



## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22VAC40-730
<b>Regulation title</b>	Investigation of Child Abuse and Neglect in Out of Family Complaints
<b>Action title</b>	Review and Amend Investigation of Child Abuse and Neglect in Out of Family Complaints
<b>Date this document prepared</b>	April 20, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This proposed regulatory action makes technical amendments to 22VAC40-730, Investigation of Child Abuse and Neglect in Out of Family Complaints, conforming it to Child Protective Services (CPS), 22VAC40-705. Because definitions and requirements of 22VAC40-705 must be followed in out of family CPS complaints, conformity in definitions and content between the two regulations is essential to maintain consistency across regulations for the investigation of child abuse and neglect.

### 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.*

None.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The Code of Virginia (Code) authorizes the State Board of Social Services to promulgate regulations to carry out the administration of social services in the Commonwealth under Chapter 15 (63.2-1500 et seq.) of Title 63.2. Sections 63.2-1506, 63.2-1511 and 63.2-1516.1 of the Code provide additional legal mandates for CPS investigations in out of family settings.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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As a result of a review of the Investigation of Child Abuse and Neglect in Out of Family Complaints regulation 22VAC40-730, inconsistencies were identified with definitions in the Child Protective Services regulation 22VAC40-705, which sets out the main requirements of CPS processes. Proposed changes to 22VAC40-730 provide technical amendments that are necessary to ensure conformity in definitions and content between CPS regulations providing for the investigation of child abuse and neglect. Conformity across CPS regulations is essential for consistency in critical decisions involving the health, safety and welfare of children and families involved in the CPS process. The goal of updating definitions and correcting inconsistencies is to provide clarity for local departments of social services when conducting investigations of child abuse and neglect in out of family complaints.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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Substantive changes to the regulation include: (1) incorporating by reference the definitions of Child Protective Services regulation 22VAC40-705; (2) eliminating duplicate definitions; (3) clarifying existing definitions to reflect updated terminology; and (4) conforming language throughout the regulation to reflect updated definitions as appropriate. Because the definitions and requirements of the CPS regulation 22VAC40-705 must be followed in out of family CPS complaints, conformity in definitions and content between the two regulations is essential to maintain consistency across regulations for the investigation of child abuse and neglect.

## 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

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The primary advantage of this proposed regulatory action is to promote consistency for local departments of social services authorized by Code to conduct CPS investigations in out of family complaints; thus, providing for consistency in investigations involving alleged abusers, victims and families and proper coordination with other regulatory authorities.

This regulatory action poses no disadvantages to the public or the Commonwealth.

**Requirements more restrictive than federal**

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

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This regulatory action contains no requirements 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.

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The Code authorizes local departments of social services to conduct investigations of suspected child abuse and neglect in out of family settings; therefore, every local department will be required to comply with proposed changes. This regulatory action does not have an identified disproportionate material impact on any particular locality.

**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.

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The Department of Social Services used a participatory approach in the review and development of the proposed regulation by receiving input from the following stakeholder groups: the Child Protective Services Policy Advisory Committee; the Children’s Justice Act /Court Appointed Special Advocate Advisory Committee; the CPS Out of Family Investigation Advisory Committee; and the Governor’s Advisory Board on Child Abuse and Neglect. Membership of these committees includes representation from: state and local CPS professionals and staff, public school personnel, private mental health and treatment providers, child day program providers, residential providers, community prevention and child advocacy representatives, health care providers and private citizens.

In addition to any other comments, the board/agency 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 may do so via the Regulatory Townhall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email or fax to Mary Walter, CPS Program Consultant, Department of Social Services, Division of Family Services, 801 East Main St., Richmond, VA 23219, [mary.walter@dss.virginia.gov](mailto:mary.walter@dss.virginia.gov), phone: 804-726-7569 or fax: 804-726-7499. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period.

**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 requirements creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>There is no additional projected cost to the state to implement and enforce the proposed regulation, as these are primarily technical changes.</p>
<p><b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b></p>	<p>There is no projected cost on localities to implement the proposed regulation.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b></p>	<p>Local departments of social services will be affected by the proposed regulation, as they are required to comply with the regulation when completing CPS investigations in out of family complaints. Impact will be minimal because the proposed changes provide technical clarification and do not impose any additional requirements for the completion of these investigations.</p>
<p><b>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.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 120 local departments of social services in the Commonwealth.</p>
<p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new</b></p>	<p>There are no projected costs to implementing the changes in the proposed regulation.</p>

<b>regulations.</b>	
<b>Beneficial impact the regulation is designed to produce.</b>	The beneficial impact of this proposed regulation is to promote consistency in definitions and language across CPS regulations, thus improving compliance for local departments who are authorized by statute to carry out CPS investigations in out of family complaints.

