regulation consistent with the Code of Virginia, and to make any other changes the agency deems necessary after comments and review.

### Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

LDSS-local departments of social services

VDSS-Virginia Department of Social Services

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The mandate for this regulatory action is a directive from the General Assembly. Chapter 446 of the 2019 Acts of Assembly (SB 1339) requires the Board of Social Services to promulgate regulations to establish a caseload standard and Chapter 934 of the 2020 Acts of Assembly (SB 472) requires the Virginia Department of Social Services (VDSS) to promulgate regulations related to termination of parental rights, independent living needs assessments and plans, and reporting requirements for local boards and child-placing agencies.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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The state's legal basis for this action is § 63.2-217 of the Code of Virginia that requires the State Board of Social Services to adopt such regulations as may be necessary to carry out the purpose of title 63.2. This regulatory action is necessary to comply with the Chapter 446 of the 2019 Acts of Assembly (SB 1339) that makes numerous changes to the laws governing the provisions of foster care services, Chapter 677 and 676 of the 2019 Acts of Assembly (HB 1730 and SB 1253) that amends the age range for credit checks on children in foster care, and Chapter 934 of the 2020 Acts of Assembly (SB 472) that requires case consultation when reunification remains the goal after 12 months and reporting requirements when termination of parental rights do not occur in a timely manner.

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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This regulatory action is necessary to amend the existing regulation so that it will be consistent with the Code of Virginia. This regulation is essential to support the health, safety and permanency of children in foster care and facilitate the provision of foster care services to children and families. The goals of this regulatory action are: 1) amend existing regulation to align with changes made in the 2019 and 2020 Sessions of the General Assembly; 2) establish caseload standards in accordance with Chapter 446 of the 2019 Acts of Assembly Chapter (SB 1339); and 3) promulgate regulations related to termination of parental rights, independent living needs assessments and plans, and reporting requirements for local boards and child-placing agencies in accordance with Chapter 934 of the 2020 Acts of Assembly (SB 472).

**Substance**

*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.*

This regulatory action will incorporate technical corrections, language and processes necessary to ensure consistency with the Code of Virginia. This regulatory action includes changes to regulations on credit checks and independent living services, relative search and notification, a foster care complaint system, case consultation when reunification remains the goal after 12 months, acceptable reasons for not filing for termination of parental rights and reporting requirements for those cases, and caseload standards.

**Issues**

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

This regulatory action poses no disadvantages to the public or the Commonwealth. This regulatory action proposes amendments to the Permanency regulation, which provides for the safety of children who come into the child welfare system and for children in the Commonwealth who are adopted. In particular, this action addresses recent Code changes to help improve the safety, permanency, and well-being of children and youth in foster care.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no requirements in this regulatory action that would exceed applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected:

There are no other state agencies particularly affected by this regulatory action.

Localities Particularly Affected:

This regulation impacts LDSS. LDSS are located statewide and no individual locality will be particularly affected.

Other Entities Particularly Affected:

This regulatory action will impact children in foster care, birth parents, constituents, and relatives.

**Economic Impact**

*Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There is no additional cost to the state to implement and enforce this regulation. The development of additional regulatory and policy guidance documents and the monitoring of adherence to the regulations is a current responsibility of VDSS staff. The implementation of a caseload standard was estimated in the fiscal analysis for SB 1339 and, as a result, the General Assembly allotted funds.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no additional cost to other state agencies.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>Proposed changes will bring the regulation into compliance with existing state laws and clarify procedures and requirements so that LDSS can better address the permanency needs of children in foster care.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no additional costs associated with this regulatory change. The implementation of a caseload standard was estimated in the fiscal analysis for SB 1339 and, as a result, the General Assembly allotted funds.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Proposed changes will bring the regulation into compliance with existing state laws and clarify procedures and requirements so that LDSS can better address the permanency needs of children in foster care.</p>

**Impact on Other Entities**

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>This regulation will impact LDSS and children and youth in the custody of these LDSS.</p>
<p>Agency's best estimate of the number of such entities that will be affected. 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.</p>	<p>All 120 LDSS will be affected.  No small businesses will be directly impacted.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:  a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;  b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;  c) fees;  d) purchases of equipment or services; and  e) time required to comply with the requirements.</p>	<p>There will be no additional cost to businesses as a result of this regulation and there are no costs related to the development of real estate, fees, the purchase of equipment or services, or time required to comply with these requirements.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Proposed changes will bring the regulation into compliance with existing state laws and clarify procedures and requirements so that LDSS can better address permanency needs of children in foster care.</p>

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

There are no other alternatives to the proposed regulatory action, as the action is necessary to make the regulation consistent with state law.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting*

requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

There are no other alternative regulatory methods that would accomplish the necessary objectives of this regulatory action. The regulatory action is applicable to LDSS in their activities towards permanency for children and youth in foster care and case management. There is no impact on small businesses.

