



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Board of Social Services
VAC Chapter Number:	22 VAC 40-260
Regulation Title:	Agency Placement Adoptions-Subsidy
Action Title:	Amend Subsidy Regulation as a Result of Periodic Review
Date:	January 30, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

22 VAC 40-270, which provides guidance on the appeal rights of adoptive applicants and parents, will be repealed. An appeals provision will be added to 22 VAC 40-260 to replace this regulation.

22 VAC 40-260 addresses adoption subsidy, which is a money payment or service provided to adoptive parents on behalf of a child with special needs. The regulation provides criteria by which a child is defined as a special needs child prior to and after adoption finalization, and describes the types of subsidy agreements and payments, application requirements, and conditions for terminating adoption assistance agreements. Amendments are proposed to revise the special needs criteria, add an appeals provision, clarify several existing requirements, and improve accountability in the administration of the subsidy program.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 63.2-217 of the Code of Virginia provides that the State Board shall adopt such regulations as necessary or desirable to carry out the purpose of Title 63.2 of the Code of Virginia. Section 63.2-900 of the Code of Virginia provides that a local board shall adopt regulations for the provision of foster care services directed toward the permanent planning for children in the custody of or placed by local boards. The provisions of 22 VAC 40-260 are directly related to the statutory authority, by facilitating the placement of children in permanent, adoptive homes. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Many of Virginia's waiting children have physical, mental, and emotional challenges which make them difficult to place in adoptive homes. Adoption subsidy facilitates their placement into adoptive homes by providing the adoptive family with additional resources in order to meet the child's special needs. The regulation facilitates permanency through adoption for children with special needs who might otherwise languish in foster care. The regulation is, therefore, essential to their health, safety, and welfare. 22 VAC 40-260 establishes administrative guidelines necessary for local agencies to administer adoption subsidy and is essential for this reason.

Proposed amendments would update the special needs criteria to more accurately reflect the population of waiting children, increase accountability in the administration of subsidy, and provide clarity on several topics. The regulation was established in 1989 and amendments are necessary to incorporate references to the 1997 Adoption and Safe Families Act and other statutory mandates which have taken affect since 1989.

One amendment pertains to appeal rights. Virginia’s adoption assistance program receives funding from Title IV-E of the Social Security Act. Title IV-E requires the State to provide for granting an opportunity for a fair hearing to any individual whose claim for IV-E benefits is denied or not acted upon within reasonable time. Appeal rights for adoptive parents and applicants have been added to 22 VAC 40-260. As a result, the need for a separate regulation singly addressing appeals is eliminated and appeal rights are retained. Thus, 22 VAC 40-270, Appeals, will be repealed.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action’s changes.

The majority of the proposed changes are intended to clarify existing requirements and provide practice guidance. Substantive changes are as follows:

Special needs criteria is revised to more accurately reflect the children in care by amending the characteristic related to minority or mixed racial heritage by adding a minimum age of 3 years.

Language regarding when reasonable efforts have been made to place a child without subsidy is replaced with less restrictive language that requires the child be registered and photo-listed with AREVA. This is consistent with Title IV-E requirements regarding reasonable efforts.

Appeal rights for adoptive parents and applicants have been added.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 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 include a sentence to that effect.

The advantage to the public, agency, and Commonwealth in retaining and amending the regulation is that adoption subsidy, which facilitates the adoptive placement of children with special needs, will continue to be administered according to state and federal requirements. The proposed amendments will update the special needs criteria and clarify key requirements. There are no disadvantages to the public or Commonwealth.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget

activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

There is no anticipated fiscal impact of amending the regulation.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

22VAC40-260-10

Clarifies that adoption assistance agreements are for federal subsidy, state subsidy or conditional subsidy. Deletes reference to local subsidy, which is no longer used in Virginia.

Clarifies that the conditions that must be met in order for a child to be a “child with special needs” by:

- Deleting the reference to “legally free for adoption,” and replacing it with the requirement that the child must be unlikely to return home because of terminated parental rights. This amendment makes clear that termination of parental rights is one of three main factors in defining a child with special needs. It makes Virginia’s requirements consistent with federal Title IV-E requirements regarding the definition of special needs.
- Deleting language in the second factor requiring a determination be made that the child cannot be placed within a reasonable time due to certain factors. This is replaced with the more simplified requirement that the child has individual characteristics making him/her hard to place, omitting the subjective language “within a reasonable period of time.”
- Adding a third factor requiring that reasonable efforts be made to first place without subsidy. This makes Virginia’s requirements consistent with federal Title IV-E requirements regarding the definition of special needs.
- Clarifying that, for special conditions not diagnosed until after the final order of adoption, the diagnosis cannot be more than 12 months

22VAC40-260-20

Reformatting better delineates between eligibility before legal adoption and after legal adoption. New sections (A and B) are dedicated to eligibility before and after legal adoption, respectively. Reformatting also better presents the adoption subsidy program in the order in which it is administered, beginning with basic eligibility criteria, special needs criteria, determining the type of payment, through termination of the adoption assistance agreement.

