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Proposed Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-201
Regulation title(s)	Permanency Services- Prevention, Foster Care, Adoption and Independent Living
Action title	Amend Permanency Regulation
Date this document prepared	June 14, 2017

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 Permanency regulation, 22 VAC 40-201, encompasses the full range of services for prevention, foster care, adoption and independent living services. The regulation provides LDSS with rules for the provision of child welfare services consistent with the Code of Virginia and federal law. Substantive amendments and other changes to this regulation are those required by legislation impacting the Code of Virginia in 2016 and by the Federal Preventing Sex Trafficking and Strengthening Families Act of 2014. These are described below. The intent of this action is to make the regulation consistent with current Code of Virginia and federal laws, and to make any other changes the agency deems necessary after comments and review.

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.

AREVA- Adoption Resource Exchange of Virginia

CSA- Comprehensive Services Act

DJJ- Virginia Department of Juvenile Justice

ICPC- Interstate Compact on the Placement of Children

LCPA- Licensed Child Placing Agencies

LDSS- Local Department of Social Services

Title IV-E- the title in the federal Social Security Act that authorizes the use of federal funding for foster care and adoption

VDSS- Virginia 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 legal basis for this action is § 63.2-217 of the Code of Virginia. This statute provides the authority for the State Board of Social Services to adopt regulations as may be necessary to carry out the mandated purposes of the Department of Social Services. Throughout Title 63.2, there are requirements for regulations to be developed to implement permanency services. This regulatory action will provide a comprehensive and accurate structure for the provision of these services.

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.

The regulation is necessary for protecting the welfare of children in foster care because it addresses issues such as service planning, notification of relatives, factors to consider in placement, adoption assistance, and many other provisions intended to ensure the wellbeing of the child. The purpose of this proposal is to make the regulation consistent with current Code and federal laws, and to make any other changes deemed necessary to ensure the accuracy and clarity of the regulation.

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.

This regulatory action incorporates technical corrections, language and processes necessary to ensure consistency between the Code of Virginia and federal law, and address requirements that have been passed into law since the introduction of the current Permanency Services regulation. This includes, but is not limited to: adding the definition of sibling and requirement to notify parents of siblings when a child enters foster care; adding the definition of reasonable and prudent parenting standard and the definition of prior family, limiting permanency goals of Another Planned Permanent Living Arrangement and Permanent Foster Care to youth age 16 and over; establishing standards for normalcy for children in foster care; ensuring that children age 14 and older in foster care are actively involved in the development of their foster care plans, are provided with an opportunity to choose two members of their planning team, are presented with a youth's rights document, and receive their credit reports every year; ensuring that youth in foster care are provided with personal documents when they turn 18; and, extending foster care services to youth who turn age 18 in foster care to age 21. The conditions under which adoption assistance can be continued for a youth who is adopted after age 16 is also addressed.

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.

This 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 improve service delivery for older youth and ensures compliance with the federal Preventing Sex Trafficking and Strengthening Families Act of 2014. Compliance with federal mandates are a requirement for continuing to receive federal funding for the operation of child welfare service programs in Virginia.

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 in this regulatory action that exceed 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.

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

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 Department of Social Services is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/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 Em Parente, Foster Care Program Manager, 801 East Main Street, Richmond, Virginia, 23219, FAX: 804-726-7895, Phone: 804-726-7538, email: em.parente@dss.virginia.gov or, comments may be submitted to Traci Jones, Adoption Program Manager at the same address and FAX, Phone: 804-726-7537 or email: traci.Jones@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 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 Credit Reporting Agencies are providing the credit reports of youth in foster care to VDSS at no cost. The funding for the extension of foster care to age 21 was included in the 2016 Appropriations Act.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There will be no additional cost to localities for the changes in the regulations regarding the requirements incorporated for children age 14 and older in foster care. The majority of these activities are already included in guidance as ‘best practice’, and have been incorporated into practice already. There is no cost for involving children in foster care in the development of their</p>

	<p>foster care plans or in allowing them to choose members of their team; VDSS is providing youths' credit reports to the LDSS at no cost; LDSS must secure youth's critical personal documents in order to conduct business on behalf of the youth, there is no cost to then provide them to the youth when he turns 18.</p> <p>There will be minimal cost associated with the notification of siblings' parents when a child enters foster care. This condition will only exist for some cases. The total cost for notifying siblings' parents is estimated to be less than \$1000/year. 2879 children entered foster care during the 2015 federal fiscal year. It is estimated that half (1440) of those children would fall into this category. Workers are already notifying relatives but would need to send an additional letter which would cost the agencies approximately \$705.00.</p> <p>Changes to the regulation will require local departments to provide foster care services to youth who turn 18 in foster care or who was in foster care immediately prior to being committed to DJJ and is not yet 21. Funding for this activity as well as the requirement to provide services was included in the FY 2017 base budget as a result of the Appropriations Act of 2016. There is no additional fiscal impact as a result of this technical change to the regulation.</p> <p>Proposed changes which will reduce the stigmatizing aspects of foster care for children and which clarify existing requirements or improve consistency with state or federal law will not result in any additional cost to the localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>This regulation will impact local departments of social services and children and youth in the custody of these departments.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses 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>120 local departments may be effected. No small businesses will be directly impacted.</p>
<p>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</p>	<p>There will be no additional cost to businesses as a result of this regulation. Nor are there any costs related to the development of real estate.</p>