**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.*

A review of this regulation necessitated the conforming of definitions and terminology to comport with the main CPS regulation, 22VAC40-705. This regulatory action incorporates by reference the definitions from 22VAC40-705 and updates definitions distinct to 22VAC40-730. The alternative is to leave the definitions and corresponding terminology in each CPS regulation, potentially leading to confusion. In addition, if the definitions remain duplicated and separate as they are now, the process to change future updates to these regulations would require two regulatory actions.

The proposed amendments are not anticipated to have a cost for implementation and will have no effect on small businesses in the Commonwealth.

**Regulatory flexibility analysis**

*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.*

This regulatory action, inclusive of the periodic review, revealed necessary updates to increase consistency in CPS regulations regarding investigation of child abuse and neglect in out of family complaints which impacts the health, safety and welfare of children and families involved. Proposed changes include consolidation of definitions across CPS regulations and incorporating such language into this regulation. The proposed language does not impose any restrictions on any parties involved and has no impact on small businesses in the Commonwealth.

**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 notice of intended regulatory action public comment period.

**Family impact**

*Please assess the impact of the proposed 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.*

The proposed regulatory action will have no negative impact on the institution of the family, family stability, or rights of parents. The Investigation of Child Abuse and Neglect in Out of Family Complaints regulation sets out requirements for investigating CPS complaints in state licensed and religiously exempted child day programs, private and public schools, residential facilities, hospitals or institutions. Proposed changes provide technical amendments to establish conformity across CPS regulations which could increase consistency in the investigation of complaints in out of family settings with regard to critical decisions involving the health, safety and welfare of children and families. There is no anticipated impact on marital commitment or family income.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please describe the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change, rationale, and consequences</b>
10. Definitions.			<p>For consistency between CPS regulations, the introductory statement incorporates by reference the definitions from the Child Protective Services regulation 22VAC40-705-10. By doing so, the following definitions are removed: caretaker; child day center; Child Protective Services; complaint; department; disposition; family day home; founded; and local agency.</p> <p>The definition for child day center is replaced with child day program, defined in § 63.2-100. This is a more general term and encompasses child day centers.</p> <p>The definition for facility is amended to include child day program.</p> <p>The definition for residential facility is</p>

			<p>amended to reflect current terminology in examples of such facilities.</p> <p>The subsequent amendments in this regulatory action reflect the changes made to the definitions section.</p>
20. General.			<p>The term valid is added to qualify complaint.</p> <p>Changes in the definitions require that the following amendments be made: change child day center to child day program; omit regulated family day home; and change group residential facilities to residential facilities.</p>
30. Initial assessment.			<p>Changes the title of this section from Initial assessment to the more accurate term Safety assessment.</p> <p>The term valid is added to qualify complaint.</p> <p>The term local department replaces local agency.</p> <p>The term safety is added to qualify plan.</p>
40. Involvement of regulatory agencies.			<p>The term valid is added to qualify complaint.</p> <p>The term local department replaces local agency.</p> <p>Child day program replaces child day center.</p>
60. Contact with CPS regional coordinator.			<p>The term valid is added to qualify complaint and the term local department replaces local agency.</p>
70 A. Contact with the facility administrator.			<p>For clarification, language is added regarding initiating contact with the facility administrator or designee.</p>
70 B.			<p>The term valid is added to qualify complaint.</p>
80. Contact with the alleged victim child.			<p>The term local department replaces CPS agency.</p>
90 A. Contact with the alleged abuser or neglecter.			<p>The term local department replaces CPS agency, and the term valid is added to qualify complaint.</p>
100. Contact with collateral children.			<p>The term valid is added to clarify complaint, and the term nonvictim was added to qualify the collateral children referenced in this section.</p>
115 B.			<p>The term valid is added to clarify</p>

<p>Procedures for conducting an investigation of a teacher, principal or other person employed by a local school board or employed in a nonresidential school operated by the Commonwealth.</p>			<p>complaint.</p>
<p>130 A. Requirements.  130 B.</p>			<p>Replace the term CPS staff with CPS workers.  The term local department replaces local agency.</p>