



Virginia  
Regulatory  
Town Hall

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## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Social Services
<b>Virginia Administrative Code (VAC) citation</b>	22 VAC40-201
<b>Regulation title</b>	Permanency Services –Prevention, Foster Care, Adoption and Independent Living
<b>Action title</b>	Fair Hearings for Foster Care Emergency Regulation
<b>Date this document prepared</b>	December 10, 2015

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 regulatory action amends 22VAC40-201-10 and adds section 22VAC40-201-115. The regulation was initially amended as an emergency regulatory action and became effective 6/25/14. The emergency action was necessitated by passage of House Bill 2045 (2013). The proposed replacement regulation creates an appeal process related to the provision of foster care services. Key provisions of the regulation are: who has a right to appeal to the Commissioner of Social Services; what decisions or benefits may not be appealed; who shall be notified of the right to an appeal and what is included in the notice; the ability of the Commissioner to delegate the duty and authority to duly qualified officers; information about the decision; and the appellant's right to judicial 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.*

DSS – 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.*

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Federal authority is 45 CFR 1355.30 (k), 205.10 and 1392.11. State authority is §§ 63.2-217 and 63.2-915 of the Code of Virginia. This regulation will replace an emergency regulation that became effective on 6/25/14.

## 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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This regulatory action establishes a hearing process for individuals who may receive a payment or service that is intended to benefit a child in foster care. This action provides that those individuals may appeal to the Commissioner when they believe a benefit has been denied or unreasonably delayed. Appropriate benefits help to protect the health and welfare of children in foster care.

## 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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Key provisions of the regulation are: who has a right to appeal to the Commissioner of Social Services; what decisions or benefits may not be appealed; who shall be notified of the right to an appeal and what is included in the notice; the ability of the Commissioner to delegate the duty and authority to duly qualified officers; information about the decision; and, the appellant's right to judicial review. The only change to this regulation from the emergency regulation is the deletion of the first sentence in 22VAC-40-201-115 C, which was determined to be overly broad and subject to differing interpretations.

## 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 advantage of this regulation is that it provides a process for individuals to appeal to the Commissioner when they believe a benefit related to a foster care case, has been denied or unreasonably delayed. This 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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There are 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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This regulation impacts all 120 local departments of social services.

### 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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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 Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to **Phyl Parrish, Virginia Department of Social Services, 801 East Main Street, Richmond, Virginia 23219, 804-726-7926, Fax: 804-726-7895, or, [phyl.parrish@dss.virginia.gov](mailto:phyl.parrish@dss.virginia.gov)**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will not be held after this regulatory stage is published in the *Virginia Register of Regulations*.

There is only one change being made to the language in the emergency regulation, therefore the workgroup that provided input into the development of the regulation is not being reconvened.

**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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.*

<b>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.</b> Think broadly, e.g., these entities may or may not be regulated by this board	The individuals who would be affected are those claiming a benefit under § 63.2-905 related to foster care services.
<b>Agency’s best estimate of the number of (1) entities that will be affected, including (2) small businesses affected.</b> Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	This regulation impacts local departments of social services, licensed child placing agencies and the individuals who are claiming a benefit related to foster care services.
<b>Benefits expected as a result of this regulatory proposal.</b>	Individuals will have a process to follow to appeal the denial or delay of a claim for a benefit related to foster care services.
<b>Projected cost to the state to implement and enforce this regulatory proposal.</b>	No new costs for this regulatory action. Funding was provided for additional hearing officer positions in DSS when HB 2045 was passed in the 2013 General Assembly session.
<b>Projected cost to localities to implement and enforce this regulatory proposal.</b>	No significant costs to localities anticipated.
<b>All projected costs of this regulatory proposal for affected individuals, businesses, or other entities.</b> Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	No costs for individuals, businesses or other entities.

**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.*

No alternatives have been considered. The Administration for Children and Families, Children’s Bureau, informed DSS that failure to have an appeal process in place for payments and services benefiting children in foster care would mean that DSS would place its ability to draw down funding under Title IV-E of the Social Security Act at risk.

**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.*

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This regulation has no impact on small businesses. It is a process for individuals to appeal denial or delay of benefits related to foster care services.

**Public comment**

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

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No comments were received following publication of the Emergency/NOIRA action.

**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.*

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While this regulatory action does not impact the rights and authority of parents, marital commitment, or family income, it does have the potential for indirect impact on the family. Creation of an appeals process could impact birth parents or caretakers in situations where there is a goal of reunification with those parents or caretakers. Those individuals would be able to appeal if they were denied or delayed in receiving a service or benefit that could help them accomplish some of what is needed in order to have their child returned home.

**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. 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 list separately (1) all differences between the **pre-emergency regulation** and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10	n/a	n/a	<p>Adds a definition of “claim for benefit” to clarify that maintenance and certain services may be appealed.</p> <p>Adds a definition of “denied” as meaning the refusal to provide a claim for benefits.</p>
n/a	115	No appeal process was included.	<p>This new section creates an appeal process for individuals whose claim for benefits is denied or not acted upon with reasonable promptness.</p> <p>Substantive requirements include:</p> <p>The appeal is to the Commissioner and may be heard by designated appeals officers.</p> <p>Decisions made by local departments of social services, the family assessment and planning team or other multi-disciplinary team may be appealed to the Commissioner.</p> <p>Local departments or if the local department is not involved, the family assessment and planning team or other multi-disciplinary team, must provide written information regarding the right to appeal to applicants. This could include birth parents, caretakers, guardians ad litem, and foster parents.</p> <p>The written notice is provided at the time a child enters care, or when a decision is made to discontinue, change or suspend a benefit.</p> <p>Timely notice must be given when a decision discontinues, changes or suspends a benefit. Timely notice means the notice is mailed at least 10 days before the date the action becomes effective.</p> <p>An individual has 30 days after local</p>

			<p>department action to request a hearing and the hearing must be conducted within 90 days of the request.</p> <p>The Commissioner may provide that a request for a hearing made within 10 days following the action shall result in reinstatement of the benefit pending the hearing except under certain circumstances.</p> <p>The Commissioner or designated hearing officer may deny or dismiss a request for a hearing if it is withdrawn or abandoned.</p> <p>The individual appealing has the right to a representative, to bring witnesses, examine information on which the local department, family assessment and planning team or other multi-disciplinary team relied in making its decision, and to question or refute witnesses.</p> <p>Decisions by the hearing officer shall be based exclusively on the evidence and materials introduced at the hearing</p> <p>The individual appealing shall be notified of the decision in writing.</p> <p>When the hearing decision is in favor of the individual, the local department shall promptly begin the process to provide the service or make corrective payments.</p> <p>The decision of the Commissioner shall be binding and considered a final agency action for purposes of judicial review.</p> <p><b>Change from emergency to proposed:</b></p> <p>This proposed regulation includes one change from the emergency regulation. In section 115 C, the first sentence was removed. It was determined that the sentence was overly broad and that the rest of the paragraph addressed the same issue of placement decisions in a more precise way</p> <p>The sentence that has been removed is “Decisions related to the placement of a child in foster care with a specific individual or family may not be appealed.”</p>
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