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Exempt Action: Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) Chapter citation(s)	22 VAC40-211
VAC Chapter title(s)	Foster and Adoptive Home Approval Standards
Action title	Amend Foster and Adoptive Home Approval Standards for 2020 Legislation
Final agency action date	August 19, 2020
Date this document prepared	August 19, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, 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.

This regulatory action is necessary to implement requirements of legislation passed during the 2020 session of the General Assembly and to make changes consistent with waiver and foster family home capacity standards as outlined in the Family First Prevention Services Act of 2018 and defined in the Social Security Act.

Chapter 562 (SB 1025) of the 2020 Acts of Assembly clarifies that local departments of social services (LDSS) must submit a waiver request to the Commissioner when it is determined that training requirements are a barrier to placement with a kinship foster parent. LDSS may not remove a child from the physical custody of the kinship foster parent during the approval process. Waivers of any non-safety-related approval standard in kinship foster family homes may be made by LDSS on a case-by-case basis. A waiver may be granted by LDSS for kinship foster parents for the purpose of approval for training,

completion of the mutual family assessment, tuberculosis assessment, screening or tests, and physical examinations for a period not to exceed six months.

The Family First Prevention Services Act requires that the total number of children in foster care in a foster family home must not exceed six, unless specific exemptions apply. This is inconsistent with our current regulation, which states that the maximum number of children in a home must not exceed eight.

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, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "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."

Section 63.2-217 of the Code of Virginia gives the State Board of Social Services the responsibility to make rules and regulations to administer social services in the Commonwealth under Chapter 9 (63.2-900 et seq.) of Title 63.2 of the Code of Virginia.

More specifically, the 2020 Acts of Assembly Chapter 562 directs that the Board of Social Services (the Board) shall promulgate regulations to implement the provisions of this act and that the initial adoption of regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ **2.2-4000** et seq. of the Code of Virginia), except that the Board shall provide an opportunity for public comment on the regulations prior to adoption.

Additional changes were necessary to make the regulation consistent with waiver and foster family home capacity standards as outlined in the Family First Prevention Services Act of 2018 and defined respectively in sections 471(a)(10)(D), 472(c)(1)(A)(ii)(III), and 472(c)(1)(B) of the Social Security Act.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On August 19, 2020, the State Board of Social Services approved the exempt action to amend 22VAC40-211, Foster and Adoptive Home Approval Standards.