A, 1- Clarifies basic eligibility criteria addressing age and custody. Adds additional clarification that the child must have been placed by a local board or licensed agency. The exception is when the child has resided for 18 months with foster parents who file an adoption petition under Code of Virginia, Section 16.1-219.36.

A, 2-Amends this section to address determination of whether a child has special needs instead of a determination that the child is eligibility for subsidy. A child determined to have special needs is eligible for subsidy.

A, 2, b, (2)-Requires that hereditary tendency, congenital problem or birth injury that could lead to future disability be verified by a medical/psychological statement. This supports adoption assistance policy requirements for documentation of special needs and pertinent diagnostic reports.

A, 2, c- Revises reference to reasonable efforts for clarity.

A, 2, c, (2)- Revises language regarding when reasonable efforts to first place the child without subsidy are considered to be made. Replaces current language requiring local recruitment efforts and listing in the AREVA photo-listing for a minimum of 30 days with less restrictive language. This is consistent with Title IV-E requirements regarding reasonable efforts.

B, 3- Requires that the child's physical, mental or emotional condition at the time of placement, or hereditary tendency, congenital or birth injury be verified by a diagnosis that is not more than 12 months old. This is not a new requirement, but was revised for clarity. It is consistent with the definition of special needs in earlier sections.

C, 1-Deletes reference to state subsidy. State subsidy is addressed in a separate section.

C, 2-Deletes reference to state and local funds, and replaces with Comprehensive Services Act (CSA) pool funds. In 1993, state and local foster care funds were pooled with other funds into a single pool, referred to as the CSA state pool.

C, 3, a-Deletes reference to state and local funds and replaces with CSA funds.

C, 3, c-Deletes provision that reasonable efforts to first place the child without subsidy are not required if conditional subsidy is involved. This change makes the criteria for a conditional subsidy consistent with that for federal and state subsidies.

D-Adds language requiring negotiation of payments with adoptive parents, taking into consideration the needs of the child, family circumstances, and other resources available to defray the costs of adoption assistance. Clarifies that while adoptive parents' income is not to be the sole factor, negotiation with adoptive parents and exploration of other resources are required for accountability purposes. This is consistent with Title IV-E requirements.

D, 1, a-Adds a provision for not having to provide a maintenance payment when it is determined through negotiation that a payment is not needed. The added provision supports the negotiation requirement in the regulation.

D, 1, c-Deletes requirement for approval of negotiated maintenance rate by the Department. This requirement is burdensome to families and local agencies, and is no longer necessary.

D, 1, d- Adds language clarifying that increases in the amount of maintenance payments will be made under certain circumstances for children receiving the maximum allowable basic maintenance payment.

D, 2, a-Adds language clarifying that special service payments are used in meeting the child's **non-routine** dental needs. The current regulation implies that all dental needs may be covered through special service payments. The revision will place responsibility for routine dental care for adopted children with their adoptive parents.

It further clarifies that special service payments must be directly related to the child's individual characteristic that makes the child hard to place, or to the physical, mental or emotional condition that existed at the time of placement but was not identified before the final order. This clearly delineates special service payments (focused on the needs of the child) from maintenance payments (focused on the needs of the child and family), and gives adoptive parents and local agencies flexibility in developing adoption assistance agreements.

D, 2, b, (2)-Deletes eyeglasses from the equipment that can be purchased with special service payments. The revision is consistent with that regarding non-routine dental needs.

D, 2, g-Deletes reference to Department purchase of service requirements, and requires that the rate of payment shall not exceed the prevailing community rate. The Department no longer has purchase of service requirements for adoption services.

D, 3-Replaces "special needs" child with child "with special needs." This is a technical amendment.

D, 3, a, (1) and (4)-Deletes reference to rates set by the Department. The Department no longer sets rates for adoption services.

E, 2, a-Technical amendment

F, 2, a-Adds a requirement for the placing agency to maintain responsibility for payments and services identified in the agreement, regardless of where the family resides. This is consistent with state and federal law regarding the protection of interests of children in interstate situations.

G, 1, b-Revises language to allow maintenance payments to continue for a child turning 18 during his/her senior of school, if the child is expected to graduate by the end of the school year in which he/she turns 18.

G, 4-Adds a provision that when a child receiving adoption subsidy enters foster care or physical custody becomes the responsibility of the state, the local agency may renegotiate the adoption assistance agreement with the adoptive parents. This is consistent with Title IV-E guidelines.

H-Adds a provision for adoptive parents and applicants to appeal decisions related to adoption subsidy, presentation of relevant information about the child, and compliance with state laws and policies for approving adoptive homes. It has been recommended that the separate appeal regulation (22 VAC 40-270) be repealed, and appeal rights be incorporated into 22VAC 40-260.

Alternatives

Please describe the specific 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.

The regulation sets forth necessary guidelines for administration of the adoption subsidy program by all local departments of social services. The option of not having a subsidy regulation is not feasible, as Virginia is mandated by federal and state statutes to provide adoption subsidy.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

There was no public comment.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The agency, through examination of the regulation, determined that the regulation is clearly written and understandable by individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The regulation will be reviewed as needed and no later than four years after the proposed regulation is effective. At that time, the agency will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated, and to ensure that the regulation addresses the specific and measurable goals of adoption subsidy.