<p>development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Proposed changes will bring the regulation into compliance with existing state and federal laws; clarify procedures and requirements so that local departments can better address permanency and well-being needs of children in foster care; and ensure that young adults who turn 18 in the custody of the department have access to services between the ages of 18 and 21. Continued adherence to federal requirements ensures that federal funding will continue to be available to Virginia to administer foster care and adoption programs.</p>

Alternatives

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

This regulatory action reflects changes to Code as well as federal law. The action addresses LDSS practices related to serving older youth in foster care, extending foster care to 21, and making a child’s experience in foster care less stigmatizing. There are no viable alternatives to making changes to this regulation in response to changes in the Code and appropriations act. The action does not impact 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.

There are no other regulatory methods that would accomplish the objectives of this regulatory action. The regulation is applicable to LDSS in their activities involving youth in foster care and adoptions and does not have an adverse 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 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 regulatory action is not the result of a periodic review/small business impact review.

Public comment

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

There were no comments received during the public comment period.

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 addresses the health and safety of children who have come into foster care. However, the first goal for children in foster care is reunification with their parents or prior caretaker and this regulatory action strengthens the involvement of parents in the process, including the provision of services to support the reunification of the family. The regulatory action does not directly impact family income, marital commitment, or care for elderly parents.

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	Proposed new section	Current requirement	Proposed change, intent, rationale, and likely impact of proposed
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number	number, if applicable		requirements
10		<p>There is no definition for “normalcy”</p> <p>There is no definition of “prior family”</p> <p>There is no definition for “reasonable and prudent parent standard”</p> <p>There is no definition for “sibling”</p>	<p>The definition of normalcy has been added. Implementing the reasonable and prudent parenting standard (referred to as normalcy in Virginia) is required by federal law.</p> <p>Prior family is used in the regulation but was not previously defined. The definition provides clarification.</p> <p>The definition of reasonable and prudent parent standard is necessary to provide guidance on normalcy which is required by federal law.</p> <p>The definition of sibling has been added. Federal law now requires that the parent of a sibling be notified when a child enters foster care.</p>
35		<p>LDSS shall resume custody upon the youth’s discharge from commitment unless an alternative arrangement for the custody of the youth has been made.</p>	<p>Language was added to clarify that if an alternative custody arrangement has been identified the LDSS shall include that information in the foster care plan for review and approval by the court so that a custody order can be issued.</p>
40		<p>There is no current requirement that addresses the parents of siblings.</p> <p>There is no current requirement to search the putative father registry.</p> <p>The child’s well-being is not addressed.</p>	<p>The requirement that parents of siblings must be notified when a child enters foster care has been added. The intent is to exhaust all relative options for permanency for a child, as well as assist the child in maintaining connections. There is a provision for when it may not be in the child’s best interest to notify relatives.</p> <p>The requirement that If the birth father of a child entering foster care is unknown, the LDSS shall search the birth father registry within 30 days of the child entering foster care. Identifying and locating the child’s birth father is crucial in assisting the child in achieving permanency either through placement with the father or paternal relatives.</p> <p>Child well-being has been added to the statement that approved homes and licensed facilities shall comply with federal and state requirements for safety.</p>

		<p>Adoptive placements are not specifically addressed.</p>	<p>Normalcy/reasonable and prudent parent standard are not safety related but address the child’s well-being.</p> <p>Adoptive has been added to foster parent and replaces “resource” parent. The statement regarding denying placement applies to both foster and adoptive families.</p>
<p>70</p>		<p>Age restrictions of foster care goals are not addressed.</p> <p>Circumstances, including age restriction, under which the goal of Permanent Foster Care (PFC) may be used is not addressed.</p> <p>The requirement to continue to explore all permanency options for youth in APPLA and PFC is not addressed.</p> <p>The goal of Independent Living is not addressed as it pertains to Fostering Futures youth.</p>	<p>Clarification is provided stating that the goal of Another Planned Permanent Living Arrangement (APPLA) can only be chosen for youth age 16 and over.</p> <p>Additions to this section outline when the goal of Permanent Foster Care may be identified for a youth pursuant to the Code of Virginia. This includes the child being placed in a foster home where there is a clearly established relationship with the foster parents and the youth is age 16 and older. Permanent foster care is not a permanency goal and should only be used in specific circumstances.</p> <p>The requirement that the LDSS shall continue to make efforts to help the child achieve permanency through return home, placement with relatives, or adoption even if they are in PFC or APPLA has been added. Youth in PFC and APPLA have not achieved permanency and it is crucial that the LDSS continue to explore these options throughout the life of the case. Changing circumstances of the child and family may allow for one of these goals to be achieved and the child to achieve permanency.</p> <p>Clarification is provided stating that the goal of Independent Living may also be used for youth in the Fostering Futures program. This program allows for youth to remain in foster care until age 21 with the goal of transitioning to adulthood. While the LDSS should continue to identify permanent connections and supports for the child, the services provided for youth in this program are aimed at assisting the child in living independently making the goal of Independent Living the most appropriate</p>