**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 is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.*

*In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.*

This regulatory action is not the result of a periodic review/small business impact review.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

Commenter	Comment	Agency response

There were no comments received during the public comment period.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

The State Board of Social Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Lora Smith, 801 East Main Street, 11<sup>th</sup> Floor, Richmond, Virginia 23219, 804-726-7538 and [lora.smith@dss.virginia.gov](mailto:lora.smith@dss.virginia.gov). 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.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
40		Within 30 days of the child's entry into foster care, the LDSS will identify and notify, in writing, all adult relatives that the child has been removed and the options to participate in the care and placement of the child. The LDSS must also conduct a search of the Virginia Birth Father Registry if the child's father is unknown.	The minimum requirement of searching for relatives at the time of entry, annually, and prior to the child's placement changes has been added. This change is a result of state legislation (2019 Acts of Assembly Chapter 446).

		The local department must ensure a child in foster care is placed in an approved home or licensed facility that complies with all applicable federal and state requirements for safety and child well-being	“Approved” has been removed to further incorporate all allowable placements that meet federal and state requirements even if full foster home approval hasn’t been granted.
70			A new requirement has been added that when a child has been in care for 12 months and reunification remains the case plan goal, the LDSS shall consult with the Commissioner or designee regarding case planning. This change is a result of state legislation (2020 Acts of Assembly Chapter 934).
100		<p>Independent living services shall be identified by the youth, foster or adoptive family, local department, services providers, legal community and other interested individuals.</p> <p>Independent living services shall be provided to all youth ages 14 to 18 years of age and offered to any person between 18-21 years of age who is transitioning from foster care to self-sufficiency.</p> <p>Independent living assessments must be completed and used to develop the service plan.</p> <p>Allowed youth placed in foster care before 18 and who turn 18 prior to July 1, 2016 can continue to receive independent living services from ages 18-21.</p> <p>The local department shall run annual credit checks on all youth in foster care who are 14 years of age and older.</p>	<p>The youth’s parent or prior custodian has been added to the list of individuals who are involved in identifying necessary independent living services. Engaging the child’s family, especially their parent/caregiver is vital to ensuring the best outcomes for youth.</p> <p>Clarification has been added to this requirement to specify this applies to youth in foster care ages 14-21 and youth who are between 14-23 years of age and who were in foster care at any point between 14-21 years of age.</p> <p>Independent living assessments (now known as life skills assessments) and transition plans are due within 30 days of a youth in foster care reaching 14 years of age or within 30 days of a youth who is 14 years of age or older entering foster care and such assessments and plans must be updated annually in accordance with the 2020 Acts of Assembly Chapter 934.</p> <p>All language referencing the independent living program that was in place prior to the Fostering Futures program for youth 18-21 has been removed as all youth in that program have aged out and now Fostering Futures is the program that provides support to youth 18-21.</p> <p>The requirement has been modified to include youth between the ages of 14 and 18 as the LDSS cannot run credit checks on adults, in accordance with the 2019 Acts of Assembly Chapter 677.</p>



110		If a child has been in foster care for 15 out of last 22 months, the LDSS shall file a petition to terminate parental rights.	The requirement has been changed to account for convictions of certain offenses and to identify exceptions to the requirement to file for termination of parental rights. The three exceptions are outlined in this section as well as documentation and reporting requirements. This change is a result of state legislation (2020 Acts of Assembly Chapter 934).
140			The caseload standard of 15 foster care cases per foster care worker has been added. This change is a result of state legislation (2019 Acts of Assembly Chapter 446).
n/a	145	This new section outlines investigation procedures for foster care complaints received by VDSS.	This change is a result of state legislation (2020 Acts of Assembly Chapter 934). The foster care complaint process is already in place in VDSS and there is no likely impact.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

**Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace**

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

**Table 3: Changes to the Emergency Regulation**

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage