




COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring
Attorney General

202 North Ninth Street
Richmond, Virginia 23219
804-786-2071
Fax 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

TO: MARGARET SCHULTZE, Commissioner
Virginia Department of Social Services

FROM: ELLEN FULMER MALENKE 
Assistant Attorney General

DATE: July 12, 2017

SUBJECT: Exempt Regulation Section - 22VAC40-131 (Standards for Licensed Child-Placing Agencies)

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 standards for licensed child-placing agencies into conformity with § 63.2-1701 of the Code of Virginia, to comply with Chapter 196 of the 2017 Acts of Assembly (HB 2156). The legislation amended the definition of a person who operates or maintains a child welfare agency to include individual; corporation; partnership; association; limited liability company; local government; stated agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity that operated or maintains a child welfare agency.

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 5150 - Final

DEPARTMENT OF SOCIAL SERVICES

Amend Licensed Child Placing Agencies to Conform with Code

Part I

General Provisions

22VAC40-131-10. Definitions.

"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 parent" means any person 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" means any person 18 years of age or older.

"Annual" means within 13 months of the previous event or occurrence.

"Applicant" means an individual or couple applying to be approved as a resource, foster, adoptive, treatment foster, or short-term foster family home provider.

"Background check" means a sworn statement or affirmation disclosing whether the individual has a criminal conviction, is the subject of any pending criminal charges within or outside the Commonwealth of Virginia and is the subject of a founded complaint of abuse or neglect within or outside the Commonwealth; criminal history record information; child abuse and neglect central registry search; and any other requirement of 22VAC-40-191, Background Checks for Child-Welfare Agencies, and §§ 63.2-1721 and 63.2-901.1 of the Code of Virginia.

"Behavior support" means those principles and methods employed by a provider to help a child or youth achieve positive behavior and to address and correct a child's or youth's inappropriate behavior in a constructive and safe manner in accordance with goals of the child's or youth's service or treatment plan and the safety of the child or youth and others.

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

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) a parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) a person responsible by virtue of their position of conferred authority; and (iv) adult persons residing in the home with the child.

"Career and technical education" means organized sequential educational activities and courses that provide individuals with academic and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions.

"Case management" means an activity that assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to his needs. Case management activities are provided in treatment foster care.

"Casework" means provision of direct services or treatment with an individual or several individuals, and intervention in the situation on the client's behalf.

"Casework staff" means an individual hired to perform casework services who has at least a baccalaureate degree with relevant experience required in this chapter.

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

"Child-placing activities" means the activities involved in the placement of children in foster or adoptive family homes; and children or youth in children's residential facilities or independent

living arrangements. The following activities and actions are integral components of a Virginia-licensed child-placing program and when performed in Virginia, these components are regulated under this chapter:

1. The provision of counseling to biological parents including assisting parents to formulate a plan for the care and/or placement of their child;
2. The acceptance of a child's custody for placement purposes;
3. Assessing a child's service and placement needs;
4. Performing home studies;
5. Selecting and approving applicants for resource, foster, treatment foster, or short-term foster care and adoption placements; and approving independent living placements and services;
6. Matching a child with an approved family or licensed children's residential facility;
7. Making a placement of a child in a resource, foster, treatment foster, or short-term foster care home; an independent living arrangement; or children's residential facility selected for that child;
8. Casework and supervision of children in foster care, adoption and independent living, including counseling the child, the biological, adoptive parents, or other persons; and consultation with foster parents and agencies holding custody of the child; and
9. Providing documentation to finalize adoptions and providing post-placement adoption and supervision services or making referrals to appropriate resources for such services.

"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 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 of Virginia 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's family" means the birth or adoptive parents, legal guardians, or family to whom the child may return.

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

"Complaint" means an accusation that a facility that is subject to licensure is operating without a license or that a licensed facility is not in compliance with licensing standards or law.

"Corporal punishment" means punishment administered through the intentional infliction of pain or discomfort to the body through (i) actions such as, but not limited to, striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Department" means the State Department of Social Services.

"Dual approval process" means a process that includes a home-study, mutual selection, interviews, training, and background checks completed on all applicants to be considered for approval as a resource, foster, or adoptive family home provider.

"Emergency placement" means the placement of a child where the local department of social services placing the child has within the past 72 hours removed the child from his home or previous placement due to abuse or neglect or other emergency.

"Employee," "staff," or "staff person" means a person working for the licensee who is compensated or has a financial interest in the business of the licensee, regardless of role, service, age, function, or duration of employment with the licensee. Employee, staff, or staff person also includes persons hired through a contract to provide services for the licensee.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where the legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster care services" means the provision of a full range of casework, treatment, and community services, including but not limited to independent living services, for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 of the Code of Virginia or in need of services as defined in § 16.1-228 of the Code of Virginia and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services and the parents or guardians where legal custody remains with the parents or guardians, or (iii) has been committed or entrusted to a local board of social services or licensed child-placing agency.

"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 committed or entrusted to a child-placing agency.

"Independent living arrangement" means the 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

include services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, money management skills development, access to essential documents, and other appropriate services to help children or youth and persons prepare for self-sufficiency.

"In-service training" means the on-going instruction received by providers after they complete their pre-service training.

"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" means a uniform law enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands that establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Licensee" means the individual, corporation, partnership, association, limited liability company, trust, business trust, public entity, or any other legal entity recognized by the Virginia State Corporation Commission, local government, state agency, including any department, institution, authority, instrumentality, board, or other administrative agency of the Commonwealth; or other legal or commercial entity to whom the department issues a license and who is legally responsible for compliance with the regulations and statutory requirements related to the child-placing agency.

"Licensing representative" means an agent authorized by the commissioner to carry out the responsibilities and duties specified in Subtitle IV (§§ 63.2-1700 et seq. and 63.2-1800 et seq.) of Title 63.2 of the Code of Virginia.

"Local board" means the local board of social services representing one or more counties or cities.

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

"Mental abuse" means that which occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.

"Mutual selection" means a method within the dual approval process that encourages collaboration by and between both (i) the applicant applying for approval as a resource, foster, adoptive, treatment foster, or short-term foster home provider; and (ii) the child-placing agency who is processing the application. It allows both parties the ability to gather information necessary to make an informed decision about whether the applicant has a continued interest in and would be ready to accept a child into his home if it is determined that he meets all criteria to be an approved home provider. The child-placing agency makes the final determination regarding approval or disapproval of the applicant.

"Parent" means the birth or adoptive parent of a child.

"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.

"Permanent entrustment agreement" means an agreement that provides for the termination of all parental rights and responsibilities with respect to the child to be placed for adoption.

"Permanent foster care placement" means the place in which a child has been placed pursuant to the provisions of §§ 63.2-900, 63.2-903, and 63.2-908 of the Code of Virginia with the expectation and agreement between the placing agency and the place of permanent foster

care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517 of the Code of Virginia. A permanent foster care placement may be a place of residence of any natural persons deemed appropriate to meet a child's needs on a long-term basis.

"Physical abuse" means abuse that occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a physical injury by other than accidental means; or creates a substantial risk of death, disfigurement, or impairment of bodily functions.

"Physical neglect" means the failure to provide food, clothing, shelter, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to § 63.2-100 of the Code of Virginia.

"Physical restraint" means use of a physical intervention or "hands-on" hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Placing agency" means the child-placing agency that placed the child with the licensee.

"Pre-service training" means the instruction received by providers during the initial approval process.

"Provider" means an individual approved as a resource, foster, adoptive, treatment foster, or short-term foster parent or family.

"Records" means the written information assembled in a file relating to the child-placing agency; staff; volunteers; child; child's family; and resource, foster, adoptive, treatment foster, and short-term foster family home providers.

"Resource parent" means an approved provider who is committed to support reunification and who is prepared to adopt the child if the child and family do not reunify.

"Seclusion" means the involuntary placement of a child alone in a locked room or secured area from which he is physically prevented from leaving.

"Serious incident reports" means a written report detailing the child's accidents or injuries that require medical attention beyond minor first aid care, criminal activity, and incidents requiring police intervention.

"Service plan" means a written document that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians pursuant to § 16.1-281 of the Code of Virginia.

"Sexual abuse" means any act of sexual exploitation or any sexual act upon a child in violation of the law that is committed or allowed to be committed by the child's parents or other persons responsible for the care of the child pursuant to § 63.2-100 of the Code of Virginia.

"Short-term foster care" means a licensee-offered service that is designed to provide crisis or alternate planned-support relief for up to 30 consecutive calendar days to resource, foster, adoptive, or treatment foster family home providers; or biological families through substitute care placement arrangements for children. The substitute-care placement environments used shall be limited to provider home environments that have been approved.

"Special needs" means (i) a physical, mental, or emotional condition existing prior to adoption; (ii) hereditary tendency, congenital problem, or birth injury leading to substantial risk of future disability; or (iii) individual circumstances of the child related to age, racial, or ethnic background or close relationship with one or more siblings. A child with special needs is any child for whom it has been determined unlikely that he will be adopted within a reasonable period of time due to one or more of the factors described in clause (i), (ii), or (iii) of this

definition and the child is in the custody of a local board or licensed child-placing agency. A special needs child includes children who have factors described in clause (i) and (ii) of this definition present at the time of adoption but not diagnosed until after entry of the final order of adoption and no more than one year has elapsed.

"State Board" means the State Board of Social Services.

"Treatment" is the coordinated provision of services and use of professionally developed and supervised interventions designed to produce a planned outcome in a person's behavior, attitude, emotional functioning, or general condition.

"Treatment foster care" is a community-based program where services are designed to address the special needs of children and families. Services to children are delivered primarily by treatment foster parents who are trained, supervised, and supported by child-placing agency staff. Treatment is primarily foster family based, and is planned and delivered by a treatment team. Treatment foster care focuses on a continuity of services, is goal directed and results oriented, and emphasizes permanency planning for the child in care.

"Treatment foster parent" means a provider, approved by the licensed or certified child-placing agency, who is trained to provide treatment foster care services.

"Treatment team" means the group that provides mutual support; evaluates treatment; and designs, implements, and revises the treatment and service plan. Treatment team members are persons directly involved with the child and shall, unless otherwise indicated, consist of the child; professional child-placing agency staff; other professionals; the child's family members, where appropriate; and the treatment foster parents.

"Youth" means persons between the ages of 16 and 18 who are in foster care and persons between the ages of 18 to 21 who are former foster care children and are transitioning from foster care to self-sufficiency.