			goal.
80	110	LDSS should consider input from the child, parents, foster/adoptive parents and service providers in the development of the foster care plan.	The information has been moved to section 110 as it pertains to the foster care plan prepared for all court reviews. It also strengthens the language to say that the child, parents, foster/adoptive parents, service providers should participate in the development of the plan instead of their input just being “considered”. It requires that the youth age 14 and older are given the opportunity to invite two members of the team. This ensures that the youth feels like he is heard during the meeting and he has someone advocating for him throughout the development of his permanency plan.
90		Normalcy is not addressed in the current regulation	Normalcy is a requirement of the Preventing Sex Trafficking and Strengthening Families Act of 2014. This allows foster parents and congregate care providers to make day to day decisions about a child’s participation in age-appropriate extracurricular, enrichment and social activities. This will allow children in foster care the same opportunities as their peers. LDSS shall ensure that training is provided, caregivers are acting in accordance to the agreement entered into between the LDSS and provider, and that no other policy interferes with the ability to implement normalcy.
100		<p>It is not clear that youth who turned 18 prior to July 1, 2016 are only eligible for independent living services.</p> <p>Current regulation requires the LDSS to approve the youth’s living arrangement.</p> <p>Youth receiving important documents is not addressed.</p>	<p>Provides clarification that youth who turn 18 prior to July 1, 2016 are only eligible for independent living service, not Fostering Futures which includes foster care placement.</p> <p>The requirement for the LDSS to approve the youth’s living arrangement has been removed. LDSS does not have the authority to do this as these youth are considered adults and choose their own living arrangement.</p> <p>The Preventing Sex Trafficking and Strengthening Families Act of 2014 requires the LDSS to provide youth who turn 18 in foster with certain crucial documents. This has been added to the regulation. This will enable youth to have what they need to obtain employment, attend school, and have knowledge of their medical history.</p>

		Credit checks for youth in foster care in not addressed.	The requirement that the LDSS shall run annual credit checks on all youth age 14 and older in an effort to guard against identity theft has been added. This is a requirement of the Preventing Sex Trafficking and Strengthening Families Act of 2014.
	105	Fostering Futures is a new program.	Foster care for youth age 18-21 (Fostering Futures Program) has been added. The section outlines who is eligible for the program and the criteria that must be met to maintain eligibility. The program allows youth who would otherwise age out of foster care and be required to leave their foster home placement to remain in foster care. When youth in foster care turn 18 they are often not fully prepared to live on their own and support themselves. This program provides the much needed safety net to ensure these youth can become productive members of society.
110		<p>LDSS should consider input from the child, parents, foster/adoptive parents and service providers in the development of the foster care plan.</p> <p>There is no current requirement documenting out of state placements, asking the youth about his permanency plan, and ensuring the youth attends the court hearing.</p>	<p>The information has been moved from section 80 as it pertains to the foster care plan prepared for all court reviews. It also strengthens the language to say that the child, parents, foster/adoptive parents, service providers should participate in the development of the plan instead of their input just being “considered”. It also requires that the youth age 14 and older are given the opportunity to invite two members of the team. This ensures that the youth feels like he is heard during the meeting and he has someone advocating for him throughout the development of his permanency plan.</p> <p>The following requirements have been added:</p> <ul style="list-style-type: none"> a. to document the appropriateness of out of state placements in the foster care plan b. LDSS shall ensure the youth attends the permanency planning hearing c. that the youth shall be consulted regarding their permanency plan. <p>All of these are requirements of the Preventing Sex Trafficking and Strengthening Families Act of 2014. It also clarifies for youth over 18 when a supervisory review is required vs. an administrative panel review.</p>

		Petitioning for TPR for children in foster care for the last 15 out of 22 months is not currently addressed.	It also adds the requirement that if a child has been in foster care for 15 out of the last 22 months, the LDSS shall petition to terminate parental rights. This is the current practice.
130		The foster care case closes the foster child turns 18.	This has been expanded to say when the child turns 18 and objects to continuing to receive foster care services for which he is eligible. This allows for the case to remain open for those youth that are continuing to receive independent living services or those youth in the Fostering Futures Program.
140		The Director of the LDSS may grant approval for a foster child to travel out of state/country.	This requirement has been removed as this contradicts the federal law that requires states to implement normalcy, giving foster parents and congregate care providers the authority to make day to day decisions.
161		Currently, there is only one circumstance where adoption assistance may be extended to age 21.	The Fostering Futures Program includes a provision where adoption assistance payments may be extended to age 21. The eligibility for this type of extension has been added in addition to the criteria that must be met.